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

% *Date of Decision : 29.04.2025*

\+ **ITA 113/2025**
\+ **ITA 115/2025**
\+ **ITA 116/2025**
\+ **ITA 117/2025**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1

.....Appellant

Through: Mr Ruchir Bhatia, SSC, Mr Anant Mann, JSC Ms Aditi Sabharwal and Mr Abhishek Anand, Advocates.

versus

PVR LTD

.....Respondent

Through: Mr Salil Kapoor, Mr Sumit Lalchandani and Ms Ananya Kapoor, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The Revenue has filed the present batch of four appeals under Section 260A of the Income Tax Act, 1961 [**the Act**] assailing a common order dated 23.10.2024 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] dismissing the respective appeals preferred by the Revenue and allowing the cross objections filed by the respondent [**Assessee**] in the said appeals.

2. The details of the appeals filed by the Revenue and cross objections in

reference to the appeals preferred by the Assessee, which were disposed of by the learned ITAT by the impugned order, are set out below: -

Sr. No.	ITA No.	ITA No. (ITAT)	Cross Objection No.	CIT(A) No.	AY
1	113/2025	6648/Del/2013	222/Del/2018	55/13-14	2008-09
2	115/2025	1578/Del/2014	223/Del/2018	414/11-12	2009-10
3	116/2025	1270/Del/2015	307/Del/2015	510/16-17	2010-11
4	117/2025	7948/Del/2018	69/Del/2021	134/10-11	2014-15

3. The principal question considered by the learned ITAT was whether the subsidies received by the Assessee from the State governments were in the nature of capital receipts?

4. The Assessee had received the Entertainment Tax Subsidy [**ETS**] from the State Governments in respect of the multiplexes operated by it in the States of Uttar Pradesh, Madhya Pradesh, and Maharashtra. The Governments of State of Uttar Pradesh, Madhya Pradesh and Maharashtra, had framed respective Schemes for grant of ETS with a view to promote setting up of fully developed multiplexes in their respective States. In terms of the said Scheme, the Assessee was allowed to retain the ETS collected by the Assessee on sale of cinema tickets and not deposit the same with the respective State Governments. The same was by way of a subsidy for construction and development of new multiplexes in the respective States.

5. The Assessee had collected entertainment tax but did not deposit the same with the concerned authorities; it adjusted the same towards the ETS. The Assessing Officer [**AO**] held that since the entertainment tax was

collected over a period of time and had not been deposited, the same was liable to be taxed in the hands of the Assessee for the previous years relevant to the respective assessment years. The AO also found that the subsidy was not a capital subsidy and was on the revenue account; therefore, was liable to be included in the Assessee's income chargeable to tax.

6. The AO noted that (i) the Assessee was not the owner of the multiplexes and was operating multiplexes from lease hold properties; (ii) the depreciation on the said properties was claimed by the owners; (iii) the subsidies received was not directly related to any capital asset or any capital outlay made by the Assessee; (iv) the exemption from payment of entertainment tax was available only after the commencement operation of the multiplexes; (v) the exemption was granted to the Assessee subject to the condition that the multiplexes would have to run for a number of years fixed by the respective State Governments; and (iv) the exemption was in the form of entertainment tax, which is collected by the Assessee as part of the sale price of the tickets and retained by it.

7. On the basis of the aforesaid observation, the AO concluded that ETS was not a capital subsidy in the hands of the Assessee.

8. On an appeal preferred by the Assessee, the Commissioner of Income Tax (Appeals) **[CIT(A)]** held in favour of the Assessee and deleted the additions made by the AO. The learned ITAT also accepted the said view.

9. The relevant extract of the impugned order accepting the Assessee's contention that the subsidy receipt was a capital receipt, is set out below: -

"3.1 Ld. Counsel of the assessee has submitted that the issue involved is a covered issue in favour of assessee by the decisions of ITAT for AY 2006-07 & 2007-08 in its own case and also by other favourable decisions of Hon'ble Supreme Court, jurisdictional High Court and other High Courts wherein it is held that the Entertainment tax receipts kept by Multiplex operators towards incentive schemes is a capital receipt not liable to tax.

3.2 It comes up that the assessee is a listed company, engaged in the business of exhibition of films in multiplexes developed in different states. With the objective to promote and to incentivize the construction of new Multiplexes, different states came out with subsidy schemes as per which the Proprietor of Multiplex was entitled to retain the amount of ETS collected on sale of cinema tickets towards subsidy limited to particular amount in particular years. The case of assessee is that based on the decision of Hon'ble Supreme Court in the case of CIT vs. Ponni Sugar and Chemicals reported in [2008] 306 ITR 392 as in AY 2006-07 & 2007-08, in this year also the assessee claimed the said amount of ETS of Rs.16,73,37,497/-forming part of its total turnover as capital receipt not liable to tax. In AY 2006-07 ETS involved was in respect of one Multiplex involving E tax subsidy scheme in the state of Uttar Pradesh and in AY 2007-08 ETS involved was in respect of SIX Multiplexes involving E-tax subsidy scheme in the state of Uttar Pradesh, Maharashtra and Madhya Pradesh. In this year ETS claim of Rs. 16,73,37,497/-relates to Seven multiplexes involving E-tax subsidy schemes in the same Three states as in AY 2006-07 & 2007-08. Detail of Multiplex wise ETS is filed before us in the PB at Page- 59 thereof.

