OD 5 & 6

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/72/2018

GRAPHITE INDIA LIMITED
VS
COMMISSIONER OF INCOME TAX, -IV, KOLKATA

WITH

ITA/16/2021
IA NO: GA/1/2017(Old No:GA/43/2017)
GRAPHITE INDIA LIMITED
VS
COMMISSIONER OF INCOME TAX-IV, KOLKATA

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE CHAITALI CHATTERJEE (DAS)
Date: 18th May, 2026.

Appearance:
Mr. Somak Basu, Adv.
Mr. Swagato Kabiraj, Adv.
...for the appellant

Mr. Prithu Dudhoria, Adv.
Mr. Madhu Jana, Adv.
Mr. Wahed Reja, Adv.
...for the respondent

The Court: Learned counsel appearing for the appellant refers to the substantial questions of law that were admitted on 7th June, 2018 in respect of ITA/72/2018 as well as on 8th May, 2018 in respect of ITA/16/2021 by the orders passed by their Lordships Hon'ble Justice Aniruddha Bose and Hon'ble Justice Amitabha Chatterjee. The substantial questions of law are as follows:

> "(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that deduction allowed under Section 80IA of the Act needs to be reduced while computing profits of the business eligible for deduction under section 80HHC of the Act ?"

Learned counsel submits that the issue is already covered by the judgment of the Hon'ble Supreme Court of India in Shital Fibers Ltd. versus Commissioner of Income Tax, reported in [2025] 476 ITR 309 (SC).

Learned counsel appearing for the respondent/department on instruction agrees with the submission made by the appellant.

As such, in view of the judgment of the Supreme Court in Shital Fibers Ltd. (supra), this Court holds that the substantial question of law to be in negative and in favour of the assessee.

The next substantial question of law is-

> "(b) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that incentive/subsidy received by the appellant in the form of remission of sales tax is not capital but revenue in nature ?"

The assessee received sales-tax remission under the West Bengal Incentive Scheme, 1993, which was granted to encourage expansion and modernization of industrial units located in backward areas and was directly linked to investment fixed capital.

The nature of such subsidy must be determined by applying the well-settled “purpose test”. In CIT v. Ponni Sugars and Chemicals Ltd. (306 ITR 392), the Supreme Court held that where the object of the subsidy is to enable setting up or expansion of an industrial unit, the receipt is capital nature irrespective of the mechanism through which it is granted. The principle was reiterated in CIT v. Shree Balaji Alloys (333 ITR 335), where incentive aimed at promoting industrialization in backward regions were held to be capital receipts. This Court in PCIT v. Ankit Metal & Power Ltd. (416 ITR 591) applied the aforesaid test and held that subsidies linked to capital investment for industrial development cannot be treated as revenue receipts.

A perusal of the West Bengal Incentive Scheme, 1993 clearly demonstrates that the remission was intended to induce fresh capital investment and expansion of industrial capacity. It was not a subsidy to assist the assessee in carrying on its trade more profitably.

The Tribunal, therefore, erred in treating the said subsidy as revenue in nature. We accordingly answer substantial question of law (b) in the negative, i.e., in favour of the assessee and against the revenue.

The appeal, being ITA/72/2018 and the appeal, being ITA/16/2021 along with connected application [IA No.GA/1/2017 (Old No.GA/43/2017)] are disposed of.

(RAJARSHI BHARADWAJ, J.)

(CHAITALI CHATTERJEE (DAS), J.)

B.Pal