Subsidy given by State Govt. on account of power consumption by new/expanded units was capital receipt

Summary – The High Court of Calcutta in a recent case of Shyam Steel Industries Ltd., (the Assessee) held that Subsidy allowed by State Government on account of power consumption which was available only to new units and units which had undergone an expansion, was to be regarded as capital subsidy not liable to tax

Facts

- The question arose in instant appeal was as to whether a subsidy allowed by the State Government on account of power consumption, by its very nature, would make the subsidy a revenue receipt and not a capital receipt, irrespective of the purpose of the scheme under which such incentive or subsidy was made available to a business unit.

Held

- The difference may be in degrees but the words of a scheme and the real purpose thereof have to be discerned in assessing whether the incentive or the subsidy thereunder has to be regarded as a capital receipt or a revenue receipt. There may be a scheme, for instance, that permits every entity of a certain class to lower charges for consumption of power, irrespective of the unit being a new unit or it having expanded itself. In such a scenario, the incentive would have to be invariably regarded as a revenue receipt. However, when the scheme itself makes the incentive applicable only to new and expanding units, the fact that the incentive is in the form of a rebate by way of sales tax or concessional charges on account of use of power or a lower rate of duty being made applicable would be of little or no relevance.
- When an entrepreneur sets up a business unit, particularly a manufacturing unit, or embarks on an exercise for expanding an existing unit, the entrepreneur factors in the cost of setting up the unit or the cost of its expansion and the costs to be incurred in running the unit or the expanded unit. It is the totality of the capital expenditure and the expenses to run it that are taken into account by the entrepreneur. The investment by an entrepreneur by way of capital expenditure is recovered over a period of time and has a gestation gap. If the running expenses are made cheaper by way of any subsidy or incentive and made applicable only to new units or expanded units, the realisation of the capital investment is quicker and the decision as to the quantum of capital investment is influenced thereby. That is the exact scenario in the present case where the lower operational costs by way of subsidy on consumption of power helps in the quicker realisation of the capital expenditure or the servicing the debt incurred for such purpose.

- In view of the acceptance of the wider ambit of the "purpose test" and the scheme in this case being available only to new units and units which have undergone an expansion, the real purpose of the incentive in this case has to be seen as a capital subsidy and has to be regarded, as such, as a capital receipt and not a revenue receipt.
- In the result, the revenue's appeal is dismissed.