

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1622/Del/2018 : Asstt. Year : 2013-14

JCIT, Special Range-1, New Delhi	Vs	Agriculture Insurance Company of India Ltd., 13 th Floor, Ambardeep, 14, K.G. Marg, Connaught Place, New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AAECA2874P		

Assessee by : None

Revenue by : Sh. Satpal Gulati, CIT DR

Date of Hearing: 12.07.2021

Date of Pronouncement: 12.07.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of Id. CIT(A)-32, New Delhi dated 26.10.2017.

2. Following grounds have been raised by the revenue:

"1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs.14,60,88,000/- on account of corpus fund without routing the income through the profit and loss account. The Id. CIT(A) was not justified in not treating the same as diversion of income.

2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs.2,41,82,570/- made by the AO on account of

disallowances u/s 14A r.w.r. 8D of the Income Tax Rules."

3. Ground No. 1 relates to corpus fund raised by the revenue stands covered by the decision of the Tribunal in assessee's own case for assessment year 2009-10 in ITA No.366/Del/2018 vide order dated 17.03.2021.

4. We have perused the material available on the record. In the present case, it is noticed that an identical issue having similar facts was a subject matter of the assessee's appeal in ITA No.366/Del/2018, the relevant findings have been given in para 5 & 6 which read as under:

"5. We find that this Tribunal in assessee's own case have noted the following facts and have decided the issue in favour of the assessee in the following manner:-

10. After discussing certain other judicial decisions, the Id. CIT(A) observed that the income received from investments and credited to the corpus fund has been credited as per the directions of the Government of India and such income was earned out of the amount received from the Central Government and State Government in the corpus fund for specified purposes by the Government of India. Accordingly, he deleted the addition of Rs. 8,62,47,181/-.

11. Before us, the Id. DR vehemently stated that the appellant's activities in respect of investments out of corpus fund vis a vis other investments are same for which common expenses have been debited in the Profit and Loss Account. Further, the assessee has utilized the corpus funds, ownership/ right to use, vests with the assessee. The Id. DR further stated that the Id. CIT(A) has simply referred to the submissions of the assessee and has deleted the additions without any speaking order. Therefore, the matter should be restored to the file of the Id. CIT(A) for fresh adjudication.

12. Per contra, the Id. counsel for the assessee reiterated what has been stated before the lower authorities. In

support, the Id. counsel for the assessee submitted the letter from Government of India, Ministry of Agriculture, Department Agriculture and Co-operation, which reads as under:

"I am directed to say that the funds under the Corpus Fund are provided by the Central and State Governments on 50:50 basis. As the Corpus Fund belongs to the Central and State Government, the interest accrued thereon also belong to the Government. Therefore, interest accrued on the Corpus Fund is required to be added in the Corpus Fund."

13. We have given thoughtful consideration to the orders of the authorities below and have carefully considered the letter of the Government of India referred to hereinabove. The facts of the case, read with the aforesaid letter of the Government, clearly demonstrates that this is a case of diversion of income by overriding titles. Considering the facts of the case in the light of the letter of Government of India, we find that the reliance by the Id. CIT(A) on the ratio laid down by the Hon'ble Supreme Court in the case of Associated Power [supra] is well taken. The ratio laid down by the Hon'ble Supreme Court has been followed in various judgments, to name a few, CIT Vs. New Horizon Sugar Mill Pvt Ltd 244 ITR 738, Bijli Cotton Mills [P] Ltd 116 ITR 60, Dalmia Cement Ltd 237 ITR 617, etc. All these judicial decisions have been discussed elaborately by the Id. CIT(A) in his order. We, therefore, do not find any error or infirmity in the order of the Id. CIT(A). Accordingly, Ground No. 1 of the Revenue is dismissed.

5. Hence, in the absence of any material change on the facts of the issue, the addition is hereby deleted.

6. Ground No. 2 relates to disallowance u/s 14A raised by the revenue stands covered by the decision of the Tribunal in assessee's own case for assessment year 2014-15 in ITA No.367/Del/2018 vide order dated 17.03.2021.

7. We have perused the material available on the record. In the present case, it is noticed that an identical issue having similar facts was a subject matter of the assessee's appeal in

ITA No.367/Del/2018, the relevant findings have been given in para 10 & 11 which read as under:

"10. We find that this Tribunal after noting the earlier orders of the Tribunal wherein it was held that once the assessee's income is to be computed u/s.44 which relates to all insurance business which is a non obstante clause, therefore disallowance of Section 14A cannot be made. The relevant observation of the Tribunal reads as under:

"We have carefully gone through the order of the coordinate bench in ITA No. 5779/DEL/2015 order dated 09th November 2017. We find that the coordinate bench has followed the earlier order of the coordinate bench in ITA No. 3115/DEL/2013. The relevant findings of the coordinate bench read as under:

"We have considered the rival contentions and gone through the records. The provisions of section 44 read as under.

'Insurance business, - 44 : Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head 'interest on securities', 'income from house property', 'capital gains' or 'income from other sources' or profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a cooperative society, shall be computed in accordance with the rules contained in the First Schedule.

23. The above provision makes it very clear that section 44 applies notwithstanding anything to the contrary contained within the 'provisions of the income-tax Act relating to computation of income chargeable under different heads. We agree with the learned counsel that there is no requirement of head-wise bifurcation called for while computing the income u/s 44 of the Act in the case of a insurance company:

'The income of the business of insurance is essentially to be at the amount of the balance of profits disclosed by the annual accounts as furnished to the Controller of Insurance. The actual computation of profits and gains of insurance business will have to be computed in accordance with Rule 5 of the First Schedule. In the light of these special provisions coupled with non obstante clause the AO is not permitted to travel beyond these provisions.'

24. Section 14A contemplates an exception for deductions as allowable under the Act are those contained u/s 28 to 43B of the Act. Section 44 creates Special application of these provisions in the cases of insurance companies. We, therefore, agree with the assessee and delete the disallowance made by the AO which is based on the application of sec. 14A of the act as according to us, it is not permissible to the AO to travel beyond section 44 and First Schedule of the Income-tax Act.

Respectfully following the decision of the ITAT in the case of Oriental Insurance Co. Ltd. (supra), the additional ground raised by assessee is allowed. Accordingly, it is held that the provisions of section 14A are not applicable in the case of assessee. Therefore, the addition of Rs. 23,31,454/- stands deleted.

4. Respectfully following the order in ITA 3115/Del/2013, we allow the appeal of the assessee.

11. Thus, following the aforesaid decision and the principle upheld by the Tribunal, we do not find any infirmity in the order of the Id. CIT(A) and the same is confirmed. Accordingly ground no.2 is dismissed."

8. Hence, in the absence of any material change on the facts of the issue, the addition is hereby deleted.

9. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 12/07/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 12/07/2021

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR