

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.As. No.427/DEL/2018 & 428/DEL/2018
Assessment Years 2013-14 & 2014-15

Ultimate Flexipack Ltd., 305, 3 rd Floor, Bhanot Corner, Pamposh Enclave, Greater Kailash-I, New Delhi.	v.	ACIT, Central Circle-27, New Delhi.
TAN/PAN: AAACU6565D		
(Appellant)		(Respondent)

Assessee by:	Shri M.P. Rastogi, Adv.		
Department by:	Smt. Sushma Singh CIT-D.R		
Date of hearing:	19	07	2021
Date of pronouncement:	11	10	2021

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against separate impugned order of even date 30.12.2017 passed by Id. CIT(A)-29, New Delhi for the quantum of assessment passed u/s.153/143(3) for the Assessment Year 2013-14 and u/s.143(3) for Assessment Year 2014-15. We will first take up the appeal for the assessment year 2013-14 wherein the assessee has raised following grounds:-

"1. Lower authorities have erred in holding that minimum royalty of Rs. 3,00,00,000/- (Three crore only) paid for acquiring sub - licensing rights is allocable to tax holiday units eligible for deduction u/s 80-IB & 80-IC of the Income Tax Act, 1961.

2. *It is contended that Minimum Royalty payment of Rs. 3 crore is relatable to sub-licensing rights acquired and not to be allocated to tax holiday units.*

3. *It is contended that on the facts and circumstances of the case and in law, refund of Excise duty (Self Cenvat Credit) amounting to Rs 1,20,95,648/- is a capital receipt not includible in the determination of total income u/s 115JB of Income Tax Act, 1961.*

4. *It is contended that on the facts and circumstances of the case and in law subsidy on DG sets amounting to Rs 2,86,957/- being a capital receipt is not includible in the determination of total income u/s 115JB of Income Tax Act, 1961.”*

2. At the outset, grounds no.1 and 2 have not been pressed by the ld. counsel; therefore, same is dismissed as not pressed.

3. In so far as ground no.3 is concern, the ld. counsel submitted that same is covered by the decision of this Tribunal in assessee's own case for the Assessment Years 2005-06 and 2006-07 in ITA No.2199/Del/2009 vide order dated 20.03.2019 and also order for the Assessment Years 2007-08 to 2011-12, order dated 22.01.2020, wherein the Tribunal has held that excise refund on account of establishment of new industrial undertaking in the state of Jammu & Kashmir as an incentive to promote industrial activity is in the nature of capital subsidy not liable to tax, therefore, the Excise Duty refund has to be excluded from the computation u/s.115JB of the Act as it is a capital receipt.

4. We find that even the ld. Assessing Officer has noted that this issue whether CENVAT Excise Duty refund is a subsidy in the nature of capital receipt or not has been decided by the ld. CIT(A)

in Assessment Years 2007-08 and 2008-09 in favour of the assessee for which the Department has filed an appeal before the Tribunal. Since, this issue has already been decided by the Tribunal in assessee's own case that Excise Duty refund was on account of establishment of new industrial undertaking under the incentive to promote industrial activity in the state of J & K has been held to be capital receipt, therefore, neither it can be taxable under the normal provision of the Act nor under Section 115JB. This issue stands covered by the decision of Hon'ble Jammu and Kashmir High Court in the case **Shri Balaji Alloys & Ors vs. CIT & Ors. (2011) 33 ITR 335 (J&K)**, which has also been confirmed by the Hon'ble Supreme Court. Further, Hon'ble Calcutta High Court in the case of **CIT vs. Ankit Metal & Power Ltd.**, reported in **(2019) 416 ITR 591 (Cal)** has held that in the computation of book profit u/s.115JB wherein subsidy granted as incentive by the State Government under the Scheme for setting up of all specified backward area and state, it is capital in nature not to be included for the purpose of computation u/s.115JB, therefore, this appeal is allowed in favour of the assessee.

5. In so far as issue raised in ground no.4, the facts are that the assessee has claimed capital subsidy on DG sets amounting to Rs.2,86,957/- wherein the same has been computed as part of book profit by the Assessing Officer. This issue has again been decided in favour of the assessee by the Tribunal wherein it has been held to be capital receipt not liable for forming part of book profit. Accordingly, this issue is also decided in favour of the assessee.

6. Similarly, in Assessment Year 2014-15, following grounds have been raised.

1. *Lower authorities have erred in holding that minimum royalty of Rs. 3,00,00,000/- (Three crore only) paid for acquiring sub-licensing rights is allocable to tax holiday units eligible for deduction u/s 80-IB & 80-IC of the Income Tax Act, 1961.*
2. *It is contended that Minimum Royalty payment of Rs. 3 crore is relatable to sub-licensing rights acquired and not to be allocated to tax holiday units.*
3. *It is contended that on the facts and circumstances of the case and in law, refund of Excise duty (Self Cenvat Credit) amounting to Rs 75,40,851/- is a capital receipt not includible in the determination of total income u / s 115JB of Income Tax Act, 1961.*
4. *It is contended that on the facts and circumstances of the case and in law subsidy on DG sets amounting to Rs 2,86,957/- being a capital receipt is not includible in the determination of total income u/s 115JB of Income Tax Act, 1961.”*
7. Here again, the assessee has not pressed grounds no.1 and 2 and the same is dismissed as not pressed. Ground no.3 and 4 are similar to grounds raised in Assessment Year 2014-15, therefore, in view of the finding given above both these grounds are also allowed.
8. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open Court on 11th October, 2021.

Sd/-
[R.K. PANDA]
ACCOUNTANT MEMBER

DATED: 11th October, 2021

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER