

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
 AND
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.3098/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Siara Engineering Pvt. Ltd.,
 156/2, Mahalunge, Chakan
 Talegaon Road, Tal.-Khed,
 Chakan, Pune-410501

PAN : AA ECS6669Q

.....अपीलार्थी /
 Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
 Circle – 10, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad A. Shah
 Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 11-02-2021

घोषणा की तारीख / Date of Pronouncement : 19-02-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 22-09-2017 passed by the Commissioner of Income Tax (Appeals)-6, Pune [‘CIT(A)’] for assessment year 2012-13.

2. The assessee raised ground Nos. 1 to 4 challenging the action of CIT(A) in confirming the disallowance made by the AO by invoking Rule 8D(2) of the I.T. Rules without recording any satisfaction as to why the

disallowance made by the assessee on its own is not correct in the facts and circumstances of the case.

3. The brief facts are that the assessee is a company engaged in the business of manufacturing of machine engineering and automobile components such as gears and shaft. The assessee filed its return of income declaring a total income of Rs.7,45,25,549/-. Under scrutiny the AO completed the assessment and determined the income of the assessee at Rs.7,54,17,410/- inter alia disallowing of Rs.8,91,858/- under Rule 8D r.w.s. 14A of the Act vide its order dated 12-12-2014 u/s. 143(3) of the Act. The CIT(A) confirmed the same.

4. We note that the assessee earned dividend income of Rs.21,42,980/- and disallowed expenditure of Rs.1,92,114/- on its own being 15% of expenses. During the course of scrutiny assessment proceedings the assessee was asked to explain that the disallowance made on its own in respect of expenditure relating to exempt income. It was submitted that the assessee has calculated the expenditure based on both direct and indirect expenses incurred and these expenses are other than those which can be directly attributable to manufacturing expenses to an extent of Rs.12,80,759/-. The assessee allocated 15% of such expenses to exempt income and balance to manufacturing activities. According to assessee the disallowance at 15% is scientifically reasonable and no further disallowance is required. Before us, the ld. AR, Shri Sharad A. Shah reiterated the submissions advanced before the AO and CIT(A) and argued the disallowance made by the assessee on its own relating to exempt income is reasonable @ 15% and remaining 85% expenses allocated to manufacturing activities. He submits that the AO without recording any

satisfaction to the disallowance made by the assessee on its own mechanically invoked Rule 8D(2) to compute the disallowance of expenditure for the purpose of Section 14A of the Act which is not warranted. Further, he pointed out that the disallowance made under proportionate interest paid of Rs.3,436/- is also not required as the assessee has share capital and reserves and surplus more than the investments made and referred to page No. 1 of the paper book of Balance Sheet. Further, the ld. AR referred to page No. 23 of the paper book and submitted on similar issue constituting the same identical facts this Tribunal upheld the disallowance of expenditure at 15% in assessee's own case for A.Ys. 2009-10 and 2010-11 and prayed to allow the grounds raised by the assessee.

5. The ld. DR, Shri Vitthal Bhosale relied on the order of CIT(A) and prayed to dismiss the grounds raised by the assessee.

6. Having heard arguments of both the sides, we note that the assessee on its own allocated at 15% of expenses relating earning exempt income, are also other than which can be directly attributable to manufacturing expenses which means remaining 85% were allocated to the manufacturing activities. The contention of ld. AR is that the AO did not record satisfaction regarding why the suo-moto expenses disallowed by the assessee relating to exempt income are not correct. Further, he contended that the AO mechanically invoked the method for calculation of expenditure relating to exempt income under Rule 8D(2) of the I.T. Rules. It is also undisputed fact remains on record that this Tribunal in assessee's own case upheld the disallowance of expenditure @ 15% relating to exempt income in the earlier year i.e. A.Ys. 2009-10 and 2010-11 vide

its order dated 01-08-2018 wherein, in our opinion, is not applicable to the year under consideration because the Coordinate Bench held the disallowance made by the assessee to be correct taking into consideration the allowability of claim u/s 80IA of the Act. Further, we note that the AO made disallowance under the head Proportionate interest paid to an expenditure of Rs.3,436/- under Rule 8D(2)(ii) of I.T. Rules. We note that as pointed out by the ld. AR at page No. 1 of the paper book in Balance Sheet discloses that the assessee having share capital, reserves and surplus to an extent of Rs.32,45,40,343/- whereas the investments made by the assessee is at Rs.22.97 crores which is reflecting from para 5.3 of assessment order. It is settled principle that when the share capital, reserves and surplus funds are more than the investments made, shall be presumed that the investments made from own funds. Therefore, the disallowance under interest expenditure involving Rule 8D(2)(ii) is not required in view of decision of Hon'ble High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. reported in 383 ITR 529 (Bom).

7. In respect of the grounds raised by the assessee regarding the recording of satisfaction of the Assessing Officer in respect of computation of expenditure relating to exempt income, we note that in the assessment order in para 5.3, the Assessing Officer held the submission of assessee is not accepted regarding the computation of expenditure relating to exempt income. We also note that the assessee submitted the details of accounts relating to expenditure incurred in earning the exempt income. The Assessing Officer asked the assessee to submit the explanation regarding the disallowance u/s 14A of the Act. As discussed above, the Assessing Officer rendered the submission of the assessee is not acceptable, in our opinion, the Assessing Officer requires to render satisfaction recorded why

the computation of assessee is not correct. The provision u/s 14A of the Act mandates satisfaction of the Assessing Officer is to be recorded why the accounts of expenditure relating to exempt income is not correct. It is settled principle that the adoption of methodology contemplated in Rule 8D(2) is not mechanical proceeding which requires the satisfaction of the Assessing Officer. In this case as discussed above already, there was no satisfaction of the Assessing Officer regarding the expenditure disallowed by the assessee on its own. Therefore, the disallowance made by the Assessing Officer without recording satisfaction is liable to be deleted. Regarding the order of this Tribunal in earlier years involving the assessment years 2009-10 and 2010-11 in assessee's own case rendered a finding the disallowance made by the assessee on account of expenditure relating to exempt income is fair and reasonable. Though the said order is not applicable to the year under consideration but however no contrary finding brought on record by the ld. AR in this regard. Therefore, the disallowance made by the Assessing Officer as upheld by the CIT(A) is deleted and we hold that the disallowance made by the assessee on its own is justified. Thus, grounds raised by the assessee are allowed.

8. The assessee raised additional grounds of appeal seeking deduction of Rs.6,80,000/- paid towards Education Cess under Finance Act while computing the taxable income. The ld. AR submits that the above ground raised by the assessee is purely legal ground and raised for the first time before this Tribunal. Since, the Education Cess paid by the assessee available with the respondent revenue which does not require any further examination of facts and prayed to allow the additional ground. Further, he referred to page No. 31 of the paper book and submitted that this

Tribunal taking support from the decision of Hon'ble High Court of Bombay in the case of Sesa Goa Limited Vs. The Joint Commissioner of Income Tax, Tax Appeal No. 17 of 2013 directed the AO to allow deduction paid towards Education Cess.

9. After hearing both the parties, we note that the assessee paid Education Cess while computing the taxable income under normal provisions of the I.T. Act. The Hon'ble High Court of Bombay in the case of Sesa Goa Limited (supra) was pleased to hold that the Education Cess is an allowable expenditure as per the provision of the I.T. Act. The relevant portion of the order of Tribunal in ITA No. 1578/PUN/2017 for A.Y. 2011-12 in the case of M/s. Advik Hi-Tech Pvt. Ltd. is reproduced here-in-below for ready reference :

"12. The assessee has also preferred additional ground which reads as follows:

"The Ld. AO be directed to allow deduction of Rs.12,91,464/- paid towards Education Cess under Finance Act while computing the taxable income under normal provision of the IT Act."

13. We find that this issue is squarely covered by the decision of the Hon'ble Bombay High Court in the case of Sesa Goa Limited Vs. The Joint Commissioner of Income Tax, Tax Appeal No.17 of 2013 wherein it has been observed and opined by the Hon'ble Bombay High Court as follows:

"22. Applying to the aforesaid principles, we find that the legislature, in Section 40(a)(ii) has provided that "any rate or tax levied" on "profits and gains of business or profession" shall not be deducted in computing the income chargeable under the head "profits and gains of business or profession". There is no reference to any "cess". Obviously therefore, there is no scope to accept Ms. Linhares's contention that "cess" being in the nature of a "Tax" is equally not deductible in computing the income chargeable under the head "profits and gains of business or profession". Acceptance of such a contention will amount to reading something in the text of the provision which is not to be found in the text of the provision in Section 40(a)(ii) of the IT Act.

23. If the legislature intended to prohibit the deduction of amounts paid by an Assessee towards say, "education cess" or any other "cess", then the legislature could have easily included reference to "cess" in clause (ii) of Section 40(a) of the IT Act. The fact that the legislature has not done so means that the legislature did not intend to prevent the deduction of amounts paid by the assessee towards the "cess", when it comes to computing income chargeable under the head "profits and gains of business or profession"."

The Hon'ble Bombay High Court observing on the impugned order of the ITAT has reasoned at Para 33 of the said order that the Tribunal has observed that since "cess" is collected as a part of the income tax and fringe benefit tax, therefore, such "cess" is to be construed as "tax". However, the Hon'ble Bombay High Court held that there is no scope for such implications when construing a taxing statute. Even though, "cess" may be collected as a part of income tax, that does not render such "cess" either rate or tax, which cannot be deducted in terms of the provisions in Section 40(a)(ii) of the Act. The mode of collection is really not determinative in such matter. Therefore, it was held that amount "cess" paid is deductible from total income of the assessee.

14. The Pune Bench of the Tribunal in the case of DCIT Vs. Bajaj Allianz General Insurance Company Limited, ITA Nos.1111 & 1112/PUN/2017 for the assessment years 2013-14 & 2014-15 dated 25.07.2019 on the issue has held and observed as follows:

"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."

That therefore, from the legal perspective, the issue of „education cess“ is an allowable expenditure as per provisions of Section 40(a)(ii) of the Income Tax Act, 1961 (hereinafter referred to as „the Act“) and placing reliance on the decision of the Hon'ble Bombay High Court (supra.), we allow the additional ground of appeal raised by the assessee."

10. The ld. DR did not bring on record any order in support of his contentions.

11. Therefore, in view of the above decision, we direct the AO to allow deduction in respect of Education Cess paid by the assessee. Accordingly, the additional ground raised by the assessee is allowed.

12. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 19th February, 2021.

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th February, 2021.

RK/Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy//

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