आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member

ITA No.1074/Kol/2025
Assessment Year: 2014-15

Shyam Metalics And Engery Ltd…..…….....…….……Appellant
83, Trinity Tower, 7th Floor,
Topsia, Kol-700046,
[PAN: AAHCS5842A]

vs.

DCIT, Central Circle-1(1), Kolkata……...……...…..…..Respondent

Appearances by:
Shri Akkal Dudhewala, AR, appeared on behalf of the appellant.
Shri Praveen Kishore, DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 23, 2025
Date of pronouncing the order : September 15, 2025

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 08.04.2025 of the Commissioner Of Income Tax (Appeals)-22, Kolkata [hereinafter referred to as the "ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 [hereinafter referred to as the "Act"].

2. Ground No.1 raised by the assessee is against the ld. CIT(A) order confirming the disallowance of bogus loss of Rs.1,89,53,757/- incurred by the assessee upon sale of listed shares of M/s Unno Industries Limited ('UIL').

3. The facts in brief are that the assessee had sold shares of UIL at a loss of Rs.1,89,53,757/-. According to the ld. AO, though the assessee had furnished contract notes, bank statements and other documents in support of sale of shares of UIL but as per the Investigation Wing database, the share of UIL was penny stock which was being used by

entry operators to provide bogus accommodation entries in the guise of capital gains or losses. The ld. AO also referred to a report published by the Directorate of Income tax Mumbai, which listed UIL as a penny stock scrip to arrange bogus LTCG/ loss. The ld. AO therefore held that the loss of Rs.1,89,53,757/- incurred on shares of UIL was not genuine and therefore added the same by way of cash credit u/s 68 of the Act.

4. In the appellate proceedings, the ld. CIT(A) was pleased to confirm the order of the ld. AO. Being aggrieved by the order of the ld. CIT(A), the assessee is now in appeal before us.

5. The ld. AR submitted that the loss quantified by the ld. AO was factually incorrect. The ld. AR invited our attention to the statement giving the details of total short term capital loss of Rs.1,89,53,757/- incurred during the year along with the stock ledger and supporting sample contract notes, which was placed at Pages31 to 80 of the Paperbook. He pointed out that the impugned loss figure was a summation of loss incurred on sale of several listed shares and that the loss incurred in shares of UIL was only Rs.73,26,040/- and not Rs.1,89,53,757/-. According to the ld. AR, this fact showed that the ld. AO had not applied his mind to the facts of the case and had rather disallowed the impugned sum in a mechanical fashion. He contended that neither the purported report of the Investigation Wing, statement of broker(s) or statement of entry operator(s) etc. was provided to the assessee nor was the assessee provided with a fair opportunity to rebut the same. The ld AR argued that the impugned disallowance was made in gross violation of principles of natural justice and submitted that the impugned issue ought to be set aside. Per contra, the ld. DR appearing for the Revenue supported the order of the lower authorities.

6. We have heard rival contentions and perused the material placed before us. From the facts placed before us, it is observed that the assessee had purchased and sold 5,45,000 shares of UIL during the year which yielded short term capital loss of Rs.73,26,040/-. Apart from the shares of UIL, the assessee have transacted in other listed shares as well in which it incurred short term capital loss of Rs.1,16,27,717/-, with aggregate quantum of gross short term capital loss coming to Rs.1,89,53,757/- [Rs.1,16,27,717 (+) Rs.73,26,040]. The details thereof are placed at Pages 30 to 80 of the Paper Book. It is observed that the ld. AO's case concerned the short-term capital loss incurred in the shares of UIL alone, which he alleged to be bogus. We therefore find prima facie merit in the assessee's plea that the correct quantum of loss incurred on sale of shares of UIL was Rs.73,26,040/- and therefore, the lower authorities had grossly erred in disallowing the entire gross short term capital loss of Rs.1,89,53,757/-. Accordingly, the ld. AO is directed to delete the excess loss of Rs.1,16,27,717/- incorrectly disallowed in the impugned order.

7. So far as the allowability of short-term capital loss of Rs.73,26,040/- incurred in sale of shares of UIL is concerned, it is observed that the ld. AO has passed a cryptic order alleging the impugned loss to be bogus. It is observed that though the ld. AO has cited report(s) of the Investigation Wing enlisting UIL as a penny stock and statement(s) of several broker(s) / entry operator(s) who were purportedly manipulating the scrip of UIL, but none of these details were confronted to the assessee. It is seen that no show cause was also given to the assessee prior to making the impugned addition. Even the ld. CIT(A) i had confirmed the disallowance by citing judicial precedent(s) and without even looking into the facts of the given case. According to us, the assessee is entitled to a right of fair hearing, which requires that

the material/ information/ statement sought to be used against the assessee ought to be confronted and the assessee be given sufficient opportunity to rebut the same. Hence, in all fairness, we set aside the issue involving the disallowance of loss incurred in shares of UIL back to the file of ld. AO to examine the same de novo after allowing the assessee opportunity of being heard. Needless to say, the ld. AO shall provide the relevant material along with the statement(s) which he intends to use against the assessee and the assessee shall also cooperate in the proceedings. This ground is therefore partly allowed for statistical purposes.

8. Ground No. 2 raised by the assessee pertains to the disallowance of penalty expenses of Rs.34,71,274/-.

9. The ld. AO in the assessment order observed that the aforesaid sum being penal in nature was disallowable in terms of Explanation (1) to Section 37(1) of the Act. Though the assessee assailed the issue before the ld. CIT(A), but he has omitted to adjudicate this issue. Aggrieved, the assessee is now in appeal before us.

10. Taking us through the details of the penalty expenses of Rs.34,71,274/- which was placed at Pages 81 to 86 of the Paper Book, the ld.AR pointed out to us that the impugned penalty expenses of Rs.34,71,274/- comprised of fines and penalties paid to private entities/ third parties towards breach of contract(s) in the usual course of business and it did not involve payment of penalty for infraction of any law. According to him therefore, the impugned disallowance made under Explanation to Section 37(1) of the Act was unwarranted and prayed for deletion of the same. On the other hand, the ld. DR urged us to set aside this issue back to the ld. AO for verification.

11. Heard both the parties. The limited issue before us is whether the penalty expenses of Rs.34,71,274/-incurred by the assessee was amenable to Explanation to Section 37(1) of the Act or not. From the details placed on record, it is evident that the aforesaid sum comprised of fines paid to third parties for breach of contract or delay in payment of dues or for failure to fulfill obligations arising out of contracts entered into in the course of business. The ld. AR, on sample basis, showed us that the assessee had paid fine of Rs.20,500/- to M/s M. Hoque Enterprises for violating the agreed safety norms under the contract. Similarly, penal charge of Rs.68,296/- was paid to M/s Treco Earth Movers Pvt Ltd for loss incurred due to accident while shifting iron pellets. We further observe that similar small fines/penalties were paid for stolen items or missing parts or damaged goods to private parties. Having perused the same, there is merit in the submission of the ld. AR that the impugned sum was not incurred for infraction of law but comprised of payments for breach of contracts and therefore in light of the decision of the Hon'ble jurisdictional Calcutta High Court in the case of Apeejay Pvt Ltd Vs CIT (114 ITR 544), the impugned disallowance is held to be unjustified. The ld. AO is directed to delete the same. This ground is therefore allowed.

12. Ground No. 3 relates to disallowance of Rs.48,74,376/- made u/s 14A r.w.r 8D while computing the book profits u/s 115JB of the Act.

13. After hearing the rival contentions and perusing the materials available on record, we find that the issue is settled in favour of the assessee by the decision of special Bench of this Tribunal at Delhi in case of ACIT Vs. Vireet Investment Pvt. Ltd (ITA No.502/Del/2012), wherein the Hon'ble Special Bench has held that the disallowance by the ld. AO u/s 14A read with Rule 8D of the Rules is not required to be made to the book profit u/s 115JB of the Act. Accordingly, we direct the

ld. AO to delete the addition made to the book profit u/s 115JB of the Act. The Ground No. 3of the assessee is therefore allowed.

14. In Ground No. 4(i) & (ii) raised in the appeal, the assessee is seeking exclusion ofthe incentive derived under the Status Holders Incentive Scheme ('SHIS') & Focus Product Scheme('FPS') from the computation of total income, claiming it to be in nature of capital receipt. The facts as noted are that, the assessee had received incentive amounting to Rs.1,02,01,683/-under the SHIS & FPS Scheme of the Government of India for promoting and exploring new markets abroad. The copy of the Scheme notified by the Government is found placed at Pages 87 & 115 of the Paper Book. Relying on the decision of the Hon'ble Supreme Court in the case of PCIT v. Nitin Spinners Ltd. (130 taxmann.com 402) rendered in the context of these specific schemes, the assessee have claimed the impugned receipt as capital receipt not exigible to tax before the Ld. CIT(A). It is noted that, the ld. CIT(A) had rejected this additional claim. Aggrieved by which, the assessee is now in appeal before us.

15. Assailing the action of the ld. CIT(A), the ld. AR contended that the assessee was prevented from raising a fresh claim only before the ld. AO and that the assessee was free to raise any new claims before the appellate authorities. For this, he particularly relied on the decisions of Hon'ble Calcutta High Court in the cases of PCIT Vs Shantinath Detergents (P.) Ltd. (151 taxamann.com 68) & CIT Vs Britannia Industries Ltd (83 taxman.com 365) and the decision of this Tribunal in the case of Century Plyboards (I) Ltd. v. DCIT (123 taxmann.com 256) wherein on similar facts and circumstances, it was held that, the appellate authority had the power to entertain the claim of deduction which was not claimed before the Assessing Officer by filing a revised return. On merits, the ld. AR relied on the following decisions wherein

the incentives received under the FPS & SHIS Schemes of the Government was held to be in the nature of capital receipt.

- Pr. CIT v. Nitin Spinners Ltd. (supra) (SC)
- DCIT v. Patanjali Foods Ltd. (161 taxmann.com 815) (ITAT Mumbai)
- Narayan Industries v. ACIT (ITA No. 6153/Del/2017) (ITAT Delhi)

16. The ld. DR however strongly opposed the admission of this additional claim. According to the Ld. DR, the ld. CIT(A) had rightly rejected this fresh claim raised by the assessee by relying on the decision of Hon'ble Supreme Court in the case of Shriram Investments vs CIT (301 Taxman 393). He therefore urged us to reject this ground raised by the assessee.

17. We have heard both the parties and perused the material placed before us. The first aspect to be addressed is whether the assessee is permitted to raise a fresh claim before us, which was not raised in the return of income or by filing revised return of income before the ld. AO. It is observed that, the assessee had not raised the claim for exclusion of incentive received under the FPS & SHIS Scheme by way of capital receipt, because of the complex legal position and the litigation surrounding this issue. According to the ld. AR, only when the impugned issue was adjudicated in assessee's favour by the Hon'ble Supreme Court in the case of PCIT v. Nitin Spinners Ltd. (supra) that, the assessee made this claim before the ld. CIT(A). We observe that the Hon'ble Gujrat High Court in the case of CIT v. Mitesh Impex (367 ITR 85) after considering the decisions rendered by the Hon'ble Apex Court in the case of NTPC v. CIT [1998] (229 ITR 383) and Goetze (India) Ltd. v. CIT [2006] (284 ITR 323) has held that, if a claim which is available in law is not raised either inadvertently or an account of erroneous understanding of complex legal position, such a relief cannot be shut up for all the times

to come merely because it is raised for the first time in appellate proceedings in absence of a revised return filed before the Assessing Officer.

18. We further note that, on similar set of facts & circumstances, identical contention was also raised by the Revenue before the Hon'ble Calcutta High Court in the case of PCIT Vs Shantinath Detergents (P.) Ltd. (supra). In the decided case also, the assessee had raised this plea for the first time before the Tribunal viz., the subsidy received under the State Industrial Scheme is capital in nature and therefore should be excluded from the book profit u/s 115JB of the Act. The Tribunal admitted this legal issue raised by the assessee and answered it in their favour. Before the Hon'ble High Court, the Revenue raised the following question for their consideration.

> *"Whether the Learned Tribunal has committed substantial error in law in upholding the decision of the Learned CIT(A) of admitting the grounds of appeal for the first time relating to taxability of sales tax subsidy which had been already offered for taxation by the assessee in its return of income, when the facts relating to the same were not available on records and thus denying the Assessing Officer any scope to examine the issue which involves a mixed question of law and fact and the order of the Learned Tribunal suffers by perversity ?"*

19. The Hon'ble jurisdictional High Court answered the question in negative and in favour of the assessee by observing as under:

> *"4. So far as the substantial question no. [a] is concerned, the same is squarely covered by the decision of this Court in the case of Pr. CIT v. Krishi Rasayan Exports (P.) Ltd. [2022] 145 taxmann.com 191/[2023] 290 Taxman 567. The operative portion of the decision reads as follows :—*
>
> *'4. The substantial question of law involved in this appeal is squarely covered in favour of the assessee and against the*

revenue in the light of the decision of the Hon'ble Supreme Court in CIT v. M/s. Chaphalkar Brothers [2017] 88 taxmann.com 178/[2018] 252 Taxman 360/400 ITR 279. The operative portion of the judgment reads as follows :—

....

5. Identical issue was also considered by this Court in the case of Pr. CIT v. Ankit Metal And Power Ltd. [2019] 109 taxmann.com 93/266 Taxman 237/416 ITR 591 (Cal.) wherein apart from considering the effect of the subsidy, the Court also considered as to whether when a receipt is not in the character of income as defined under section 2(24) of the Act, whether it can be said to form part of the book profit under section 115 JB. The said question was answered in favour of the revenue in the following terms :—

"... The third issue involved in the instant appeal which requires adjudication is whether the action of the Tribunal entertaining/allowing the claim which was made by the assessee before the Assessing Officer by filing a revised computation instead of filing a revised return since the time to file the revised return had lapsed, for claiming to treat the incentive subsidies in question as capital receipts instead of revenue receipts as claimed in original return. The Assessing Officer had denied this claim. The Revenue has attacked the order of the Tribunal by relying on the decision in the case of Goetze (India) Ltd. v. CIT reported in [2006] 284 ITR 323 (SC).

This case does not help the Revenue/appellant. In this case, the Supreme Court has made it clear that its decision was restricted to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return, and did not impinge on the power of the Appellate Tribunal under section 254 of the Income-tax Act, 1961. The Hon'ble Supreme Court in the said decision held as follows (page 324 of 284 ITR):

"In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge

on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961."

This judgment was followed by our court in the case of CIT v. Britannia Industries Ltd. reported in [2017] 396 ITR 677 (Cal.) holding that the Tribunal has the power to entertain the claim of deduction not claimed before the Assessing Officer by filing a revised return. Respectfully following the aforesaid decision as well as the view already taken by us in this case that the aforesaid subsidies are capital receipt and not an "income" and not liable to tax, the Tribunal in exercise of its power under section 254 of the Income-tax Act justified this claim though no revised return under section 39(5) of the Act was filed before the Assessing Officer. We answer both the question Nos. 1 and 2 in the negative and in favour of the assessee.

.....

5. Thus, following the above decision, the substantial question of law [a] is answered against the revenue."

20. Coming to the decision of the Hon'ble Supreme Court in the case of Shriram Investments vs CIT (301 Taxman 393)relied upon by the ld. CIT(A) for rejecting the impugned claim, it is noted that, the issue before the Hon'ble Supreme Court was whether the AO has jurisdiction to consider the claim made by the assessee in a revised return filed by the assessee beyond the time limit u/s139(5). The Hon'ble Supreme Court reiterated the principle laid down in Goetze India Ltd (supra) that as the revised return was barred by limitation, the AO did not have any jurisdiction to consider the claim by the assessee in the revised return. The Hon'ble Apex Court did not put any fetters on the power of the appellate authority to entertain new claim. In this regard, we refer to the following findings rendered by the coordinate Bench of ITAT, Mumbai in the case of DCIT v. Shelter Developers (ITA No. 3753/Mum/2023), which is as under:-

"13. We have heard both the parties on the issue of admissibility of assessee's claim that the amount of compensation is a capital receipt and hence not taxable, and can such a claim be raised at the stage of the Tribunal when this ground was not raised either before the ld. AO or the ld. CIT (A) and has neither claimed in the return of income.

14. Thus, the issue is whether the Tribunal has the power /jurisdiction to examine such claim. The 3 judges bench of Hon''ble Supreme Court in the case of NTPC vs. CIT (supra) had considered precisely same question which reads as under:-

....

16. This principle laid down by the Hon'ble Supreme Court has been reiterated and explained further by the Hon'ble Jurisdictional High court in the case of CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd.,(supra). After considering the judgment of Hon'ble Supreme Court in the case of Goetze India Ltd. vs. CIT reported in (2006) 157 taxmann.com 1 wherein, the Hon'ble High Court observed and held as under:-

> *"21. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (India) Limited v.Commissioner of Income-tax, (2006) 157 Taxman 1. We are unable to agree. The decision was rendered by a Bench of two learned Judges and expressly refers to the judgment of the Bench of three learned Judges in National Thermal Power Company Limited vs. Commissioner of Income-tax (supra). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the*

assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Company Limited contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held:-

.....

17. Thus, the Hon'ble Supreme Court has held that the Tribunal has the power to entertain such a claim for the first time before the Tribunal even though the claim was not before the appellate authorities or was not before the Assessing Officer.

18. Now coming to the judgment relied upon by the ld. CIT DR, the Hon'ble Supreme Court in the case of Shriram Investments vsCIT (supra), the issue before the Hon'ble Supreme Court was whether the revised return filed by the assessee which was barred by limitation u/s.139 (5), does the AO has jurisdiction to consider the claim made by the assessee in the said revised return. The Hon'ble Supreme Court held that the revised return was barred by limitation and ld. AO does not have any jurisdiction to consider the claim by the assessee in the revised return. Nowhere, the Hon'ble Supreme Court has held that the Tribunal does not have the power u/s.254. On the contrary, the Hon'ble Supreme Court observed that the Tribunal has not exercised its power u/s.254 to consider the assessee's claim and instead Tribunal has directed the ld. AO to consider the assessee's claim made in the revised return which was barred by limitation where ld.AO had no jurisdiction to consider the claim. The relevant para 8 & 9 clarifying this issue reads as under:-

"8. Coming to the decision of the Tribunal, we find that the Tribunal has not exercised its power under Section 254 of the IT Act to consider the claim. Instead, the Tribunal directed the assessing officer to consider the appellant's claim. The assessing officer had no jurisdiction to consider the claim made by the assessee in the revised return filed

after the time prescribed by Section 139(5) for filing a revised return had already expired.

9. Therefore, we find no reason to interfere with the impugned judgment of the High Court. The appeal is, accordingly, dismissed."

19. Thus, this judgment in fact conversely speaking implies that the power can be exercised by the Tribunal u/s.254 to consider the claim.

....

21. However, there is another judgment of the Hon'ble Supreme Court in the case of Wipro Ltd., vs. CIT reported in (2022) 140 txmann.com 223(SC), wherein, the Hon'ble Supreme Court held that the Tribunal can entertain any legal ground for the first time before the Hon'ble Supreme Court had referred to the three Judge Bench judgment of the Hon'ble Supreme Court in the case of NTPC Ltd., The relevant observation of the Hon'ble Supreme Court reads as under:-

.....

22. The aforesaid judgment of the Hon'ble Supreme Court clearly clinches the issue that the ITAT can entertain such a claim for the first time in terms of its claim u/s.254, accordingly, we admit the legal issue raised by the assessee in the cross objection and the objections raised by the ld. AR is rejected."

21. In the view of the above decisions (supra), we thus admit the fresh claim raised by the assessee seeking exclusion of incentive received under the FPS & SHIS Scheme from the computation of total income, claiming it to be capital receipt.

22. Coming to the merits of the claim, we have perused the copies of the schemes placed before us. It is observed that the incentive schemes, i.e. FPS & SHIS were notified by the Government in the years2006 & 2009respectively under the Foreign Trade Policy, 2004 – 2009 for exploring potentially new markets to promote and enhance India's export

potential. The ld. AR has brought to our notice that the FPS Scheme was launched with an objective to incentivize employment intensity in rural and semi-urban areas so as to offset the inherent infrastructure inefficiencies and other associated costs. Likewise, the SHIS Schemewas intended to incentivize technological upgradation in export sectors. It is observed that, the objective of these Schemes was to increase the share of global trade of India, incentivize investment and expand the employment opportunities in these sectors. We find that, identical issue came up for consideration before the Hon'ble Rajasthan High Court in the case of Pr. CIT v. Nitin Spinners Ltd. (supra) wherein also, the subsidy received under the various schemes of Foreign Trade Policy was held to be capital receipt and therefore excluded from the total income. It is noted that the SLP preferred by the Revenue has since been dismissed by the Hon'ble Supreme Court. The relevant findings are noted to be as under:

> *"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."*

23. Identical view is found to have been expressed by the Hon'ble ITAT, Mumbai in the case of DCIT v. Patanjali Foods Ltd. (supra) wherein it was held that the subsidies received by the assessee under the Foreign Trade Policy, is in the nature of capital receipt, not chargeable to tax. The relevant findings, relied upon by us, is as follows:-

> *"8.3 We have considered the rival submissions of both the parties. From the facts as already discussed in the foregoing, it is*

noted that the FPS and VKGUY Schemes, in terms of which the subsidy was granted, was with the object to enhance the Indian export potential in the international market and generate employment opportunities. It was not granted to meet any cost of expenditure incurred by the assessee to make the exports. We note that the Hon'ble Rajasthan High Court in the case of Nitin Spinners Ltd. (supra) has considered similar scheme notified under the same Foreign Trade Policy. The Hon'ble High Court thereafter held that the incentive received under such Scheme was in the nature of capital receipt and therefore not taxable. The relevant findings of the Hon'ble High Court are noted to be as under:

.....

8.4 It is also noted that the SLP preferred by the Revenue against the above judgment of the Hon'ble High Court has since been dismissed by the Hon'ble Supreme Court, which is reported in Pr. CIT v. Nitin Spinners Ltd. [2021] 130 taxmann.com 402. We also note that identical issue has also been consider by this Tribunal in the case of Aarti Drugs Ltd. (supra) wherein also the incentives received under the FPS/FMS/SHIS Schemes notified under the Foreign Trade Policy was held to be capital in nature and thus not liable to tax. The relevant findings of this Tribunal, as noted by us, are as under:

> *"43. We have considered the rival submissions and perused the material available on record. The assessee is a manufacturer of bulk drugs and also exports some of the products to various countries for which the government is providing certain subsidies under the Foreign Trade Policy. As noted above, the assessee initially, in its return of income, treated the subsidies received as Revenue receipts and offered the same to tax. However, before the learned CIT(A), the assessee filed additional grounds claiming that the subsidy received under the FPS, FMS, SHIS schemes are capital in nature and therefore cannot be included in the total income of the assessee. As noted elsewhere, the appellate authority can entertain a fresh claim made by the assessee, even if such a claim was not made in return of*

income or by way of a revised return of income. Thus, we find no infirmity in the impugned order admitting the additional ground filed by the assessee.

44. Further, we find that the learned CIT(A) analyzed the objectives of subsidies received under the aforesaid schemes in para 14.10 of its order, as under:

"14.10 The Government of India notified the Foreign Trade Policy, 2009-14 under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 vide notification No 1 (RE-2012)/2009-14 dated 05.06.2012. The Policy contains a Chapter on Special Focus Initiatives, wherein the objective of special focus incentives given for various sectors (FMS and FPS) is specified as under:

"(a) with a view to continuously increasing our percentage share of global trade and expanding employment opportunities, certain special focus initiatives have been identified/continued for Market Diversification, Technological Upgradation, Support to status holders, Agriculture, Handlooms, Handicraft, Gems & Jewellery, Leather, Marine, Electronics and IT Hardware manufacturing Industries, Green products, Exports of products from North- East, Sports Goods and Toys sectors Government of India shall make concerted efforts to promote exports in these sectors by specific sectoral strategies that shall be notified from time to time"

Further, the objective of subsidy under Status Holder Incentive Scrip (SHIS) is laid down in the policy as under:

"With an objective to promote investment in upgradation of technology of some specified sectors as listed in Para 3.16.4 below, Status Holders shall be entitled to incentive scrip @ 1% the FOB Value of exports made during 2009-10 and during 2010-11 of these specified sectors in the form of duty credit. This shall be over and above the duty credit scrip claimed/availed under this chapter. "

45. In this regard, it is also relevant to note that the AO in its remand report dated 11/04/2019, forming part of the paper book from pages No. 117-120 after examining the submissions of the assessee and schemes and various facts placed on record noted that the salient objectives of the FPS/FMS/SHIS subsidy received under the Foreign Trade Policy is to increase percentage share of global trade by increasing the competitiveness in selected markets, technological upgradation and expanding employment opportunity. In para 7.2 of its remand report, the AO further stated that the purpose of introduction of the schemes was to encourage industries, which require industrial growth, technological upgradation, and development.

46. Accordingly, the learned CIT(A) came to the conclusion that the subsidy is a capital receipt in the hands of the assessee and therefore not includable in the total income. The relevant findings of the learned CIT(A) in this regard are as under:

"14.11 Thus, on a plain reading of the relevant policy document of the Government of India, it is clear that the objective of the subsidy granted under FPS, FMS and SHIS is to increase the global market share, technology up gradation and employment generation in certain sectors. The object of the subsidy under these schemes was not to enable the assessee to run the business more profitably. The object was primarily to provide encouragement and support, which would create benefits of enduring nature, for the Industry as a whole in certain sectors of economy. It is pertinent to recall here that in the remand report, after examining the facts brought on record by the appellant, AO has also concluded that the salient objective of the FPS, FMS and SHIS subsidy under the Foreign Trade Policy is to increase percentage share of global trade by increasing competitiveness in select markets, technological upgradation andexpanding employment opportunity. In that view, I am of the considered opinion that, having regard to the 'purpose test' laid down by the Supreme Court in the aforementioned cases, the amounts received by the appellant during the year, under those

Schemes as subsidy should be treated as capital receipt in its hands, not includible in the total income."

47. We find that the subsidy granted under the FMS scheme came up for consideration before the Hon'ble Rajasthan High Court in PCIT v. Nitin Spinners Ltd. [2020] 116 taxmann.com 26 (Rajasthan) , wherein the Hon'ble High Court observed as under:

. . . . . .

48. We further find that the Hon'ble Supreme Court dismissed the Revenue's Special Leave Petition in PCIT v. Nitin Spinners Ltd., [2021] 283 Taxman 2(SC), against the aforesaid decision of the Hon'ble Rajasthan High Court. Thus, when the objective of the aforesaid subsidies has been admitted to be to encourage industries by providing industrial growth, technological upgradation, and development, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue in treating the amount received by the assessee under the aforesaid schemes as capital receipt. As a result, grounds no. 9-13 raised in Revenue's appeal are dismissed."

8.5 Following the ratio laid down in the above decisions, we, in principle, find merit in the claim of the Ld. AR that the subsidies received by the assessee under the Foreign Trade Policy was in the nature of capital receipt not liable to tax."

24. Following these decisions, we accordingly accept the plea raised by the assessee and direct the AO to exclude the impugned incentives, being in nature of capital receipt, while computing the total income for the relevant year.

25. On the issue of treatment of these incentives while computing book profit u/s 115JB, we find that the case of the assessee is squarely covered by the decision of the coordinate Bench of the Hon'ble ITAT, Kolkata in the case of DCIT Vs Century Plyboards (I) Ltd (supra) wherein it was held as under:-

"45. Now coming to the issue relating to treatment of these subsidies while computing book profit u/s 115JB, we note that the Hon'ble Apex Court in the case of Apollo Tyres Ltd. v. CIT [2002] 122 Taxman 562/255 ITR 273 held that the AO has the power to rework the book profit if the profits are computed not in accordance with Part II and Part III of Schedule VI to the Companies Act, 1956. The Hon'ble Supreme Court in their subsequent decision rendered in the case of Indo Rama Synthetics (I) Ltd. v. CIT [2011] 9 taxmann.com 25/196 Taxman 539/330 ITR 363 further held that, the object of MAT provisions is to bring out the true working result of the companies. As held in the preceding paras, the subsidies received by the assessee were capital in nature and therefore not liable to tax. In the circumstances therefore, inclusion of such capital receipt in the computation of book profit u/s 115JB would defeat two fundamental principles. Firstly, it would levy tax on receipt which is not in the nature of income at all and secondly it would not result in arriving at real working results of the company. We thus find merit in the assessee's claim that the said subsidies being capital in nature, deserves to be excluded from the computation of book profit u/s 115JB of the Act.

46. It is noted that in the context of similar State Industrial Scheme, the jurisdictional Hon'ble Calcutta High Court in the case of Ankit Metal and Power Ltd. (supra) held that subsidies received for setting up new industry is not in the nature of income and therefore cannot be deemed as income for the purposes of computing book profit u/s 115JB of the Act. In the decided case the assessee had received interest subsidy under the WB Incentive Scheme, 2000 and power subsidy under the Power Intensive Industries Scheme, 2005 for setting up Sponge Iron Plant in Bankura. Before this Tribunal, the assessee claimed that receipt of such subsidies in form of remission of interest and power/electricity duty payments etc. was capital receipt not liable to tax both under the normal computational provisions as well as book profit u/s 115JB of the Act. The Tribunal answered the issue in favour of the assessee. On

appeal by the Revenue, the Hon'ble High Court upheld the order of this Tribunal by observing as under:

....

27. In this case since we have already held that in relevant assessment year 2010-11 the incentives 'Interest subsidy' and 'Power subsidy' is a 'capital receipt' and does not fall within the definition of 'Income' under section 2(24) of Income-tax Act, 1961 and when a receipt is not on in the character of income it cannot form part of the book profit under section 115JB of the Act, 1961. In the case of Appollo Tyres Ltd. (supra) the income in question was taxable but was exempt under a specific provision of the Act as such it was to be included as a part of the book profit. But where a receipt is not in the nature of income at all it cannot be included in book profit for the purpose of computation under section 115JB of the Income-tax Act, 1961. For the aforesaid reason, we hold that the interest and power subsidy under the schemes in question would have to be excluded while computing book profit under section 115 JB of the Income-tax Act, 1961."

47. We also rely on the decision of the coordinate bench of this Tribunal in the case of Sicpa India (P.) Ltd. (supra) wherein it has been held that the subsidy received by the assessee in form of excise duty exemption for setting up new industry in the North Eastern State viz., Sikkim was in the capital field and therefore not liable to tax under the provisions of section 115JB of the Act.

.....

48. For the reasons set out above and respectfully following the binding decision of the Hon'ble Calcutta High Court as well as this Tribunal, we hold that the subsidies received by the assessee for setting up new industries, by way of refund of VAT and excise duty of Rs. 2,36,75,501/- and Rs. 13,82,79,547/- respectively are liable to be excluded from the computation of book profit u/s 115JB of the Act.

……

51. For the reasons set out above therefore, we do not find any merit in the contention put forth by the ld. CIT, DR. We accordingly accept the plea raised by the assessee and direct the AO to exclude the subsidies received in form of refund of VAT and excise duty exemption while computing book profit u/s 115JB of the Act. Ground Nos. 2 & 3 of the Cross Objections therefore stands allowed."

26. Following the above decisions (supra), we thus hold that the incentive received under the SHIS / FPS Scheme, being in nature of capital receipt is directed to be excluded from the computation of book profit u/s 115JB of the Act. Ground Nos. 4(i) &(ii) are therefore allowed.

27. Ground No. 4(iii) of the appeal relates to exclusion of proceeds of Rs. 4,29,25,768/- received upon sale of carbon credits while arriving at the book profit u/s 115JB of the Act. The assessee has claimed the sale of carbon credits to be capital receipt and accordingly excluded the same while computing income under normal provisions. It was brought to our notice that, this claim was not disputed by the ld. AO. The assessee however had inadvertently omitted to exclude the said sum while arriving at book profit u/s 115JB and had therefore raised this claim before the ld. CIT(A) seeking exclusion of the same. The ld. CIT(A) rejected this additional claim, for the same reasons already discussed above, while adjudicating Ground Nos. 4(i) & (ii). Now the assessee is in appeal before us.

28. Heard both the parties. It is observed that the carbon credit is neither received by producing or selling a product, or by-product or rendering any services in connection with the carrying on of the business. Rather, it is in the nature of 'an entitlement' received to

improve world atmosphere and environment by reducing carbon, heat and gas emissions. Carbon credits are made available to the taxpayer on account of saving of energy consumption and non-emission of hazardous gases into the atmosphere and not because of its business. It has been held by various judicial authorities cited above that *"carbon credit is an offshoot of environmental concern"*. We find that there are a plethora of judgments wherein it has been consistently held that income from sale of carbon credit is not chargeable to tax. We particularly take note of the decision of the Hon'ble Andhra Pradesh High Court in the case of CIT vs My Home Power Ltd [2014] 46 taxmann.com 314. It is noted that, the ld. AO had also not disputed the assessee's claim that, the sale of carbon credit is a capital receipt. The off-shoot of this issue is then, whether the receipts from sale of carbon credits, being in the nature of capital receipts, will form part of book profit u/s 115JB or not. We find that this issue is no longer res integra. We note that Coordinate Benches of this Tribunal in the following cases have held that the receipts from sale of carbon credits being capital in nature, should be excluded the purposes of computing book profit u/s 115JB of the Act. The relevant extracts of the decisions are as follows:

(I) SRF Limited vs. ACIT (ITA No. 6693/Del/2018) :

> *"6.4 It is a settled law that a capital receipt is not liable to tax under the Act unless it is specifically included in the definition of income u/s 2(24) of the Act and chargeable under any of the charging provisions of the Act. Once a particular receipt is treated as capital receipt, the same cannot be brought to tax in garb of 'minimum alternative tax' applicable on book profits computed u/s 115JB of the Act. The ratio of judgment delivered by the Hon'ble High Court of Calcutta in case of Ankit Metal & Power Ltd. [2019] 109 taxmann 93 (Cal) is worth mentioning. In Para no. 27, the Hon'ble Court held that:*
>
> *……*

6.5 Further ITAT, Lucknow Bench, in case of L.H. Sugar Factory Ltd. (ITA No. 717 & 418/LKW/2013 and others), held as under: -

"4. We have considered the rival submissions. We find that the issue in dispute as per Ground No. 1 of appeal is regarding nature of receipt on account of sale of carbon credit and in the case of CIT Vs. My Home Power Ltd. (Supra) also, the dispute before Hon'ble Andhra Pradesh High Courtwas this as to whether the amount received by the assessee on SRF Ltd. vs. ACIT transfer ofcarbon credit is capital receipt or Revenue receipt. It was held by Hon'bleAndhra Pradesh High Court in that case that carbon credit is not anoffshoot of business but an offshoot of environmental concerns and noassets is generated in the course of business but it is generated due toenvironmental concerns and therefore, it was held that the Tribunal hascorrectly held that this is a capital receipt and it cannot be business receiptof income and in this manner, Hon'ble Andhra Pradesh High Court hasupheld the Tribunal's order in that case. The dispute in the present case isalso regarding nature of receipt on account of transfer of carbon credit.Ld. DR of the Revenue could not point out any difference in facts in thepresent case and in the case of CIT Vs. My Home Power Ltd. (Supra) and therefore, respectfully following this judgment of Hon'ble Andhra Pradesh High Court, we decline to interfere in the order of Ld. CIT(A) on this issue. Accordingly, Ground No.1 of the Revenue is rejected."

6.6 We, therefore, respectfully following the aforesaid ratio of Hon'ble High Court hold that Carbon credits being the capital receipts cannot be brought to tax as book profits and are, thus, liable to be excluded from the computation of book profits u/s 115JB. The additional ground of appeal no.4 of the assessee is thus allowed."

(II) DCM Shriram Industries Ltd. Vs. ACIT (ITA No. 1841/Del/2020) [ITAT Delhi] :

"29. Another off-shoot of this issue is whether the receipts from RECs, being in the nature of capital receipts, will form part of book profit computed under section 115JB of the Act. We find, this issue has also been addressed by the Coordinate Bench in case of SRF Ltd. Vs. ACIT (supra) wherein it has been held as under:

.....

30. Thus, respectfully following the ratio laid down by Coordinate Bench, as aforesaid, we hold that the receipts from sale of RECs, being in the nature of capital receipts, should be excluded for the purpose of computing book profit under section 115JB of the Act. Grounds are allowed to the extent indicate above."

(III) M/s Ramgad Minerals & Mining Ltd. Vs. ACIT (ITA Nos. 1270 & 1271/Bang/2019) [ITAT Bang] :

"9.6.1. We find force in the submissions of Ld.AR. We note that Ld.CIT (A) has already accepted the contention of the assessee and held that the sale of carbon Credit is a capital receipt and his finding on this aspect has attained finality because no appeal is filed by the revenue against this finding of Ld.CIT (A). Once it is accepted that the receipt in question is a capital receipt, this judgment of Hon'ble Calcutta High Court rendered in case of CIT vs. Ankit Metal & Power Ltd. (Supra) becomes applicable. We note that, Hon'ble Calcutta High Court has duly considered the judgment of Hon'ble Supreme Court rendered in case of Appollo Tyres vs. CIT (supra) and held that where a receipt is not in the nature of income at all, it cannot be included in Book Profit under Section 115JB. Hence, we follow this judgment of Hon'ble Calcutta High Court rendered in the case of CIT vs. Ankit Metal & Power Ltd. (Supra) and decide this issue also in favour of the assessee in both years."

29. Following the above cited decisions, we thus direct the ld. AO to allow the exclusion of carbon credit receipts from the computation of

assessable book profit u/s 115JB of the Act. Ground No. 4(iii) is therefore allowed.

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

Kolkata, the 15th September, 2025.

Sd/-	Sd/-
[Pradip Kumar Choubey]	**[Rajesh Kumar]**
Judicial Member	**Accountant Member**

Dated: 15.09.2025.
RS

Copy of the order forwarded to:
1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches