

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

**Before Sh. Satbeer Singh Godara, Judicial Member
&**

Sh. S. Rifaur Rahman, Accountant Member

ITA No. 1726/Del/2017: Asstt. Year : 2003-04

ITA No. 1566/Del/2018 : Asstt. Year : 2008-09

ITA No. 1567/Del/2018 : Asstt. Year : 2009-10

ITA No. 1568/Del/2018 : Asstt. Year : 2010-11

Uflex Ltd., 305, 3 rd Floor, Bhanot Corner, Pamposh Enclave, Greater Kailash-1, New Delhi-110048	Vs	ACIT, Central Circle-27, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACF0109J		

ITA No. 2194/Del/2018: Asstt. Year : 2008-09

ITA No. 2195/Del/2018 : Asstt. Year : 2009-10

ITA No. 2196/Del/2018 : Asstt. Year : 2010-11

ACIT, Central Circle-27 (Erstwhile Central Circle-18), New Delhi	Vs	Uflex Ltd., 305, 3 rd Floor, Bhanot Corner, Pamposh Enclave, Greater Kailash-1, New Delhi-110048
(APPELLANT)		(RESPONDENT)
PAN No. AAACF0109J		

Assessee by : Sh. M. P. Rastogi, Adv.,

Sh. Shivam Malik, Sh. Rajiv Kumar, Adv.

Revenue by : Ms. Jaya Chaudhary, CIT-DR

Date of Hearing: 12.12.2024

Date of Pronouncement: 20.12.2024
--

ORDER

Per Satbeer Singh Godara, Judicial Member:

The instant batch of seven appeals pertains to the single assessee herein namely, M/s Uflex Ltd. All other relevant details thereof stand tabulated as under:

Sl. No.	ITA Nos.	A.Y.	Appellant	Respondent	Order passed against	Proceedings u/s
1.	1726/Del/2017	2003-04	Uflex Ltd.	ACIT	CIT(A)-29, New Delhi Appeal No. 548/10-11/CIT(A)-29 Dated 27.01.2017	153A/143(3)
2.	1566/Del/2018	2008-09	Uflex Ltd.	ACIT	CIT(A)-29, New Delhi Appeal No. 53/16-17/CIT(A)-29 Dated 29.01.2018	153A/143(3)
3.	1567/Del/2018	2009-10	Uflex Ltd.	ACIT	CIT(A)-29, New Delhi Appeal No. 50/16-17/CIT(A)-29 Dated 29.01.2018	153A/143(3)
4.	1568/Del/2018	2010-11	Uflex Ltd.	ACIT	CIT(A)-29, New Delhi Appeal No. 51/16-17/CIT(A)-29 Dated 29.01.2018	153A/143(3)
5.	2194/Del/2018	2008-09	ACIT	Uflex Ltd.	CIT(A)-29, New Delhi Appeal No. 53/16-17/CIT(A)-29 Dated 29.01.2018	153A/143(3)
6.	2195/Del/2018	2009-10	ACIT	Uflex Ltd.	CIT(A)-29, New Delhi Appeal No. 50/16-17/CIT(A)-29 Dated 29.01.2018	153A/143(3)
7.	2196/Del/2018	2010-11	ACIT	Uflex Ltd.	CIT(A)-29, New Delhi Appeal No. 51/16-17/CIT(A)-29 Dated 29.01.2018	153A/143(3)

2. Heard both the parties at length. Case files perused.

3. Learned counsel submits at the outset that the assessee's and Revenue's three cross appeals each i.e. ITA Nos. 1566 to 1568/Del/2018 and ITA Nos. 2194 to 2196/Del/2018; for assessment years 2008-09 to 2010-11, respectively, involve the first and foremost issue of validity of the corresponding assessments dated 31.03.2016 itself as the relevant proceedings herein are u/s 143(3) r.w.s. 153A of the Act arising from the department's search action dated 19.02.2014 in M/s Uflex group.

4. It is in this factual backdrop that we quote PCIT vs. Abhisar Buildwell P. Ltd. (2023) 454 ITR 212 (SC) that once all the impugned assessment are "unabated ones", any addition

therein must be based on the seized material only. Learned CIT-DR could not pinpoint any such specific seized material as per their lordships decision. We thus see merit in the assessee's foregoing first and foremost legal argument to quash all these three assessments dated 31.03.2016 in very terms. These assessee's three appeals ITA Nos. 1566 to 1568/Del/2018 succeed and Revenue's cross appeals ITA Nos. 2194 to 2196/Del/2018 are dismissed in very terms therefore.

4.1 All other pleadings on merit in these cases stand rendered academic.

5. We now advert to assessee's sole surviving appeal ITA No. 1726/Del/2017 for A.Y. 2003-04 raising the following substantive grounds:

"1. The Ld. CIT (Appeals) is wrong on facts and bad in law in not admitting the additional grounds filed by the appellant.

2. It is contended that assessment under section 143(3) vide order dated 24.03.2006 post search on 23.02.2006 is null and void and without jurisdiction.

3. The Ld. CIT(Appeals) is erroneous in concluding that assessment was completed on the date of search.

4. It is contended that assessment proceedings were pending on the date of search i.e. on 23.02.2006.

5. The Ld. CIT (Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 25,26,35,097/- being a capital receipt granted under Uttar Pradesh Industrial Policy 1994 read with Uttar Pradesh Trade Tax Act, 1948.

6. The Ld. CIT (Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 2,21,58,869/- being a capital receipt granted under 1991 scheme of Madhya Pradesh Government read with Madhya Pradesh General sales tax act 1958.

7. *Without prejudice to Ground No. 4 & 5 , it is contended that sum of Rs. 25,26,35,097/- and Rs 2,21,58,869/- being sales tax is an allowable deduction u/s 43B of the Income Tax act, 1961.*

8. *The Ld. CIT (Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 25,26,35,097/- 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.*

9. *The Ld. CIT (Appeals) is wrong on facts and bad in law in not allowing the deduction of sales tax subsidy of Rs. 2,21,58,869/- 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.*

10. *The lower authorities are wrong on facts and bad in law in not allowing the claim of deduction u/s 80HHC to the extent of profits under clause (a) or clause(c) of sub-section (3) of section 80HHC of Rs. 13,14,61,417/- while computing Book profits u/s 115JB based on the ratio of judgment by Hon,ble Supreme court in Ajanta Pharma Ltd. Vs. CIT (2010) 327 ITR 305(SC).*

11. *The lower authorities are wrong on facts and bad in law in not allowing the claim of deduction u/s 80HHC without applying the sun -set clause specified in sub - section (1B) of section 80HHC of the Act.*

12. *The lower authorities were wrong on facts and bad in law in rejecting the claim of appellant for a sum of Rs. 3,00,66,362/- on account of bad debts written off under normal provisions of the Act.*

13. *The lower authorities were wrong on facts and bad in law in rejecting the claim of appellant for a sum of Rs. 3,00,66,362/- on account of bad debts written off under Book profits u/s 115JB."*

6. Learned counsel has further filed the assessee's modified second ground as under:

"Ground No. 2.

That on account of search which took place on 23rd February 2006, the pending assessment on the date of

search in terms of second proviso to Section 153A of the IT Act has been abated and accordingly the original order passed by the Assessing Officer on 24th March 2006 for Assessment Year 2003-04 was a nullity and all the appeal proceedings in furtherance thereto were nullity and consequently the disposal of appeal by the CIT (Appeals) based on the findings in invalid original appellate proceedings and non-admission of additional ground of appeal relating to the sales-tax subsidy claimed as capital receipt and reduction u/s 115-JB of the IT Act in relation thereto as well as the reduction of export profits u/s 115JB at higher figure is arbitrary, unjust and bad in law."

7. It is in this factual backdrop that we now proceed to decide with the assessee's legal arguments/ground that once it's original return filed on 12.12.2003 had itself become invalid, it is indeed entitled to claim all the benefits in a return filed u/s 153A herein for the first time and therefore, both the learned lower authorities could have neither rejected the same on legality nor on merits.

8. We note all the basic relevant facts in the assessee's instant appeal. It had admittedly filed it's original return on 12.01.2003. The Assessing Officer appears to have taken up scrutiny thereafter. It was during the said scrutiny that the departmental authorities carried out section 132 search action in it's case on 23.02.2006. This followed the original section 143(3) assessment framed in it's case on 24.02.2006. There is further no quarrel between the parties that the departmental authorities had carried out the second search as well in assessee's case on 10.05.2007 which led to initiation of section 153A proceedings; wherein, it filed afresh return *inter alia* claiming benefits for the first time which have been declined in the lower proceedings. We further deem it appropriate to clarify here that it is the assessment framed u/s 153A r.w.s.

143(3) of the Act in furtherance to instant second search only that the assessee has come in appeal before us.

9. We have given our thoughtful consideration to the assessee's foregoing first and foremost substantive ground and written submissions. We find no merit therein. This is for the precise reason that first of all, the earlier learned co-ordinate bench order dated 12.10.2006 has already upheld the regular assessment dated 24.03.2006 and therefore, its validity could not be questioned at this stage in subsequent proceedings. This is further coupled with the fact that once we are dealing with an assessment in furtherance to the second search action dated 10.05.2007 in assessee's case, only proceedings which are pending on this clinching date could be treated as "abated" ones u/s 153(1) (2nd proviso). Learned counsel very fairly submitted that no assessment or no proceeding; whatsoever, was pending in assessee's case on the date of second search herein. That being the case, we are of the considered view that the assessee's case ought to be treated as involving an "unabated" assessment only than an "abated" one wherein it could claim any relief afresh going by PCIT Vs. JSW Steels Ltd. 422 ITR 71 (Bom.). We further quote tribunal's latest decision in DCIT Vs. Sew Infrastructure Ltd. (2024) 167 taxmann.com 446 (Hyd.)(SB) that no such new claims could be entertained in section 153A "unabated" assessments. We accordingly reject the assessee's claim(s) raised in section 153A return as not maintainable. Rejected accordingly.

9.1 All other pleadings on merits herein stand rendered academic. The assessee's instant last latter appeal ITA No. 1726/Del/2017 fails therefore.

10. To sum up, the assessee's first and foremost appeal ITA No. 1726/Del/2017 is dismissed, its latter three appeals ITA Nos. 1566 to 1568/Del/2018 are allowed and Revenue's as many cross appeals ITA Nos. 2194 to 2196/Del/2018 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 20/12/2024.

Sd/-

(S. Rifaur Rahman)
Accountant Member

Dated: 20/12/2024

Sd/-

(Satbeer Singh Godara)
Judicial Member

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR