

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 270/DEL/2018 [A.Y 2008-09]
ITA No. 271/DEL/2018 [A.Y 2009-10]
ITA No. 272/DEL/2018 [A.Y 2010-11]
ITA No. 273/DEL/2018 [A.Y 2011-12]
ITA No. 274/DEL/2018 [A.Y 2012-13]

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

Vs.

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

PAN: AAACU 6565 D

ITA No. 693/DEL/2018 [A.Y 2008-09]
ITA No. 694/DEL/2018 [A.Y 2009-10]
ITA No. 695/DEL/2018 [A.Y 2010-11]
ITA No. 696/DEL/2018 [A.Y 2011-12]

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

Vs.

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

PAN: AAACU 6565 D

(Applicant)

(Respondent)

Assessee By : Shri M.P. Rastogi, Adv
Department By : Shri H.K. Chaudhary, CIT- DR

Date of Hearing : **22.03.2022**
Date of Pronouncement : **22.03.2022**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned cross appeals by the assessee and the Revenue are preferred against the order of the ld. CIT(A) - 29, New Delhi pertaining to Assessments Years 2008-09 to 2011-12. ITA No 274/DEL/2018 is an appeal by the assessee for A.Y. 2012-13.

2. All the captioned appeals were heard together and have common issues. Therefore, they are being disposed of by this common order for the sake of convenience and brevity.

3. The quantum in each appeal may differ.

4. The common grievances of the assessee read as under:

A (i) 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 Jammu 85 Baddi units eligible for deduction u/s 80-IB & 80-IC of the Act.

It is contended that Minimum Royalty payment of Rs. 3 crore net of sub-licensing income of Rs. 2.42 crore is allocable to tax holiday units.

B 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 4,11,74,224/- is a capital receipt not includible in the determination of total income u / s 115JB of Income Tax Act, 1961."

5. The common grievances of the Revenue read as under:

"1. The Ld. CIT(A) has erred in law as well as on facts in allocating expenses of Rs. 10,00,000/- against earning of sub-licensing fee and other income without proper justification.

2. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of claim for deduction of Rs. 4,11,74,224/- u/s 80IB on account of self cenvat credit availment.

3. That the grounds of appeal are without prejudice to each other.

4. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

6. At the very outset, the ld. counsel for the assessee drew our attention to Para 3 of the assessment order for Assessment Year 2008-09 and pointed out that the additions made in the original assessment framed u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] have been made as it is in the impugned assessment order.

7. It is the say of the ld. counsel for the assessee that the quarrel in respect of original assessment framed u/s 143(3) of the Act traveled upto the Tribunal and the Tribunal in assessee's own case in ITA No. 3373/DEL/2020 has deleted the impugned addition.

8. It is also the say of the ld. counsel for the assessee that since no new addition has been made in the impugned assessment order and since the additions made in the original assessment order have been deleted by the Tribunal, the impugned additions are also to be deleted.

9. Though the ld. DR strongly supported the findings of the Assessing Officer, but fairly conceded that the additions have been deleted by the Tribunal.

10. We have carefully perused the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. Para 3 of the assessment order makes it clear that the additions/adjustments have been made as per the original assessment framed u/s 143(3) of the Act.

11. This Tribunal, in assessee's own case vide a consolidated order dated 22.01.2020 for Assessment Years 2007-08 to 2011-12 ITA No. 3373/DEL/2011 and others has deleted the additions. The relevant findings read as under:

"43. As regards to Grounds No. 5 and 6 relating to refund of excise duty/cenvat credit, the Ld. AR submitted that in the year under appeal, the CIT (A) did not follow his predecessor's order for AY 2005- 06 to AY 2008-09 and held that such excise duty refund/cenvat credit is not a capital receipt, but a revenue receipt and liable to tax and consequently also did not exclude such receipts while computing the income u/s 115-JB of IT Act. This issue has already been decided by the Tribunal in assessee's own case in AY 2006-07 in ITA No. 2199/Del/2009 vide its order dated 20 th March 2019.

44. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

45. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the eligibility of excise duty refund was on account of establishment of new industrial undertaking in the State of Jammu & Kashmir as an incentive to promote industrial activity in the ITA Nos.3373, 4012/Del/2011 ITA Nos.375, 6292, 610/Del/2012 ITA Nos.1856, 1327/Del/2015 State of Jammu & Kashmir and is in the nature of capital subsidy not liable to tax. Thus, the said excise duty refund has to be excluded from the computation of [Section 115JB](#) of the Act as well as it is capital receipt. The decisions relied by the Ld. AR in case of Shri Balaji Alloys (supra) is applicable in the present case. Besides in A.Y. 2006-07 as well as in A.Y. 2007-08 hereinabove, this issue is decided in favour of the assessee by the Tribunal and the facts are identical in the present Assessment Year as well. Therefore, Ground No. 5 and 6 of the assessee's appeal are allowed.

XXX

XXX

73. As regards to Ground No.1 of Revenue's appeal, the Ld. AR submitted that as explained in ground No. 1 of Revenue's appeal in Assessment Year 2007-08 (ITA No. 4012/Del/2011), the issue is identical in the present assessment year as well. The Ld. DR relied upon the Assessment Order and could not controvert

the facts of the present assessment year with that of earlier assessment year.

74. We have heard both the parties and perused all the relevant material available on record. The additional ground filed by the assessee is admitted by ITA Nos.3373, 4012/Del/2011 ITA Nos.375, 6292, 610/Del/2012 ITA Nos.1856, 1327/Del/2015 us, while accepting the assessee's contention that the sub-licensing income needs to be excluded on net basis after adjusting the royalty paid, therefore, this ground No. 1 of Revenue's appeal does not survive, hence dismissed.

75. As regards to Grounds No. 2 of revenue's appeal, the Ld. AR submitted that in grounds No. 4 and 5 of Revenue's appeal Assessment Year 2007-08 in ITA No. 4012/Del/2011 the issue is identical in the present assessment year as well. The Ld. DR relied upon the Assessment Order and could not controvert the facts of the present assessment year with that of earlier assessment year."

12. Respectfully following the decision of the co-ordinate bench [supra], we direct the Assessing Officer to delete the impugned additions from the respective Assessment Years.

13. In the result, all the appeals of the assessee are allowed and those of the Revenue are dismissed.

The order is pronounced in the open court on 22.03.2022.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

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

Dated: 22nd March, 2022.

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	