

Subsidy received from foreign joint venture partner to contribute in joint venture co. was a capital receipt

Summary – The High Court of Madras in a recent case of Sundaram Finance Ltd., (the Assessee) held that where in order to set up a joint venture in insurance sector, a foreign company gave capital subsidy to assessee in order to enable it to contribute its share in share capital of joint venture company, amount of subsidy so received was to be regarded as capital receipt not liable to tax

Facts

- In terms of that the Letter of Intent, a leading UK based insurance company namely 'RSA' entered into an agreement with the assessee-company to start a new joint venture in the insurance sector and initially for restraining the assessee-company, not to enter in the insurance sector, the said UK company agreed to pay a non-compete fees. It was also agreed that the start up capital would be Rs. 100 crores, of which RSA would subscribe 26 per cent at par and assessee would subscribe 50 per cent at par and the balance by one or more mutually accepted by third parties. The said letter of intent further provided that if at the time of finalisation of shareholders agreement, it was found that assessee was required to further infuse equity during the initially agreed pay-back period, RSA would make a compensatory payment to assessee if, an amount to be mutually agreed, before the finalisation of the shareholders agreement.
- In course of assessment, the Assessing Officer found that the amount received by the assessee from RSA, UK towards capital subsidy for subscribing to the share capital of the joint venture company was revenue receipt liable to tax.
- The Tribunal confirmed addition made by Assessing Officer.
- On appeal:

Held

- The agreement between the two parties in question clearly stipulated that both intended to set up a new joint venture company to enter into the insurance sector and since, for making the investment in the share capital, the assessee fell short of money, the UK company RSA gave the capital subsidy to the assessee-company to contribute its share in the share capital of the joint venture company in terms of the Letter of Intent.
- It may be noted here that 74 per cent of the total subscription share capital was to be invested by the Indian companies including the assessee-company and only 26 per cent of share capital was to be invested by the RSA (UK company). There is no material on record to show that the said capital subsidy received by the assessee company during the year in question was diverted by the assessee-company for any other purpose except for being invested in the share capital of the joint venture company. This money has not been utilised as subscribing the share capital of the UK company, RSA itself though the assessee-company SFL.

- There is no evidence on record brought by revenue to establish that the insurance business of the joint venture company had already started and the said remittance was made by the UK company RSA against any such services rendered by the assessee-company SFL to the said UK based company RSA. Therefore, the contention of the revenue that the said subsidy or remittance was received for any business link or services rendered by the assessee to the UK based company RSA can not be accepted. It is undoubtedly, a capital receipt in the hands of the assessee-company and cannot be brought to tax as revenue receipt, particularly in the face of the finding of the Assessing Authority himself that the subsidy or remittance so received from RSA had been invested by the assessee-company in the share capital of the joint venture company.