

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR**

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 No.303/NAG/2013

निर्धारण वर्ष / Assessment Year : 2006-07

Bajaj Exports Pvt. Ltd.,  
C/o. M/s. Loya Bagri & Co.,  
Chartered Accountants,  
Gandhibag, Nagpur-440002.

PAN : AAACB1540R

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Central Circle-2(3),  
Nagpur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajesh Loya, Adv.  
Revenue by : Shri U. U. Kasar, DR

सुनवाई की तारीख / Date of Hearing : 26.03.2019

घोषणा की तारीख / Date of Pronouncement : 29.03.2019

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This appeal is filed by the assessee against the order of CIT(A)-I,  
Nagpur dated 15.05.2013 for the Assessment Year 2006-07.

2. The ground nos.1, 5 and 6 are not pressed by the assessee at the time of hearing. Accordingly, they are dismissed as not pressed.

3. Rest of ground nos.2, 3 and 4 are left for adjudication and the same are extracted hereunder :-

*“(2) That the learned Assessing Officer erred in law and on facts in disallowing interest expenditure of Rs.17,91,935/- and out of other expenditure Rs.77,146/- (total Rs.18,69,081/-) holding that the assessee has incurred expenditure to this extent for earning exempted (dividend). On the facts and circumstances of the case the disallowance made by invoking Section 14A of the Income Tax Act is unjustified and unreasonable.*

*(3) That the learned Assessing Officer erred in law and on facts in holding that Rule 8D of the Income Tax Rules is applicable and thereby making disallowance u/s. 14A. On the facts and circumstances of the case the action of the Assessing Officer is illegal and unjustified.*

*(4) That the learned Assessing Officer erred in law and on facts in disallowing Rs.51,862/- being contribution to Provident Fund holding that the same is not paid within the due date and therefore disallowable. On the facts and circumstances of the case the payments of PF are made within the grace period and therefore the action of the Assessing Officer is unjustified.”*

4. Briefly stated the relevant facts include that the assessee filed the return of income declaring total income of Rs.40,04,781/-. The assessee is engaged in the business of job works of lamination on HDPE/PP woven sacks and fabric. At the end of the assessment u/s 143(3) of the Act, the Assessing Officer determined the total income of Rs.59,26,720/- after making couple of additions (i) on account of

disallowance u/s 14A of the Act (Rs.18,69,081/-) and (ii) belated payment of employees' contribution to Provident Fund (Rs.51,862/-). Regular assessment became final as the assessee never filed appeal before the CIT(A) or the ITAT. Subsequently, reassessment was made u/s 153C r.w.s. 143(3) of the Act on 20.12.2010. In the reassessment, the Assessing Officer made addition of Rs.4,19,554/- determining the total income of Rs.63,46,277/-. The Assessing Officer computed the reassessed income from the regular assessed income u/s 143(3) of the Act. The assessee is connected with Bajaj Steel Industries Ltd. & Others which was covered u/s 132 of the Act.

5. Aggrieved with the reassessment order, the assessee filed an appeal before the CIT(A). It is known why the assessee is not agitated against the regular assessment before the CIT(A).

6. In the light of the above background, the ld. counsel for the assessee fairly submitted that the addition on account of 14A of the Act as well as addition on account of employees' contribution to PF were not adjudicated by the CIT(A) as the issue was not raised before him at the relevant point of time in connection with the assessment

made u/s 143(3) of the Act. Referring to the facts on both the issues, ld. AR submitted that the issues are actually decided ones in favour of the assessee. The ld. counsel submitted that the CIT(A)'s order, which is related to the reassessment order of the Assessing Officer where the computation has begun with the above-said couple of additions which found part of the total income of Rs.59,26,723/-. Fairly mentioning that the assessee mistakenly failed to raise the issues of the said addition before the CIT(A), the ld. counsel submitted that these matters may be admitted and remanded to the file of the CIT(A) for adjudication.

7. Referring to the addition u/s 14A of the Act, ld. counsel mentioned that the disallowance is uncalled for in this case as the assessment year 2006-07 is not covered the amended provisions of Rule 8D of the Income Tax Rules, 1962. Finding fault with the regular assessment where the Assessing Officer invoked the said Rule and quantified the disallowance of Rs.18,69,081/- against the exempt income is only around Rs.4.4 lakhs (rounded off), ld. AR submitted that such disallowance constitutes high pitch assessment. Further, ld. AR submitted that the failure of the assessee in not agitating the

same against the regular assessment should not be considered as hindrance for adjudication of the issues which is otherwise allowable in favour of the assessee. Otherwise, ld. AR fairly submitted that the disputed issue does not emanate from the reassessment order or the order of the CIT(A). Further, he submitted that the disallowance u/s 14A of the Act not to exceed the exempt income of the assessee. Further, relying on various decisions, he submitted that the disallowance, if any, should not exceed the exempt income. Mentioning that the disallowance is on higher side, ld. counsel submitted that the restriction of the disallowance to minimal amount should meet the ends of justice.

8. Further, referring to the disallowance of Rs.51,862/- on account of employees' contribution to PF, ld. counsel for the assessee submitted that now the law is well settled on this issue and the payment made before due date for filing the return of income is an allowable expenditure.

9. On the other hand, ld. DR for the Revenue relied heavily on the orders of the lower authorities and fairly submitted that these issues

are part of either reassessment order or the order of the CIT(A) and, therefore, the assessee missed the opportunity to raise the said issues before the CIT(A). The assessee cannot raise the said issues now before the Tribunal in the context of the reassessment proceedings linked with the CIT(A)'s order.

10. In the rebuttal time, ld. Counsel for the assessee submitted that the Tribunal has wide power to allow to raise the additional ground before it so long as they arise from the subject-matter of the tax proceedings. In this regard, he relied on the Hon'ble Bombay High Court judgment in the case of Ahmedabad Electricity Co. Ltd. vs. CIT, 199 ITR 351 (FB).

11. Referring to the said judgement of the Hon'ble Bombay High Court (supra), ld. DR for the Revenue mentioned that the said judgement is applicable to the facts of the present case as the ground nos.2, 3 and 4 of the appeal are not in respect of the subject-matter of the entire tax proceedings.

12. We have heard both the sides on this preliminary issue. On fact, we find, the said three grounds are not connected either to the reassessment order or the impugned order of the CIT(A). However, they relate to the regular assessment order. Further, we also considered the Hon'ble Bombay High Court judgement (supra) in favour of the assessee. For the sake of completeness, we extract the held portion of the said judgement (supra) :-

*“..... Looking to the wide language in which this power is granted to the Tribunal there is no reason for restricting this power only to the points at issue arising from the order of the AAC raised by the assessee or by the Department before the Tribunal. **In deciding the appeal the Tribunal is not restricted to the grounds, which are taken or which have been allowed to be taken in the memorandum of appeal.**”*

13. From the above, it is evident that the issue need not arise from the order of the AAC raised by the assessee or by the Department before the Tribunal. In deciding the appeal, the Tribunal is not restrict to the grounds which are taken or which have been allowed to be taken in the memorandum of appeals. The conclusion part of the said judgement (supra) is also extracted hereunder :-

*“Tribunal has jurisdiction to permit additional grounds to be raised before it even though these may not arise from the order of AAC **so long as these grounds are in respect of the subject-matter of the entire tax proceedings.**”*

14. From the above, it is evident that the expression “so long as the grounds are in respect of the subject-matter of the entire tax proceedings” is an important expression as noted in para 39 of the said judgement (supra). We find in the reassessment order that the Assessing Officer considered the facts of addition made by him as in the regular assessment. By this nexus of reassessment to the regular assessment proceedings, the expression ‘in respect of the subject-matter of the entire tax proceedings becomes very significant’. In the present case, regular assessment got merged with that of the reassessment order by virtue of the way the Assessing Officer computed the reassessed income from the total income determined u/s 143(3) of the Act. Therefore, in our view, the aforesaid jurisdictional High Court judgement has rightly allowed the assessee to raise such new issues, which are subject-matter of merged regular assessment order with that of the reassessment order. Therefore, in our considered view, after admitting the grounds, the issues raised in the grounds should be remanded to the file of the CIT(A) with the direction to admit and adjudicate the issues in the light of the settled legal proposition on the issue of disallowance u/s 14A of the Act as well as on the issue of disallowance of employees’ contribution to PF.

Accordingly, the ground nos.2, 3 and 4 are allowed for statistical purposes.

15. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 29<sup>th</sup> day of March, 2019.

**Sd/-**

(विकास अवस्थी /**VIKAS AWASTHY**)  
न्यायिक सदस्य/**JUDICIAL MEMBER**  
**MEMBER**

नागपुर / Nagpur; दिनांक / Dated : 29<sup>th</sup> March, 2019.

*Sujeet*

**Sd/-**

(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)  
लेखा सदस्य/**ACCOUNTANT**

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)
4. The CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,  
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur.