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## Consideration for transfer of sales tax incentive taxable as revenue receipt

### In brief

Consideration for transfer of 'sales tax incentive' held not to be a capital receipt, and taxable as revenue receipts.

### Facts

- The taxpayer, Sun-N-Sand Hotels Pvt. Ltd.<sup>1</sup>, invested INR 100 million in wind power generation to set up two wind farms in Maharashtra.
- Key features of the Maharashtra State Government policy on wind power:

- Investment in plant and machinery, new building etc. in wind power project would qualify as eligible investment for availing sales tax benefit.
- 1/6<sup>th</sup> of the investment every year would be the sales tax benefit, provided the plant had successfully operated with minimum 12% plant load factor.
- As per the policy, the sales tax benefit could be transferred to a third party to whom electricity is sold by the Company.
- The taxpayer had already claimed tax benefit under the aforementioned scheme and was eligible for sales tax exemption of INR 16.6 million for AY 2003-2004 to AY 2006-2007.
- The taxpayer sold the sales tax entitlement to Grasim Industries Ltd.

<sup>1</sup> Sun-N-Sand Hotels Pvt. Ltd. v. DCIT [TS-6-ITAT-2014(Mum)]

## Taxpayer's contentions

- The sales tax benefit was granted to the taxpayer for building necessary infrastructure for generation of wind power in Maharashtra.
- This subsidy was not liable to be reduced from cost of windmills for granting depreciation.
- The subsidy was granted for commissioning of windmills and not to meet the cost of windmills.
- The nature of the sales tax benefit/ incentive should be determined based on the 'purpose test and intent test' principle as laid down in Reliance Industries<sup>2</sup>, Chaphalkar Brothers<sup>3</sup>, Shree Balaji Alloys<sup>4</sup> and Inox Leisure Limited<sup>5</sup>. It had been laid down that in deciding capital/ revenue character of a subsidy, the purpose and object of the Scheme under which the subsidy was given is of fundamental importance.
- Transfer of sales tax incentive was in the nature of 'subsidy' received from the government which was a capital receipt.
- Based on the above facts and judicial precedents, the taxpayer contended that the subsidy would constitute 'capital receipt'.

## Tribunal's ruling

- The Mumbai bench of the Income-tax Appellate Tribunal (the Tribunal) observed that on perusal of the agreement it was evident that the consideration received was not a sales tax benefit/ incentive but consideration for transfer of its entitlement.

- Judicial precedents cited by the taxpayer were not applicable to the facts of the present case as in none of the above cases had the assessee sold their sales tax benefit/ incentive.
- The consideration received on transfer of sales tax incentive was nothing but a benefit arising from business and was therefore a revenue receipt.

## PwC's observations

- The Tribunal held that the income derived from sale of incentive is different from subsidy received from the government directly. It is pertinent to note that when a subsidy is received from the government, it has been held to be a capital receipt as per judicial precedents cited by the assessee, but transfer/ trading involving this incentive/ benefit has been held to be taxable as revenue receipt in this case.
- In contrast, in a similar issue relating to sale of Certified Emission Reductions (CER), the Hyderabad bench of the Tribunal in the case of My Home Power Ltd<sup>6</sup> held the proceeds to be a capital receipt.
- With the ongoing emphasis on development of the renewable energy sector, such cases are bound to arise frequently before the judicial authorities, and taxability of the same continues to be a contentious issue.

<sup>2</sup> DCIT v. Reliance Industries Ltd. [2004] 88 ITD 273 (Mumbai-Trib) (SB)

<sup>3</sup> CIT v. Chaphalkar Brothers [2013] 351 ITR 309 (Bombay-HC)

<sup>4</sup> Shree Balaji Alloys v. CIT [2011] 333 ITR 335 (Jammu & Kashmir-HC)

<sup>5</sup> DCIT v. Inox Leisure Ltd. [2013] 351 ITR 314 (Gujarat-HC)

<sup>6</sup> My Home Power Ltd. v. DCIT [2013] 21 ITR(T) 186 (Hyderabad-Trib)

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