

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव,लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA Nos.1111 & 1112/PUN/2017
निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

The Deputy Commissioner of Income Tax,
Circle-1(1), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Bajaj Allianz General Insurance
Company Ltd.
GE Plaza, Airport Road,
Pune-411 006.
PAN : AABCB5730G

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं./CO.Nos.23 & 24/PUN/2019
निर्धारण वर्ष/Assessment Years: 2013-14 & 2014-15
(Arising out of ITA Nos.1111 & 1112/PUN/2017)

M/s. Bajaj Allianz General Insurance
Company Ltd.
1st Floor, Bajaj Allianz House,
Airport Road, Yerawada,
Pune-411 006.
PAN : AABCB5730G

..... प्रत्याक्षेपक/ Cross objector

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Nikhil Mutha &
Shri Rajat Soni.

Respondent by : Shri N Ashok Babu

सुनवाई की तारीख / Date of Hearing : 24.07.2019	घोषणा की तारीख / Date of Pronouncement : 25.07.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM

There are cross appeals under consideration. ITA Nos.1111 & 1112/PUN/2017 filed by the Revenue are directed against the common order of the CIT(Appeal), Pune dated 28.02.2017 for assessment years 2013-14 and 2014-15. The Assessee has filed cross objections with regard to the appeals filed by the Revenue in CO Nos.23 & 24/PUN/2019.

2. These cases were heard together. Since grounds raised by the Revenue in both the appeals and grounds raised in cross objection by the assessee are identical, these cases are being disposed of vide this consolidated order.

ITA No.1111/PUN/2017 (By Revenue)
A.Y. 2013-14

3. In ITA No.1111/PUN/2017, the Revenue has raised following grounds:

“1. The order of the Ld. Commissioner of Income Tax (Appeals) is contrary to law and on facts and in circumstances of the case.

2. The Ld. Commissioner of Income Tax (Appeals) erred on the facts and in the circumstances of the case and in law deleting the disallowance u/s 14A of the Income tax Act 1961 amounting to Rs.5,51,35,448/-.

3. The Ld. Commissioner of Income Tax (Appeals) erred on the facts and in the circumstances of the case and in law in holding that section 14A

contemplates an exception for deductions allowable under the Act as contained u/s 28 to 43B of the Act and that Section 44 creates special application of these provisions in the cases of insurance companies which prohibits the Assessing Officer to travel beyond section 44 and First Schedule of the Income-tax Act.

4. The Ld. Commissioner of Income Tax (Appeals) erred on facts and in the circumstances of the case and in law in not considering that section 44 of the Income Tax Act, 1961 nowhere restricts the applicability of section 14A of the Income Tax Act, 1961.

5. For these and such other grounds as may be urged at the time of hearing, the order of the Ld. Commissioner of Income Tax (Appeals) may be vacated and that of the Assessing Officer be restricted.

6. The appellant craves to add, amend, alter or delete any of the above ground of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”

4. **Ground Nos. 1 and 6** are general in nature and hence, requires no adjudication.

5. **Ground Nos. 2 to 5 :** At the very outset, the Ld. Counsel for the assessee brought our attention to the grounds of Revenue's appeal and submitted that solitary issue raised by the Revenue in ground Nos. 2 to 5 relates to the applicability of section 14A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the case of Insurance companies like assessee where provisions of Section 44 of the Act apply. The Ld. Counsel submitted that it is the case of the assessee, where computation of income was done u/s.44 of the Act relating to "Insurance business", the provision of section 14A cannot be invoked for making disallowance. Stating that this is covered issue, the Ld. Counsel for the assessee submitted that the CIT(Appeal) granted relief to the assessee on this issue as per discussion given in Para 6 stating the Tribunal has decided this issue in favour of the assessee relying on the earlier order of Tribunal in assessee's own case for assessment year 2003-04. The Ld. Counsel also submitted that the order of CIT(Appeal) is fair and reasonable and it does not call for any interference.

6. On hearing both the parties on this issue, we find it is relevant to extract Para 6 of the CIT(Appeal)' order which read as under:

"6. I have carefully considered the facts of the case as well as reply of the appellant and I find that the issue in respect of disallowance u/s 14A on both the counts i.e. income in respect of sale! redemption of investment as well as dividend income is covered in favour of the appellant in Pune Tribunal's order in appellant's own case in A.Y. 2003-04 (Income in respect of sale! redemption of investments) and A.Y. 2006-07 in respect of dividend income. For the sake of clarify the relevant portion of Para 18 of Tribunal's order for A.Y. 2003-04 (page 98-118 of paper book) is reproduced as under:

*18. It may not be out of place to mention that the respected Co-ordinate Bench has duly taken the note of an earlier decision of that very Bench decided in the case of that very assessee vide order dt. 29th Sept., 2004 bearing ITA Nos. 7815/Del/1989, 3607 to 3609/Del/1990; 5035/Del/1998 and 3910/Del/2000 named as Dy. CIT Vs. Oriental General Insurance Co. Ltd. [2005] 92 TTJ (Delhi) 300. As seen from the paras reproduced above on due consideration of the relevant provisions as applicable to resolve this issue a conclusion was drawn that since the Courts have held, **s. 44 creates a special provision in the cases of assessment of insurance companies therefore it was not permissible to the AD to travel beyond s. 44 of First Schedule of IT Act.** Since the view has already been expressed by respected Co-ordinate Bench therefore, we have no reason to take any other view except to follow the same. With the result we hereby accept the argument of learned Authorized Representative to the extent that in the present situation (the provisions of s. 14A need not to apply while granting exemption to an income earned on sale of investment primarily because of the reason of the withdrawal or deletion of sub-r. 5(b) to First Schedule of s. 44 of IT Act. Once we have taken this view therefore the enhancement as proposed by learned CIT(A) is reversed and the directions in this regard are set aside. Resultantly ground No. 1 is allowed consequent thereupon ground No. 2 automatically goes in favour of the assessee."*

It is further seen that Hon. Pune Tribunal in AY 2006-07 in ITA No.119/PN/2011 dated 06/05/2013 has allowed relief in respect of addition u/s.14A on account of dividend income too following its order in AY 2003-04 reproduced above. This being so, the issue stands covered by the decision of Pune Tribunal in favour of the appellant as section 14A is not applicable in the case of the appellant company. Accordingly, the ground taken by the appellant is allowed and the AO is directed to delete the addition u/s.14A of the I.T Act, 1961."

From the above, it is evident that the CIT(Appeals) granted relief to the assessee relying on the various decisions of the Tribunal as well as the Hon'ble Delhi High Court in the case of Dy. CIT Vs. Oriental General Insurance Co. Ltd. (2005) 92 TTJ 300 (Delhi).

7. Considering the settled nature of the issue, we are of the opinion that the order of the CIT(Appeal) on this issue is fair and reasonable and it does not call for any interference. Accordingly, **ground Nos. 2 to 5 raised in appeal by the Revenue is dismissed.**

8. In the result, **appeal of the Revenue in ITA No.1111/PUN/2017 is dismissed.**

CO No.23/PUN/2019 (By Assessee)
A.Y.2013-14

9. In CO No.23/PUN/2019, the assessee has raised following grounds:

“1. Cross objection No.1 : Challenging the disallowance under section 14A in respect of exempt dividend and interest income :

The decision of the learned CIT(A) that the provisions of section 14A are not applicable in respect of dividend and interest income exempt under section 10 of the Income Tax Act, 1961 (‘the Act’) is justifiable under the law and in accordance with the Hon’ble Tribunal’s ruling for earlier years in the Respondent’s own case.

2. Cross Objection No.2 : Without prejudice to Cross objection No.1 above, challenging the computation of disallowance under section 14A read with revised Rule 8D of the Income Tax Rules, 1962 (‘the Rules’).

Without prejudice to above, in case if section 14A is held to be applicable, the disallowance in relation to exempt dividend income should be restricted to Rs.2,94,378/- and in relation to exempt interest income should be restricted to Rs.17,14,999/- as determined by the Assessee based on ‘Net Income Method’.

3. Cross Objection No.3 : Without prejudice to Cross Objection No.1 and Cross Objection No.2 above, challenging the applicability of revised Rule 8D of the Rules for AY 2013-14

Without prejudice to above cross objections, the learned AO has erred in computing the disallowance under section 14A as per the revised Rule 8D without appreciating that revised Rule 8D has been notified vide CBDT Notification No.43/2016 dated 2nd June 2016 thereby applicable from AY 2017-18 onwards and not for AY 2013-14.

4. Cross objection No.4 : Deduction in respect of Education Cess:

The appellant prays that the liability for education cess on income tax paid for the year ought to be allowed as tax deductible expense while computing the taxable income.

The respondent craves leave to add, alter, delete or modify all or any of the above grounds of cross objections on or before or at the time of hearing of the appeal, so as to enable the Hon'ble Income Tax Appellate Tribunal to dispose off the appeal according to law."

10. The Ld. Counsel for the assessee brought our attention to grounds of Cross objection Nos.1 to 3 and submitted that if the Revenue's appeal in ITA No.1111/PUN/2017 is dismissed, then grounds of Cross Objection Nos. 1 to 3 become academic in nature.

11. Considering that the relief has already been granted to the assessee on the issue relating to the Provision of section 44 Vs. 14A of the Act, we are of the opinion that **grounds of Cross objection Nos. 1 to 3 are dismissed as academic.**

12. Referring to **Ground No.4**, the Ld. Counsel submitted that this ground relates to the **allowability of deduction in respect of the educational cess paid** by the assessee. The Ld. Counsel further submitted that this issue is covered in nature by virtue of the decision of the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in the case of Chambal Fertilisers and Chemicals Ltd. Vs. JCIT, Range -2, Kota.

13. On hearing both the parties on this issue, we find that this issue is covered one by the decision of the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in the case of Chambal Fertilisers and Chemicals Ltd. Vs. JCIT, Range -2, Kota wherein substantial question of law No.3 is relevant in this regard (Para 3) and the same was adjudicated by the Hon'ble High Court at Para 12 of the judgment. The Hon'ble High Court on this issue held the said question No.3 is answered in favour of the assessee. For the sake of completeness, the said Paragraph is extracted as under:

“12. We have heard counsel for the parties.

*On the third issue in appeal no.52/2018, in view of the circular of CBDT where word “Cess” is deleted, in our considered opinion, the tribunal has committed an error in not accepting the contention of the assessee. Apart from the Supreme Court decision referred that assessment year is independent and word Cess has been rightly interpreted by the Supreme Court that the **Cess is not tax** in that view of the matter, we are of the considered opinion that the view taken by the tribunal on issue no.3 is required to be reversed and the said issue is answered in favour of the assessee.”*

From the above, it is evident that education Cess, which is not disallowable item, on its payment, the cess is an allowable expenditure as per provision of section 40(a)(ii) of the Act. Considering the settled nature of the issue as per the ratio laid down in the above referred case by the Hon’ble High Court of Judicature for Rajasthan Bench at Jaipur, **ground of Cross objection No.4 is allowed.**

14. In the result, **cross objection (CO. No.23/PUN/2019) filed by the assessee is partly allowed.**

ITA No.1112/PUN/2017 (By Revenue)
CO No.24/PUN/2019 (By Assessee)
A.Y. 2014-15

15. In ITA No.1112/PUN/2017, the Revenue has raised identical grounds as raised in ITA No.1111/PUN/2017. Further, grounds in Cross objections raised in CO No.24/PUN/2019 by the assessee are also similar to CO No.23/PUN/2017.

Considering the identical issues, commonality of facts and similar arguments as advanced by the both the parties, we are of the opinion that our decision given in ITA No.1111/PUN/2017 and CO No.23/PUN/2019 would squarely applicable in the present set of cross appeals i.e. ITA No.1112/PUN/2017 and CO No.24/PUN/2019.

16. In the result, **appeal of the Revenue in ITA No.1112/PUN/2017 is dismissed and cross objection (CO No.24/PUN/2019) filed by the assessee is partly allowed.**

17. To sum up, both the appeals of the Revenue are dismissed and both cross objections of the assessee are partly allowed.

Order pronounced on 25th day of July, 2019.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य /ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th July, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-1.
4. The Pr.CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	24.07.2019	Sr.PS/PS
2	Draft placed before author	25.07.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		

