

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE  
SHRI G.S PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA Nos. 1727,1728, 1729, 1730, 1731, 1732/DEL/2017  
Asstt. Yrs 2004-05,2005-06,2006-07,2007-08,2008-09&2009-10

Uflex Ltd. 305, 3 <sup>rd</sup> Floor, Bhanot Corner, Pamposh Enclave, Greater Kailash-1 New Delhi – 110 048 PAN AAACF0109J	Vs.	ACIT, Central Circle-27, New Delhi.
(Appellant)		(Respondent)

ITA Nos. 2806,2807,2808,2809,2810 & 2811/Del/2017  
Asstt.Yrs 2004-05,2005-06,2006-07,2007-08,2008-09&2009-10

DCIT Central Circle-18, Room No. 327, 3 <sup>rd</sup> Floor ARA Centre, E-2, Jhandewalan Extn. New Delhi.	Vs.	Uflex Ltd. 305, 3 <sup>rd</sup> Floor, Bhanot Corner, Pamposh Enclave, Greater Kailash-1 New Delhi – 110 048 PAN AAACF0109J
(Appellant)		(Respondent)

Assessee by:	Shri M.P. Rastogi, Advocate Shri Rajive Kumar, CA
Department by:	Ms. Sarita Kumari, CIT-DR
Date of Hearing:	20.6.2024
Date of pronouncement:	26.07.2024

**ORDER**

**PER VIMAL KUMAR, JM**

The above mentioned assessee's and revenue department's appeals are against orders dated 30.01.2017 arising out of assessment order dated

31.12.2010 for the assessment years 2008-09 and dated 25.03.2013 for the assessment year 2009-10.

2. The assessee and revenue department have pleaded following grounds:-

ITA No.	AY	Grounds
1727/Del/2017	2004-05	<ol style="list-style-type: none"> <li>1. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 26,02,13,481/- being a capital receipt granted under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>2. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 1,89,18,025/- being a capital receipt granted under 1991 scheme of Madhya Pradesh Government read with Madhya Pradesh General sales tax act 1958 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>3. It is contended that sum of Rs. 26,02,13,481/- being sales tax under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 is an allowable deduction u/s 43B of the Income Tax act, 1961.</li> <li>4. It is contended that sum of that sales tax of Rs. 1,89,18,025/- under 1991 scheme of Madhya Pradesh Government readwith Madhya Pradesh General sales tax act 1958 is an allowable deduction u/s 43B of the Income Tax act, 1961.</li> <li>5. The lower authorities are wrong on facts and bad in law in disallowing a sum of Rs 2,50,000/- on account of foreign travelling expenses.</li> <li>6. The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.</li> </ol>

ITA No.	AY	Grounds
2806/Del/2017	2004-05	<ol style="list-style-type: none"> <li>1. Whether Ld. CIT(A) was right in allowing foreign travel expenses amounting to Rs. 2,50,000/- on the total addition of Rs. 5,00,000/- after disallowing lump sum of 50% u/s 37 of the Income Tax Act, 1967 despite observing that assessee failed to provide any purpose, identity, relation with company and jurisdiction of business requirement.</li> </ol>

		<p>2. Whether the CIT(A) was correct in admitting additional ground in the course of appeal and in allowing sales tax refund receipt as capital receipt which were neither claimed in the return of income nor in the course of assessment proceedings?</p> <p>3. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat sales tax subsidy received from UP Government amounting to Rs. 26,02,13,481/- as Capital receipt :-</p> <p>1. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>II. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>III. Ignoring the character and form of receipts by the assessee.</p> <p>4. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat sales tax subsidy received from Madhya Pradesh Industrial Policy amounting to Rs. 1,89,18,025/- as Capital receipt:-</p> <p>1. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>II. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>III. Ignoring the character and form of receipts by the assessee.</p> <p>5. That the grounds of appeal are without prejudice to each other.</p> <p>6. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.</p> <p>7. That the appellant craves leave to add, amend, alter or forgo any grounds of appeal either before or at the time of hearing of the appeal.</p>
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ITA No.	AY	Grounds
1728/Del/2017	2005-06	<ol style="list-style-type: none"> <li>1. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 24,44,23,129/- being a capital receipt granted under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>2. It is contended that sales tax of Rs. 17,63,063/- under scheme of Madhya Pradesh Government read with Madhya Pradesh General Sales Tax Act, 1958 is an allowable deduction u/s 43B of the Income Tax act, 1961.</li> <li>3. It is contended that sum of Rs. 24,44,23,129/- being sales tax under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 is an allowable deduction u/s 43B of the Income Tax Act, 1961.</li> <li>4. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 17,63,063/- being a capital receipt granted under 1991 scheme of Madhya Pradesh Government read with Madhya Pradesh General sales tax act 1958 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>5. The lower authorities are wrong on facts and bad in law in disallowing a sum of Rs. 7,50,000/- on account foreign Travelling expenses.</li> <li>6. The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.</li> </ol>

ITA No.	AY	Grounds
2807/Del/2017	2005-06	<ol style="list-style-type: none"> <li>1. Whether Ld. CIT(A) was right in allowing foreign travel expenses amounting to Rs. 7,50,000/- on the total addition of Rs. 15,00,000/- after disallowing lump sum of 50% u/s 37 of the Income Tax Act, 1967 despite observing that assessee failed to provide any purpose, identity, relation with company and jurisdiction of business requirement.</li> <li>2. Whether the CIT(A) was correct in admitting additional ground in the course of appeal and in allowing sales tax refund receipt as capital receipt which were neither claimed in the return of income nor in the course of assessment proceedings?</li> <li>3. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat sales tax subsidy</li> </ol>

		<p>received from UP Government amounting to Rs. 24,44,23,129/- and from Madhya Pradesh Industrial Policy amounting to Rs. 17,63,063/- as Capital receipt :-</p> <p>a. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>b. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>c. Ignoring the character and form of receipts by the assessee.</p> <p>4. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat sales tax subsidy received from Madhya Pradesh Industrial Policy amounting to Rs. 17,63,063/- as Capital receipt:-</p> <p>a. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>b. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>c. Ignoring the character and form of receipts by the assessee.</p> <p>5. That the grounds of appeal are without prejudice to each other.</p> <p>6. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.</p> <p>7. That the appellant craves leave to add, amend, alter or forgo any grounds of appeal either before or at the time of hearing of the appeal.</p>
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ITA No.	AY	Grounds
1729/Del/2017	2006-07	1. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 28,38,24,895/- being a capital receipt granted under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.

		<p>2. It is contended that sum of Rs. 28,38,24,895/- being sales tax under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 is an allowable deduction u/s 43B of the Income Tax act, 1961.</p> <p>3. The lower authorities are wrong on facts and bad in law making an addition of Rs. 1,58,320/- on account of understatement of Long Term capital gain.</p> <p>4. The lower authorities are wrong on facts and bad in law in disallowing a sum of Rs. 2,50,000/- on account of foreign Travelling expenses</p> <p>5. The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.</p> <p>6. That the appellant craves leave to add, amend, alter or forgo any grounds of appeal either before or at the time of hearing of the appeal.</p>
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ITA No.	AY	Grounds
2808/Del/2017	2006-07	<p>1. Whether the CIT(A) was correct in admitting additional ground in the course of appeal and in allowing sales tax refund receipt as capital receipt which were neither claimed in the return of income nor in the course of assessment proceedings?</p> <p>2. Whether Ld. CIT(A) was right in allowing foreign travel expenses amounting to Rs. 2,50,000/- on the total addition of Rs. 5,00,000/- after disallowing lump sum of 50% u/s 37 of the Income Tax Act, 1967 despite observing that assessee failed to provide any purpose, identify, relation with company and jurisdiction of business requirement.</p> <p>3. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat sales tax subsidy received from UP Government amounting to Rs. 28,38,24,895/- as Capital receipt :-</p> <p>a. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>b. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p>

		<p>c. Ignoring the character and form of receipts by the assessee.</p> <p>4. That the grounds of appeal are without prejudice to each other.</p> <p>5. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.</p> <p>6. That the appellant craves leave to add, amend, alter or forgo any grounds of appeal either before or at the time of hearing of the appeal</p>
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ITA No.	AY	Grounds
1730/Del/2017	2007-08	<ol style="list-style-type: none"> <li>1. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 36,57,94,648/- being a capital receipt granted under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>2. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 62,75,275/- being a capital receipt granted under 1991 scheme of Madhya Pradesh Government read with Madhya Pradesh General sales tax act 1958 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>3. It is contended that sum of Rs. 36,57,94,648/- being sales tax under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 is an allowable deduction u/s 43B of the Income Tax act, 1961.</li> <li>4. It is contended that sum of that sales tax of Rs.62,75,275/- under 1991 scheme of Madhya Pradesh Government readwith Madhya Pradesh General sales tax act 1958 is an allowable deduction u/s 43B of the Income Tax act, 1961.</li> <li>5. The lower authorities are wrong on facts and bad in law in disallowing a sum of Rs. 10,00,000/- on account of foreign Travelling expenses.</li> <li>6. The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.</li> </ol>

ITA No.	AY	Grounds
2809/Del/2017	2007-08	<ol style="list-style-type: none"> <li>1. Whether Ld. CIT(A) was right in allowing foreign travel expenses amounting to Rs. 10,00,000/- on the total addition of Rs. 20,00,000/- after disallowing lump sum of 50% u/s 37 of the Income Tax Act, 1967 despite observing that assessee failed to provide any purpose, identity, relation with company and jurisdiction of</li> </ol>

		<p>business requirement.</p> <p>2. Whether the CIT(A) was correct in admitting additional ground in the course of appeal and in allowing sales tax refund receipt as capital receipt which were neither claimed in the return of income nor in the course of assessment proceedings?</p> <p>3. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat sales tax subsidy received from UP Government amounting to Rs. 36,57,94,648/- as Capital receipt :-</p> <p>a. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>b. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>c. Ignoring the character and form of receipts by the assessee.</p> <p>4. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat sales tax subsidy received from Madhya Pradesh Industrial Policy amounting to Rs. 62,75,275/- as Capital receipt:-</p> <p>a.. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>b. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>c. Ignoring the character and form of receipts by the assessee.</p> <p>5. That the grounds of appeal are without prejudice to each other.</p> <p>6. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.</p> <p>7. That the appellant craves leave to add, amend, alter or forgo any grounds of appeal either before or at the time of hearing of the appeal.</p>
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ITA No.	AY	Grounds
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1731/Del/2017	2008-09	<ol style="list-style-type: none"> <li>1. The Ld. CIT (Appeals) is bad in law in not allowing the deduction of sales tax subsidy of Rs. 31,40,47,270/- including VAT refund of Rs. 6,89,81,496/- being a capital receipt granted under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 / U.P VAT Act 2008 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>2. It is contended that sum of Rs. 31,40,47,270/- being sales tax under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948/UP VAT Act, 2008 is an allowable deduction u/s 43B of the Income Tax act, 1961.</li> <li>3. The lower authorities are wrong on facts and bad in law in disallowing a sum of Rs. 10,00,000/- on account of foreign Travelling expenses.</li> <li>4. The lower authorities are wrong on facts and bad in law in disallowing a sum of Rs. 10,00,000/- on account of Aircraft Running &amp; maintenance expenses.</li> <li>5. The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.</li> </ol>
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ITA No.	AY	Grounds
2810/Del/2017	2008-09	<ol style="list-style-type: none"> <li>1. Whether Ld. CIT(A) was right in allowing foreign travel expenses amounting to Rs. 10,00,000/- on the total addition of Rs. 20,00,000/- after disallowing lump sum of 50% u/s 37 of the Income Tax Act, 1967 despite observing that assessee failed to provide any purpose, identity, relation with company and jurisdiction of business requirement.</li> <li>2. Whether the CIT(A) was correct in admitting additional ground in the course of appeal and in allowing sales tax refund receipt as capital receipt which were neither claimed in the return of income nor in the course of assessment proceedings?</li> <li>3. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat Trade tax subsidy received from UP Government amounting to Rs. 24,50,65,778/- and amounting to Rs. 6,89,81,496/- as VAT subsidy from UP Government as Capital receipt :- <ol style="list-style-type: none"> <li>1. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</li> <li>11. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount</li> </ol> </li> </ol>

		<p>under this head from its head from its customers as evident from invoices.</p> <p>111. Ignoring the character and form of receipts by the assessee.</p> <ol style="list-style-type: none"> <li>4. Whether Ld. CIT(A) was correct in restricting the disallowance of Rs. 1769088/- on account of Air Craft running and maintenance expenses to Rs. 9 lacs without any cogent basis.</li> <li>5. That the grounds of appeal are without prejudice to each other.</li> <li>6. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.</li> <li>7. That the appellant craves leave to add, amend, alter or forgo any grounds of appeal either before or at the time of hearing of the appeal.</li> </ol>
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ITA No.	AY	Grounds
1732/Del/2017	2009-10	<ol style="list-style-type: none"> <li>1. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing the deduction of Rs. 25,17,00,000/- being the VAT refund a capital receipt granted under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948 / U.P VAT Act 2008 while computing the Book profit u/s 115JB of the Income Tax Act, 1961.</li> <li>2. The Ld. CIT(Appeals) is wrong on facts and bad in law in not allowing deduction of Cenvat (Excise) refund being a capital receipt while computing book profit u/s 115JB of the Income Tax Act. 1961.</li> <li>3. The lower authorities are wrong on facts and bad in law in disallowing a sum of Rs. 54,61,000/- under section 14A readwith rule 8D.</li> <li>4. The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.</li> </ol>

ITA No.	AY	Grounds
2811/Del/2017	2009-10	<ol style="list-style-type: none"> <li>1. Whether Ld. CIT(A) was right in allowing relief to assessee when the assessee's main activities is of manufacturing and rest of the activities are secondary. The dividend income which is exempt u/s 10(38) of the IT Act has direct and avert link with the expenses incurred. The Ld. CIT(A) has not given any cogent reason for deleting this addition and simple stated that there was no debit balance as per bank statement of the respective days of investment.</li> </ol>

		<p>2. Whether the CIT(A) was correct in admitting additional ground in the course of appeal and in allowing sales tax refund receipt as capital receipt which were neither claimed in the return of income nor in the course of assessment proceedings?</p> <p>3. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat VAT refund received from UP Government amounting to Rs. 25,17,00,000/- as Capital receipt :-</p> <p>1. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>II. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>III. Ignoring the character and form of receipts by the assessee.</p> <p>4. Whether Ld. CIT(A) was right in allowing the claim of the assessee to treat self Cenvat credit availment amounting to Rs. 41,32,153/- received from J &amp; K Government as Capital receipt :-</p> <p>1. Which was never raised during the course of assessment proceedings as in returns of income and time for revising return has been over.</p> <p>II. Which was not provided by the Government directly but indirectly as an exemption &amp; assessee was not required to pay tax as had not charged any amount under this head from its head from its customers as evident from invoices.</p> <p>III. Ignoring the character and form of receipts by the assessee.</p> <p>5. That the grounds of appeal are without prejudice to each other.</p> <p>6. That the order of the CIT(A) is erroneous and is not tenable on facts and in law.</p> <p>7. 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.</p>
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3. The aforesaid grounds of appeals give rise to following questions:-
1. Whether disallowances of sales tax subsidy granted under Uttar Pradesh Industrial Policy 1994 and 1991 Scheme of Madhya Pradesh Government as a Capital Receipt while computing the book profit under section 115JB of the Income Tax Act are legally permissible?
  2. Whether the sums of sales tax under Uttar Pradesh Industrial Policy 1994 and 1991 Scheme of Madhya Pradesh Government is an allowable deduction under section 43B of the Income Tax Act is legally sustainable?
  3. Whether partial disallowances on account of foreign travelling expenses and partial aircraft running and maintenance are legal permissible?
  4. Whether disallowance of claim of deduction under section 80HHC to the extent of profit under clause (a) or clause (c) of sub section (3) of Section 80HHC while computing book profit under section 115 of Income Tax Act is legally sustainable?
  5. Whether admission of additional ground in relation to the capital subsidy/incentive under the UP Industrial Policy 1994 and Madhya Pradesh Govt. notification in view of case law is permissible?
  6. Whether the Cenvat credit availment received from J&K Government was a capital receipt and whether the same was excludible while computing book profit u/s. 115JB of the Act.
  7. Whether the disallowance made by the AO by invoking section 14A of the Act read with Rule 8D is sustainable.

4. Learned Representative for appellant/assessee submitted that the disallowances of sales tax subsidy granted under Uttar Pradesh Industrial Policy, 1994 and under 1991's scheme of Madhya Pradesh Government as capital receipt while computing book profit under section 115JB of Income Tax Act is covered by paragraph No. 14 and 15 of judgment dated 30.11.2021 in ITA Nos. 1329/Del/2015 in the case of Uflex Limited vs ACIT

for the assessment year 2010-11 and ITA No. 1855/Del/2015 dated 30.11.2021 in the case of DCIT vs Uflex Limited for the assessment year 2010-11. The alternate grounds were raised as an abundant caution with reference to claim of capital subsidy/incentive available under section 43B of Income Tax Act. The alternate grounds regarding deductions of sales tax under the Uttar Pradesh Industrial Policy 1994 and 1991 scheme of Madhya Pradesh Government were raised as a abundant precaution. Learned CIT(A) in his order held that such capital subsidy/incentive having regard to its objects and purpose are in capital account under normal provisions and accordingly not adjudicated.

5. Learned representative for the appellant/assessee submitted that Learned AO has not considered the revised return on the ground that there is no provision u/s 153A of Income Tax Act to revise the return. The opportunity for furnishing a revised return is available only under section 139(5) of Income Tax Act if the return is filed under section 139(1) of Income Tax Act. The proceedings under section 153A is comparable to the provision of section 147/148 of Income Tax Act. The assessee has claimed the deduction at an enhanced amount as per judgment of special Bench of ITAT in DCIT vs. Syncame Formulations (I) Ltd reported as 108 TTJ 105. Hon'ble Supreme Court of India in Ajanta Pharma has observed that the provision of Sections 80HHC and 115JB of IT Act operate in different spheres.

6. Learned representative for the appellant/assessee submitted that in the following cases, once proceedings are abated and return is filed under section 153A and return is filed under section 153A, the fresh claim may be made by the assessee. Reliance was placed on:-

422 ITR 71 (Bom) Pr. CIT vs. JSW Steel Ltd.

393 ITR 1 (Del) Pr.CIT vs. Neeraj Jindal

280 CTR 216 (Guj) Kirit Dahyabhai Patel vs. ACIT

7. Learned authorised representative for appellant/assessee submitted that appellant/assessee is the manufacturer and exporter of packaging material and having the units at various locations of the country as well as having subsidiaries outside India. The assessee was also in the process of expanding its business by establishing new units/subsidiaries in UAE, London etc. Appellant/assessee had aircraft and incurred expenses on its maintenance and running. During the year under consideration, the assessee had claimed the foreign travelling expenses amounting to Rs. 16,27,663/- and the details thereof are placed at page 71 of the paper book. On perusal of the details, it is clear that all the foreign travelling expenses have been incurred by the employees of the assessee-company and none of the expenses relates to the directors of the company. All the expenses have been incurred for the purpose of business either for supervising the subsidiaries or for exploring the new avenues for establishing the factories/units. It is also a fact that in the year under consideration, the assessee had established subsidiaries in Dubai UAE namely Flex Middle East and another subsidiary in London named as UFLEX Europe Ltd.

8. Learned representative for appellant/assessee submitted that the assessee is a limited and listed company and all the accounts are maintained as per the guidelines of the companies law and relevant vouchers are also maintained. In the audit report, the auditors have not pointed out any item which is un-vouched or inadmissible in nature. Therefore, the expenses of foreign travelling and aircraft maintenance incurred for the purpose of business deserve to be allowed in full.

9. Learned representative for appellant/assessee submitted that admission and adjudication of additional grounds in relation to the sales tax subsidy were taken in relation to the unit established in NOIDA for which an eligibility certificate was also issued by the State Government which has been placed at page 214 and 218 of the Paper Book. Learned CIT(A) has explained reasons for raising the claim which have been discussed by the CIT(Appeals) in paragraph 15.3 of his order at internal page 33-38 of the

order of CIT(Appeals). The Learned CIT(A) is having the co-terminus power as that of the Assessing Officer and for this very purpose the assessee relied on the following judgments:-

- (i) 53 ITR 225 (SC) CIT vs. Kanpur Coal Syndicate
- (ii) 33 ITR 182 (SC) CIT vs. Mahalakshmi Textile Mills Ltd.
- (iii) 187 ITR 688 (SC) Jute Corporation of India vs. CIT
- (iv) 229 ITR 383 (SC) National Thermal Power Co. Ltd. vs. CIT
- (v) 349 ITR 336 (Bom) CIT vs, Pruthvi Brokers & Shareholders Pvt. Ltd.

10. Learned authorised representative for department of revenue submitted that Learned CIT(A) rightly upheld disallowances of sales tax subsidy under Uttar Pradesh Industrial Policy 1994 and Madhya Pradesh Government under the 1991 Scheme as capital receipt while computing book profit under section 115JB of the Income Tax Act. Learned CIT(A) allowed additional grounds regarding sales tax subsidy as capital gain and did not adjudicate alternate grounds. Learned CIT(A) erred in admitting additional grounds despite reference to case law could not adjudicate. Learned CIT(A) erred in allowing 50% of the foreign travel expenses.

11. From examination of record in the light of aforesaid rival contention regarding question No. 1 qua disallowances of sales tax subsidy under the Uttar Pradesh Industrial Policy 1994 and 1991 Madhya Pradesh Scheme are squarely covered by para 29 of judgment in the assessee's case for the assessment year 2010-11 dated 30.01.2017 in ITA No. 1329/Del/2015 titled as "Uflex Ltd. vs. ACIT and ITA No. 1855/Del/2015 titled as "DCIT vs. Uflex Limited" as

*"Here also as noted above the object of the scheme under the Uttar Pradesh Industrial Policy and the Uttar Pradesh VAT Act, 2008 as per Section 42 provided that the benefit accrued to an assessee under the Section in terms of 4A of the Act as remained will continue and the assessee has to obtain fresh eligibility certificate which has been taken as assessee also had certificate dated 7th November, 2008, a copy of which has been placed at page 397 of the Paper book. The only difference between the earlier Uttar Pradesh*

*Industrial Policy and the Uttar Pradesh VAT Act, the person eligible for incentives and were for availing exemption for payment of tax under the State Government and thereafter the State Government will issue the refund. For the year under consideration the assessee has placed on record relevant assessment passed by the authorities under the Uttar Pradesh VAT Act, 2008 where the refund has been worked out at Rs. 19,12,31,759/- The nature of the incentive provided under the Uttar Pradesh Industrial Scheme by way of giving exemption was refund of VAT has to be seen with reference to the object and purposes for which Uttar Pradesh Industrial Scheme was framed. A perusal of the salient features as reproduced hereinabove it is quite evident that incentive under the Scheme has been provided for taxing capital investment and the State for the purpose of industrialization and setting up of new industries to generate more employment opportunities. The refund now VAT as given to the industrial undertakings only for the purpose of fulfilling the best industrialization of the State by establishment of new industries. Thus, incentive provided under the Uttar Pradesh Industrial Scheme is nothing, but capital subsidy not liable to be taxed in view of the judgement of Hon'ble apex court and Hon'ble Delhi High Court as cited above. The VAT subsidy amounting to Rs. 19,12,32,000/- is a capital receipt and hence not liable for tax and it cannot be treated as revenue receipt liable for tax. Accordingly, the additional ground raised by the assessee is allowed.”*

Accordingly question No. 1 is decided in favour of appellant/assessee.

12. From perusal of record it is evident that additional grounds regarding sums of sales tax under Uttar Pradesh Industrial Policy 1994 and 1991 Scheme of Madhya Pradesh Government as allowable under section 43B of Income Tax Act were first time raised before appellate authority by way of additional grounds. Learned appellate authority i.e CIT(A) allowed sales tax subsidy as capital receipt under the normal provision so the question No. 2 was not adjudicated upon. Therefore question No. 2 is decided as infructuous.

13. Regarding partial disallowance on account of foreign travel expenses and expenses of aircraft running and maintenance, Learned CIT(A) has given no reason. Appellant/assessee is a limited and listed company and all the accounts are maintained as per the guidelines of the companies law. In the audit report the auditors have not pointed out any item as inadmissible. Therefore the partial disallowance on foreign travel expenses is not just fair and reasonable. The partial disallowance of foreign travel aircraft running

and maintenance expenses are unsustainable. Appellant/assessee deserves disallowance of entire foreign travel and aircraft running and maintenance expenses. Therefore question No. 3 is decided in favour of the appellant/assessee.

14. The claim of deduction under section 80HHC to the extent to profits under clause (a) or clause (c) of sub-section (3) of section 80HHC while computing book profits under section 115JB was allowed by Learned AO under section 80HHC under normal provision of the Act but while computing income under section 115JB not excluded the whole expenses which allowed deduction under normal provisions based on the ratio of judgment by Hon'ble Supreme Court in Ajanta Pharma Ltd. vs. CIT (2010) 327 ITR 305 (SC) has been pleased to hold in section 115JB as in section 115JA, it has been clearly stated that the relief will be computed under section 80HHC(3)/(3A), subject to the conditions under sub-sections (4) and (4A) of that section. The conditions are only that the relief should be certified by the chartered accountant. Such condition is not a qualifying condition but it is a compliance condition. . In view of above question No. 6 deserve to be decided in favour of appellant/assessee. In view of above material facts and well settled principle of law appellant/assessee deserves the claim of deduction under section 80HHC to the extent of profit while computing book profit under section 115JB. Accordingly question No. 4 is decided in favour of appellant/assessee.

15. Learned CIT(A) admitted additional grounds in the course of appeal and allowed sales tax refund receipt as capital receipt by referring to the case of appellant/assessee for the eyar 2002-03 and 2003-04. IT is well settled principle of law that Learned CIT(A) has co-terminus power as that of the Assessing Officer and for this very purpose the assessee relied on the following judgments (supra) :-

- (i) 53 ITR 225 (SC) CIT vs. Kanpur Coal Syndicate
- (ii) 33 ITR 182 (SC) CIT vs. Mahalakshmi Textile Mills Ltd.
- (iii) 187 ITR 688 (SC) Jute Corporation of India vs. CIT

(iv) 229 ITR 383 (SC) National Thermal Power Co. Ltd. vs. CIT

(v) 349 ITR 336 (Bom) CIT vs, Pruthvi Brokers & Shareholders Pvt. Ltd.

In light of above material facts and well settled principle of law question No. 5 is decided against revenue department.

16. In so far as the amount of Rs. 41,33,153/- representing Cenvat (Excise) refund is concerned, the same has been treated by the CIT(A) to be a 'capital receipt' following the judgment of the Hon'ble J&K High Court in the case of Shree Balaji Alloys vs. CIT (2011) 333 ITR 335 (J&K). It is noticed that the said judgement of the Hon'ble J&K High Court has since been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 10061/2011 vide order dated 19.4.2016. So far as the aspect of exclusion of the said sum, being a capital receipt, while computing book profit u/s. 115JB of the Act is concerned, the same has been held to be excludible by the Delhi Tribunal in assessee's own case in ITA No. 1329/Del/2015 & Ors. vide order dated 30.11.2021 pertaining to AY 2010-11. Facts remaining similar, we find no reason to deny the claim of the assessee. In the result, on this aspect Revenue fails and assessee succeeds.

17. In so far as the disallowance u/s. 14A is concerned, the facts which emerge are that dividend income received by the assessee was of Rs. 7,26,36,548/- and the AO made a disallowance of Rs. 3,16,73,404/- by applying Rule 8D. The CIT(A) followed its own order for AY 2010-11 in the case of the assessee and allowed partial relief in as much as the disallowance on account of interest amounting to Rs. 2,62,12,404/- has been deleted and the balance of Rs. 54,61,000/- representing disallowance on account of administrative expenses as per Rule 8D(2)(iii) has been sustained. Accordingly, the Cross Appeals filed by the Revenue and the Assessee before us.

17.1 Before us, after hearing the parties, it emerges that no new investments have been made during the year under consideration and that the major amount of dividend has been received from one M/s Flex Foods Ltd., which is a group concern. The say of the assessee is that being a group concern no expense has been incurred to earn such income. Further,

the finding of the CIT(A) that no borrowed fund has been utilised to make the investments is borne out of the record in as much as the own funds of the assessee representing share capital and reserves & surplus are enough to cover the impugned investments. Therefore, so far as the decision of the CIT(A) on account of deletion of interest expenditure is concerned, the same is hereby affirmed. On the issue of disallowance of administrative expenses, the plea of the assessee was that there is no satisfaction recorded, as mandated in terms of section 14A(2) of the Act and on this aspect in AY 2010-11, the Tribunal under similar circumstances, in the case of assessee itself has held in favour of the assessee vide order dated 30.11.2011 (Supra). We find that the said plea is on all fours was qua the order under consideration and in any case, we also find merit in the plea of the assessee that disallowance ought to have been restricted, if at all, to those investments which have actually yielded dividend income during the period. Reliance in this regard is placed on the decision of the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. 165 ITD 27 (Delhi S.B) and the decision of the Hon'ble Delhi High Court in the case of ACB India Limited vs. ACIT 374 ITR 108. In this view of the matter the stand of the assessee is upheld and that of Revenue is declined.

18. Apart from the aforesaid, one more issue involved in ITA No. 1729/Del/2017 (AY 2006-07) is pertaining to addition of Rs. 1,58,320/- made on account of understatement of Long Term Capital Gain. In this regard, the facts are that assessee sold a property vide Sale Agreement dated 23.1.2003 to Basant P. Makhija, copy placed at Page 51-53 of the Paper Book. Due to typographical error on the face of the agreement to sell consideration was mentioned at Rs. 65,58,320/- instead of Rs. 61,58,320/- stated in the body of the agreement. In the computation of income, the assessee offered the capital gain of Rs. 64,00,000/- though the transacted consideration was Rs. 61,58,320/- only. The AO made the addition of Rs. 1,58,320/- being the difference between Rs. 65,58,320/- and Rs. 64,00,000/-. In our considered view the adoption of consideration of Rs. 64,00,000/- as depicted by the assessee deserve to be upheld in as

much as the consideration of Rs. 65,58,320/- is a mere error. Be that as it may, we uphold the plea of the assessee on this aspect.

19. Hence appeals of appellant/assessee are allowed and appeals of revenue department are dismissed.

**Order pronounced in the open court on 26<sup>th</sup> July 2024.**

**sd/-**

**(G.S. PANNU)  
VICE PRESIDENT**

Dated: 26/07/2024

**Veena**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**sd/-**

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

ASSISTANT 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	