

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

**BEFORE SH. SUDHIR KUMAR, JUDICIAL MEMBER
AND
SH. NAVEEN CHANDRA ACCOUNTANT MEMBER**

ITA No.7324/Del/2019
Assessment Year: 2013-2014

Bharat Insecticides Limited 1506 Vikram Tower Rajendra Place, New Delhi 110008 PAN No. AAACB1111C	Vs.	Assistant Commissioner of Income tax, Circle -4(2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Navin Ballodia, Advocate Sh. Asish Khanna, CA
Respondent by	Sh. Asish Tripathi, Sr. DR.

Date of hearing:	27/03/2025
Date of Pronouncement:	02/04/2025

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)- 33 New Delhi [hereinafter referred to as "CIT(A)"] vide order dated 21.06.2019 pertaining to A.Y. 2013-14 pertaining to arises out of the assessment order dated 26-12-2016 under section 143(3) of the Income Tax Act 1961 [hereinafter referred to as 'the Act'].

2. The assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case, the Ld' CIT(A) was not justified and grossly erred in non-considering the claim of Focus Product Scheme/Focus Market Scheme as capital receipt in computing the total income under the normal provision of the Act as well as in computing the book profit u/s115JB.*

2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in disallowing the claim of Education Cess in computing tax liability under normal provision of the Act.*

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

3. The brief facts of the case are that the assessee is engaged in the business of Agro Chemical and manufacturing of pesticides, insecticides, fungicides and weedicides. The assessee has manufacturing units in different part of India. The assessee has filed its return of income declaring total income at Rs 22,36,54,190/- on 26-09-2013 for the A.Y. 2013-14. Notice u/s

143(2) of the Act was issued to the assessee. Subsequently, notices u/s142(1) of the Act with questionnaire were issued.

4. During the year, the assessee has declared the gross profit rate at 29.29% against the total sales of Rs 21963.60 lacs as compared to the gross profit rate of 28.92% against the total turnover of Rs. 18087.99 lacs immediately in the preceding previous year. The A.O has completed the assessment vide order dated 26-12-2016 u/s 143(3) of the Act on assessed income of Rs 22,36,54,190/- after rejected the claim of duty draw back deduction, claim of export incentive and education cess.

5. Aggrieved by the assessment order dated 26-12-2016, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 21-06-2019 partly allowed the appeal. The Ld. CIT(A) deleted the Central Excise Subsidy amounting of Rs 9,11,27,438/-. Further sustained the export incentive and education cess, additions/disallowance. Against the order of the Ld. CIT(A) the assessee has preferred the appeal before the tribunal.

6. We have heard the parties and perused the material available on record. The ld. AR has submitted that government gave the

subsidy to enhance Indian export potential in the international market and the subsidy has to be treated as capital in nature and it was excludable from book profit u/s 115 JB of the Act. He further submitted that the issue involved in ground no 1 is squarely covered in the case of ITA no 1545&146 /Del/2021 M/s. RSWM ltd. v. DCIT and the case of Principal Commissioner of Income Tax, Ajmer v. Nitin Spinners Ld. [2020] 116 taxmann.com26 (Rajasthan). He also submitted that for the A.Y. 2014-15 the Ld. CIT(A) has given the relief to the assessee's own case.

7. The Ld. Sr. DR for the revenue did not controvert the above proposition.

8. It is found that the issue of claim of FPS/FMS as capital receipt received foreign trade policy in computing total income has been dealt by the co-ordinate bench of the tribunal in the case of ITA no 145&146 /Del/2021 M/s. RSWM ltd. v. DCIT held as under:

“22. The Ground No. 2 of the Revenue is regarding claim of FPS/FMS as capital receipt received as per foreign trade policy in computing the total income of the assessee. Brief facts are that the assessee availed

FPS/FMS subsidy in the form of export during the captioned Assessment Year, which was subject to the addition made by the A.O. The Ld. CIT(A) while deleting the addition relied on the Judgment of Hon'ble Rajasthan High Court in the case of PCIT Vs. Nitin Spinners Ltd. wherein it was held that the subsidy has to be treated as capital in nature and is excludable from book profit u/s 115JB of the Act. The Ld. Counsel for the assessee submitted that the issue involved in Ground No. 2 of the Revenue is squarely covered in Assessee's own case for Assessment Year 2013-14 by the order of the Co-ordinate Bench in ITA No. 71/Jodh/2018 dated 23/01/2023 and also relied on the various judicial pronouncements.

23. Heard. It is found that the issue of claim of FPS/FMS as capital receipt received as per foreign trade policy in computing total income has been dealt and decided by the Co-ordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2013-14 in favour of the assessee. Apart from the same, the Hon'ble High Court of Rajasthan in the case of Principal Commissioner of Income Tax, Ajmer Vs. Nitin Spinners Ltd. vide order dated 19/09/2019 reported

in 2019 (2020) 116 Taxman.com 26 (Rajasthan held as under:-

"As far as the question with regard to Focus Marketing Scheme was concerned, apparently the Central Government gave the subsidy to enhance Indian export potential in the international market. It was not granted to meet the cost of expenditure to meet the competition of the Indian textile market. The ITAT took note of judgment in Ponni Sugars & Chemicals Ltd. (supra) and held that the amount was not an export incentive, but rather capital receipt and therefore, not taxable. This Court is of the opinion that there is no infirmity with the reason."

24. The Judgment of the Hon'ble High Court of Rajasthan has also been affirmed by the Hon'ble Supreme Court wherein the SLP filed by the Department has been dismissed which is reported in 130 taxmann. Com 402(S.C). By respectfully following the ratio laid down by the Hon'ble High Court and the

Hon'ble Supreme Court, we find no reason to entertain the Ground No. 2 of the Revenue as the same is devoid of merit, accordingly the Ground No. 2 of the Revenue is dismissed.”

9. The Hon'ble High Court of Rajasthan in the case of Commissioner of Income Tax, Ajmer v. Nitin Spinners Ltd. [2020] 116 taxmann.com26 (Rajasthan) held as under:

7. A similar view was taken by the Calcutta High Court in CIT v. Gloster Jute Mills Ltd. [2018] 96 taxmann.com 303/257 Taxman 512 /[2019] 416 ITR 458.

8. As far as the question with regard to Focus Marketing Scheme was concerned, apparently the Central Government gave the subsidy to enhance Indian export potential in the international market. It was not granted to meet the cost of expenditure to meet the competition of the Indian textile market. The ITAT took note of judgment in Ponni Sugars & Chemicals Ltd. (supra) and held that the amount was not an export incentive, but rather capital receipt and therefore, not taxable. This Court is of the opinion that there is no infirmity with the reason.

10. Respectfully following the aforesaid decisions, we held that the assessee is entitled for claim of Focus Product Scheme /Focus Market Scheme as the capital receipt in computing the total income. Ground No 1 is decided in favour of the assessee. Ground No.2 Ld. AR for the assessee not pressed this ground, hence decided against the assessee.

11. Ground No.3: This ground is general in nature need not to be adjudicated.

12. In the result the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 02.04.2025.

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:-02.04.2025

Copy forwarded to:

1.Appellant

2.Respondent

3.CIT

4.CIT(Appeals)

5.DR: ITAT

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI