

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 634/Del/2021  
(Assessment Year : 2017-18)

M/s. Dhanuka Agritech Ltd., 82, 1 <sup>st</sup> Floor, Abhinash Mansion, Joshi Road, Karol Bagh, New Delhi-110 005  <b>PAN No. AAACD 0105 G (APPELLANT)</b>	Vs.	CIT(A)-23 Jhandewalan Extn., New Delhi – 110 055  <b>(RESPONDENT)</b>
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Assessee by	Shri S. S. Naagar, Adv.
Revenue by	Shri Pradeep Singh Gautam, Sr. D.R.

Date of hearing:	02.02.2023
Date of Pronouncement:	24.03.2023

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 24.03.2021 passed by the Commissioner of Income Tax (Appeals)-23, New Delhi relating to Assessment Year 2017-18.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of formulation and marketing of plant protection agro-chemical, including insecticides, herbicides etc. Assessee electronically filed its return of income for A.Y. 2017-18 on 30.11.2017 declaring total income of Rs.118,61,64,030/-. The case of the assessee was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dated 23.12.2019 and the total income was determined at Rs. 1,23,48,92,320/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 24.03.2021 in Appeal No.CIT(A), Delhi-23/10270/2019-20 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds of appeal :

1.0 *“That on the facts and in the circumstances of the case, the disallowance, imposition of tax and interest with reference thereto, the quantification of taxable income and the tax liability, has been grossly unjustified, erroneous and unsustainable and necessary direction be given to the CIT (A) to give appropriate relief in accordance with law.*

1.1 *That on the facts and in the circumstances of the case, the CIT(A) ought to grant the claim of Education Cess on Income Tax in computing total income under the normal provisions of the Act.*

1.2 *That on the facts and in the circumstances of the case, the CIT(A) ought to grant the claim of Excise duty refund as non-taxable under the normal provisions of the Act.*

1.3 *That the appellant craves leave, to add, to amend modify, rescind, supplement, or alter any of the grounds stated herein-above, either before or at the time of hearing of this appeal.”*

4. Before us, at the outset, Learned AR submitted that

assessee does not wish to press Ground No.1.1 being the claim of Education Cess in the light of recent amendment brought in the statute by the Finance Act, 2022. Considering the aforesaid submissions of Learned AR, **this Ground is dismissed as not pressed.**

5. The other effective ground is with respect to the claim of Excise Duty refund as non-taxable under the normal provisions of the Act.

6. It is the contention of the assessee that it had availed Excise Duty Subsidy and had offered the same to tax in the return of income despite the fact that by virtue of the purpose test it was a capital receipt and not chargeable to tax. Before CIT(A), by way of additional ground, assessee pleaded that the Excise duty subsidy is a capital subsidy and therefore not liable to be taxed. CIT(A) has noted that no claim for the amount of Excise duty Subsidy as being capital receipt was made before the AO but however before CIT(A), an additional claim was raised for the claim of Excise duty Subsidy claiming it to be non taxable receipts. CIT(A) at para 4.2 of the order while denying the claim of the assessee noted that no claim was made before the AO and no reasons were furnished by assessee to demonstrate as to what prevented the assessee from raising such claim before the AO. He further noted that facts relating to Excise duty Subsidy were also not available on record

which are essential for deciding the issue. He accordingly did not admit the additional ground by the assessee.

7. Aggrieved by the order of CIT(A), Assessee is now before Tribunal.

8. Before us, Learned AR submitted that assessee had availed Excise duty refund and the same was offered to tax while computing the total income in the return of income. He submitted that the issue was raised before the CIT(A) by way of additional grounds to treat excise duty refund as capital receipt which was rejected by CIT(A). He submitted that Hon'ble ITAT in assessee's own case in A.Y. 2012-13 (ITA No.5788/Del/2016) had dismissed the Revenue's appeal on the issue and had decided the issue in favour of the assessee. He further submitted that for A.Ys. 2013-14, 2014-15 & 2015-16, assessee had claimed the excise duty subsidy as receipts not chargeable to tax while filing the returns of income and the Revenue while assessing the income has accepted the total income declared by the assessee. He placed on record the copy of the assessment orders for the aforesaid years. He therefore, submitted that the claim of the assessee that the excise duty refund is a capital receipt be accepted and the claim of the assessee be allowed.

9. Learned DR on the other hand pointed to the findings of CIT(A) order and submitted that no claim of subsidy as being

capital receipt was made before the AO and that CIT(A) has further given a finding that the facts relating to excise duty subsidy are not available on record. He therefore, submitted that the CIT(A) was fully justified in denying the claim of the assessee. He thereafter submitted that if the claim of the assessee is allowed then the matter be remitted to AO for necessary verification as at present there is no finding of the authorities on the issue. He thus supported the order of CIT(A).

10. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the claim of the assessee that the excise duty subsidy availed by it is capital receipt. It is an undisputed fact that the claim of excise duty subsidy being capital in nature was not made before the AO but was claimed through additional ground before CIT(A). We find that the claim of excise duty being capital receipt was not accepted by CIT(A) in view of the fact that no claim was made before the AO and no reasons were furnished by assessee to demonstrate as to what prevented the assessee from raising such claim before the AO. We do not agree with the aforesaid reasoning of CIT(A) for denying the claim of the assessee in view of the facts that Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 376 (Bombay) after considering the decision of Hon'ble Supreme Court in the case of Jute Corporation India Ltd. vs. CIT (1991) 187 ITR 688 and other decisions has held that assessee is

entitled to raise the additional ground not merely in terms of legal submissions but also legal claim not made in the return filed by it. It has further held that the appellate authorities have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. We are, therefore, of the view that CIT(A) was not justified in not admitting the additional ground and deciding the issue.

11. As far as the claim and quantum of excise duty subsidy is concerned, before us, assessee has neither placed any material on record to demonstrate as to what is the excise duty refund claimed and other relevant details. Further in the absence of any finding on the issue of lower authorities and considering the totality of the aforesaid facts, we are of the view that the issue raised in the present ground needs to be re-examined at the end of CIT(A). We, therefore, restore the issue back to the file of CIT(A) and direct him to decide the issue afresh in accordance with law. CIT(A) shall be free to call for such information and explanations as he deems fit to adjudicate the claim of the assessee. Assessee shall also be free to file such documents, explanations, submissions as it deems fit in respect of the claim. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. Assessee is also directed to promptly furnish the

required details called for by the authorities. **Thus this ground of assessee is allowed for statistical purposes.**

**12. In the result, appeal of the assessee is partly allowed.**

**Order pronounced in the open court on 24.03.2023**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 24.03.2023

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI