

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 1418/DEL/2018
[A.Y 2013-14]**

The A.C.I.T
Central Circle 27
New Delhi

Vs.

Ultimate Flexipack Ltd.
305, 3rd Floor, Bhanot Corner,
Pamposh Enclave, Greater Kailash-1,
New Delhi - 110048

PAN : AAACU 6565 D

[Appellant]

[Respondent]

**Date of Hearing : 06.09.2021
Date of Pronouncement : 06.09.2021**

Assessee by : Shri. M. P. Rastogi, Adv.
Shri Rajiv Kumar, C.A.

Revenue by : Ms. Nidhi Srivastava, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the Commissioner of Income Tax [Appeals] - 29, New Delhi dated 20.12.2017 pertaining to Assessment Year 2013-14.

2. The Revenue has raised the following grounds:

1. On the facts and in the circumstances of the case, the Ld CIT(A) has erred in law and on facts in allocating Rs.10 lacs against earning of sub licensing fee and other corporate income as no basis arriving at this amount has been given and the estimated expenditure figure is excessive and unjustified.
2. On the facts and in the circumstances of the case, the Ld CIT(A) has erred in law and in facts in holding the income of Rs.5,98,30,263/- on account of deduction u/s 80IC in respect of scrap sales of Rs.5,98,30,263/- as being generated out of its manufacturing activity.
3. That the grounds of appeal are without prejudice to each other.
4. That the appellant carves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

3. At the very outset, the ld. DR fairly conceded that Ground No. 1 has been advertently taken as the grievance does not find any place in the order of the first appellate authority. The same is, accordingly, dismissed.

4. Ground No. 2 relates to the allowing of deduction u/s 80IC of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] in respect of scrap sales of Rs. 5,98,30,263/-.

5. Briefly stated, the underlying facts in issue are that the assessee company is engaged in the business of manufacturing of film used in packing industry, printed article in pouch form and zipper diaphragm. The assessee company has four manufacturing units at Baddi, Jammy and two units at Haridwar.

6. During the course of scrutiny assessment proceedings and on perusal of profit and loss account for the year under consideration, the Assessing Officer noticed that the assessee has earned income from scrap sales amounting to Rs. 5.98 crores. The assessee was asked to submit details of scrap sales which were duly submitted by the assessee.

7. It was contended that the scrap sale price comprises of sale of scrap generated out of manufacturing of finished goods as well as other scraps which have been received with raw material and

generated out of repair and maintenance of plant and machinery and other assets.

8. The Assessing Officer was of the opinion that the sale of scrap generated during the manufacturing cannot be said to have been derived from industrial activities. At the most, it can be incidental to the industry activities. Drawing support from the principles laid down by the Hon'ble Supreme Court in the case of Pandian Chemicals 129 Taxmann.com 539 and Liberty India 183 Taxman 349, the Assessing Officer disallowed the claim of deduction in respect of sale proceeds on scrap sales.

9. The assessee strongly agitated the matter before the Id. CIT(A) and reiterated its claim of deduction u/s 80IC of the Act in respect of scrap sale.

10. After considering the facts and submissions, the Id. CIT(A) was convinced that the assessee has successfully demonstrated that all the items of scrap are generated out of its manufacturing activities. The Id. CIT(A) further found that the cost of all these items have been charged to profit and loss account and eligible profit u/s 80IC of the

Act. The Id. CIT(A) considered the following judgment of the Hon'ble jurisdictional High Court of Delhi in the case of Sadhu Forging Ltd 336

ITR 444 :

"the industrial undertaking, set up by the assessee, was for the purpose of manufacture of steel forging, gears and part and accessories of motor vehicles and the scrap of these items was stated to be a bye- product of manufacturing process. ITAT found that the assessee was involved in manufacturing of forging which involved purchase of steel, cutting the same, making of forging ports, giving heat treatment and' machining. Each of these processes could be done in separate industrial undertaking, whereas assessee had undertaken all these processes in its units. The assessee was doing these works on Job basis for other undertakings, by getting the raw material from them. When the assessee was entitled to claim exemption in respect of income derived from such processes done for itself, it is not understandable as to why he would not be entitled to so merely because the raw material component was being supplied by other customers and for whom the assessee was doing the Job; the heat treatment is one of the processes through which the forgings are given the desired temperature and then cooled in different manner which results in a changing the mechanical properties desired by the customers. The cooling of the material at some predetermined rates

causes the formation of desired structure within the metal for the desired properties with the aim (i) to improve the mechanical property such as tensile strength, hardness, ductibility, shock resistance, etc. (ii) improve machinability, (iii) increase resistance to heat and corrosion (iv) relieve stresses developed due to hot and coldworking, (v) modify electrical, magnetic & molecular bonding properties, etc. The heat treatment toughens the forged part for being used as automobile parts. The process of heat treatment is absolutely essential for rendering them marketable. Therefore, the activity forging was "manufacturing" within the ambit of Section 8018. It was immaterial that the assessee was doing the job of forging also for customers and was charging them on job-work basis or on the basis of labour charges. Thus, the job work charges and labour charges were part and parcel of the manufacturing activity and could not be excluded from the profits and gains derived from the industrial undertaking for the purpose of computing deduction under Section 80-IB; the manufacturing activity also generate scrap In the process of manufacturing. The receipts sale of scrap being part and parcel of the activity and being proximate thereto would also be within the ambit of gains derived from industrial undertaking for the purpose of computing deducting under Section 80IB."

11. Drawing support from the aforementioned judgment, the ld. CIT(A) allowed the claim of the assessee.

12. Before us, though the ld. DR strongly supported the findings of the Assessing Officer, but could not point out any error or omission in the findings of the ld. CIT(A) which is supported by the decision of the Hon'ble Jurisdictional High Court of Delhi [supra]. We, therefore, do not find any reason to interfere with the findings of the ld. CIT(A).

13. In the result, the appeal of the Revenue in ITA No. 1418/DEL/2018 is dismissed.

The order is pronounced in the open court on 06.09.2021 in the presence of both the rival representatives.

Sd/-

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 06th September, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	