Govt. grant received by a co. owned by the Govt. is capital receipt even if it is used for operational exp.

Summary – The High Court of Calcutta in a recent case of State Fisheries Development Corporation Ltd., (the Assessee) held that where Government gave grant-in-aid to a company wholly-owned by Government, facing acute cash crunch, to keep company floating, even though large part of funds were applied by company for salary and provident funds, grant received was capital receipt

Facts

- The assessee was a company wholly-owned by the State Government. The assessee was engaged in business of pisciculture. The assessee received an amount as grants-in-aid. Out of that, certain sum was received for payment of salary to its employees, certain sum for payment of Provident Fund dues and certain sum for the purpose of flood relief. The assessee claim deduction of said sum from its income on plea that same constituted capital receipt.
- The assessing Officer found that the fund was applied for items which were revenue in nature. He recorded that such receipts were consistently treated in the past by the assessee as revenue receipt. Thus, same could not be allowed for deduction as capital receipt.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On further appeal, the Tribunal did not solely rely on the nature of application of the funds received through grant-in-aid and. The Tribunal examined the character of the assessee as a Government company as well as the character of grantor, being the State Government itself, the financial status of the assessee and certain other factors. The Tribunal had sustained the assessee's claim that grant-in-aid towards provident fund dues constituted capital receipts.
- On appeal to the High Court:

Held

- The fundamental principle for distinguishing capital receipt from revenue receipt in relation to Government grant has been laid down by the Supreme Court in the case of *Sahney Steel & Press Works Ltd*. v. *CIT* [1997] 94 Taxman 368/228 ITR 253. That was a case involving government subsidy in the form of certain time bound incentives and facilities. These incentives and facilities included refund of sales tax on raw materials, machineries and finished goods. The Supreme Court found that the incentives and facilities under a subsidy scheme to enable the assessee to acquire new plant or machinery for expansion of manufacturing capacity or set up new industrial undertaking could constitute capital receipt. In that case, however, the scheme contemplated for refund of sales tax on purchase of machinery and raw materials, subsidy or power consumption and certain other exemptions on utilities consumed. The Supreme Court rejected the plea of the assessee for treating such facilities and incentives as capital receipt on the reasoning that such subsidy could only be treated as assistance given for the purpose of carrying on the business of the assessee.

- So far as assessee's case in this appeal is concerned, Rs. 3.60 crores was received as grant-in-aid in the relevant previous year towards salary and provident fund dues. On surface test, receipt under these heads no doubt has the attributes of revenue receipt. But there are two factors which distinguish the character of the grant-in-aid which the assessee wants to be treated as capital receipt. Said sum was not on account of any general subsidy scheme. Secondly, the sum was given by the State to a wholly-owned company which was facing acute cash crunch. Financial status of the company appears from the submission of the assessee's representative recorded in the order of the first Appellate Authority and there is no denial of this fact in any of the materials placed.
- In the case of the assessee, though it is not a grant from a parent company to a subsidiary company, the grant is from the State Government, which was in effect, hundred per cent shareholder of the assessee. Rs. 3.60 crores was meant for payment of staff salaries and provident fund dues. As already observed, these item heads may bear the label of revenue receipt on the surface, it is apparent that the actual intention of the State was to keep the company, facing acute cash crunch, floating and protecting employment in a public sector organization. There is no separate business consideration on record between the grantor, that is the State Government and the recipient thereof being the assessee. The principle of law as laid down in the case of *Siemens Public Communication Network (P.) Ltd*. v. *CIT* [2017] 77 taxmann.com 22/244 Taxman 188/390 ITR 1 (SC) is that voluntary payments made by the parent company to its loss making Indian subsidiary can also be understood to be payments made in order to protect the capital investment of the assessee-company. Though the grant-in-aid in this case was received from public funds, the State Government being 100 per cent shareholder, its position would be similar to that of, or at par with a parent company making voluntary payments to its loss making undertaking. No other specific business consideration on the part of the State has been demonstrated in this appeal. The assistance extended appears to be measures to keep the assessee-company floating, the assessee being, for all practical purposes an extended arm of the State. Though large part of the funds were applied for salary and provident fund dues, the object of extension of assistance, to ensure survival of the company.
- As regards the funds extended for flood relief, the same cannot constitute revenue receipt. Flood relief does not constitute part of business of the assessee. Accordingly the question is answered in favour of the assessee and confirm the finding of the Tribunal.