> 3.3 As instructed by the Bench, a statement of E tax subsidy received in AY 2008-09 to 2010-11 along with copy of complete E tax subsidy schemes in respect of all the three states involved i.e. UP, MP & Maharashtra has also been filed vide letter dated 01.10.2024 filed during hearing on 01.10.2024 as per Annexures B, C1, C2 and C3.
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> 3.4 In assessment proceedings, based on the enhancement orders of Ld. CIT(A) in AY 2006-07 and 2007-08, Ld. AO added the same as revenue receipt of the assessee. However, Ld. CIT(A), based on the order of the Hon'ble ITAT in AY 2006-07 and also decisions of Hon'ble Bombay High Court in the case of CIT v. Chapalkar Brothers, 351 ITR 309 (Bom) and of Hon'ble Gujarat High Court in the case of DCIT v. Inox Leisure Ltd., 350 ITR 314 (Guj.), has held the same as capital receipt and deleted the addition.
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> 3.5 Ld. DR has not been able to take out any straw from the facts of AYs before us that the objects of state subsidy schemes involved are in any way different than one considered in the case of assessee for AY 2006-07 & 2007-08. The Ld. CIT(A), has relied the decision of the co-ordinate in assessee's own case in AY 2006-07 & 2007-08 wherein enhancement of income on account of ETS as made by the Ld. CIT stands deleted by the Tribunal vide its orders dated 20.4.2012 and 07.1 1.2023 respectively. Thus, considering this issue as no more res-Integra the departmental grounds on this issue have no substance."

10. At this stage, it is material to note that although there are other grounds raised by the Revenue including the challenge to the deletion of lease hold improvement expenses capitalised in the books of Assessee, and the deletion of the disallowance under Section 14A of the Act [in respect of

the AY 2010-11]; the learned counsel for the Revenue has not pressed any such issues in the present appeals.

11. As is apparent from the above extract of the impugned order, the learned ITAT rejected the appeals preferred by the Revenue by referring to the decision of the Hon'ble Bombay High Court in ***CIT v. Chapalkar Brothers: 351 ITR 309 (Bom)*** and the decision of the Hon'ble Gujarat High Court in ***DCIT v. Inox Leisure Ltd.: [2013] 351 ITR 314 (Gujarat)***.

12. The appeal preferred by the Revenue against the decision in ***CIT v. Chapalkar Brothers*** (*supra*) was dismissed by the Hon'ble Supreme Court in ***Commissioner of Income Tax-1, Kolhapur v. M/s Chaphalkar Brothers Pune: 2017 INSC 1198.*** The Supreme Court referred to its earlier decision in ***CIT v. Ponni Sugar and Chemicals Limited : (2008) 9 SCC 337*** and observed as under:-

> "What is important from the ratio of this judgment is the fact that Sahney Steel was followed and the test laid down was the "purpose test". It was specifically held that the point of time at which the subsidy is paid is not relevant; the source of the subsidy is immaterial; the form of subsidy is equally immaterial.
>
> Applying the aforesaid test contained in both Sahney Steel as well as Ponni Sugar, we are of the view that the object, as stated in the statement of objects and reasons, of the amendment ordinance was that since the average occupancy in cinema theatres has fallen considerably and hardly any new theatres have been started in the recent past, the concept of a Complete Family Entertainment Centre, more popularly known as Multiplex

Theatre Complex, has emerged. These complexes offer various entertainment facilities for the entire family as a whole. It was noticed that these complexes are highly capital intensive and their gestation period is quite long and therefore, they need Government support in the form of incentives qua entertainment duty. It was also added that government with a view to commemorate the birth centenary of late Shri V. Shantaram decided to grant concession in entertainment duty to Multiplex Theatre Complexes to promote construction of new cinema houses in the State. The aforesaid object is clear and unequivocal. The object of the grant of the subsidy was in order that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers. This being the case, it is difficult to accept Mr. Narasimha's argument that it is only the immediate object and not the larger object which must be kept in mind in that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold. We hasten to add that the object of the scheme is only one - there is no larger or immediate object. That the object is carried out in a particular manner is irrelevant, as has been held in both Ponni Sugar and Sahney Steel."

13. The Supreme Court has further proceeded to observe as under:-

"Since the subsidy scheme in the West Bengal case is similar to the scheme in the Maharashtra case being to encourage development of Multiplex Theatre Complexes which are capital intensive in nature, and since the subsidy scheme in that case is also similar to the Maharashtra cases, in that the

> amount of entertainment tax collected was to be retained by the new Multiplex Theatre Complexes for a period not exceeding four years, we are of the view that West Bengal cases must follow the judgment that has been just delivered in the Maharashtra case."

14. Undisputedly, the purpose of the Scheme in the present case is also to encourage the development of the multiplex theatre complexes, which are capital intensive in nature. Thus, the questions sought to be raised are squarely covered in favour of the Assessee by the decision of the Supreme Court in ***Commissioner of Income Tax-1, Kolhapur v. M/s Chaphalkar Brothers Pune*** (supra).

15. In the aforesaid view, no substantial question of law arises for consideration of this court in these appeals.

16. These appeals are, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 29, 2025
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Click here to check corrigendum, if any