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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**WP (C) 8941/2015**

Reserved on: 11<sup>th</sup> November 2017

Decided on: 7th December, 2017

SUNBEAM AUTO PRIVATE LIMITED ....Petitioner  
Through: Mr. Mayank Nagi with Mr. Vikrant  
A. Maheshwari, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX ..... Respondent  
Through : Mr. Ruchir Bhatia, Senior standing  
counsel.

WITH

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**WP (C) 8943/2015**

SUNBEAM AUTO PRIVATE LIMITED ....Petitioner  
Through: Mr. Mayank Nagi with Mr. Vikrant  
A. Maheshwari, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX ..... Respondent  
Through : Mr. Ruchir Bhatia, Senior standing  
counsel.

WITH

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**WP (C) 8996/2015**

SUNBEAM AUTO PRIVATE LIMITED ....Petitioner  
Through: Mr. Mayank Nagi with Mr. Vikrant



A. Maheshwari, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX ..... Respondent  
Through : Mr. Ruchir Bhatia, Senior standing  
counsel.

AND

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**WP (C) 9079/2015**

SUNBEAM AUTO PRIVATE LIMITED ....Petitioner  
Through: Mr. Mayank Nagi with Mr. Vikrant  
A. Maheshwari, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX ..... Respondent  
Through : Mr. Ruchir Bhatia, Senior standing  
counsel.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**07.12.2017**

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**Dr. S. Muralidhar, J.:**

1. These four writ petitions are by Sunbeam Auto Private Limited seeking *inter alia* the quashing of an order dated 30<sup>th</sup> March 2015 passed by the Principal Commissioner of Income Tax-8 (Pr CIT) under Section 264 of the Income Tax Act, 1961 ('Act'), dismissing the Petitioner's application under Section 264 of the Act for the Assessment Years ('AYs') 2007-08 to 2010-11 whereby the Assessee sought revision of the assessment orders passed by the Assessing Officer (AO) for the aforementioned AYs under Section 143



(3) on the issue of sales tax subsidy.

2. The AO had, in the aforementioned assessment orders, added back the sales tax subsidy received by the Assessee as a revenue receipt thereby rejecting its plea that it had to be treated as a capital receipt.

3. The scheme under which the Petitioner received the said subsidy also formed the subject matter of appeal filed by Johnson Matthey India (P) Limited being ITA No.952/Del/2011 before the ITAT for AY 2006-07. The ITAT, by its order dated 12<sup>th</sup> August 2014, upheld the Assessee's contention that the sales tax subsidy was a capital receipt.

4. Against the aforementioned order, the Revenue came in appeal before this Court by filing ITA No.193/2015, which was dismissed by this Court by way of its order dated 13<sup>th</sup> March 2015. This Court referred to the decision of the Supreme Court in *CIT v. Ponni Sugars and Chemicals Limited [2008] 306 ITR 392 (SC)* and this Court's decision in *CIT v. Bougainvillea Multiplex Entertainment Centre Pvt. Ltd. [2015] 373 ITR 14 (Del)*. Further the decision of this Court in *CIT v. Bhushan Steel and Strips Ltd. [2017] 398 ITR 216 (Del)*, which has been relied upon by the Revenue, is in appeal before the Supreme Court in S.L.P.(C) No. 30728-30732 of 2017 and has been stayed by that Court.

5. In that view of the matter, the impugned order dated 30<sup>th</sup> March 2015 of the Pr CIT dismissing the Petitioner's application under Section 264 is hereby set aside. Resultantly, the orders of the AO dated 29<sup>th</sup> December 2009 (for AY 2007-08), 30<sup>th</sup> September 2010 (for AY 2008-09), 24<sup>th</sup>



November 2011 (for AY 2009-10) and 9<sup>th</sup> January 2013 (for AY 2010-11) as regards their holding that the sales tax subsidy is a revenue receipt are hereby set aside. In other words, the sales tax subsidy received by the Petitioner will be treated as a capital receipt and not be added to the income of the Petitioner. The consequential orders will now be passed by the AO in terms of this order.

6. The writ petitions are disposed of accordingly.

**S. MURALIDHAR, J.**

**PRATHIBA M. SINGH, J.**

**DECEMBER 07, 2017**

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