

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.As. No.366 & 367/DEL/2018
Assessment Years: 2009-10 & 2014-15

JCIT, Special Range-1, New Delhi.	vs.	M/s. Agriculture Insurance Company of India Ltd., 13 th Floor, Ambadeep, 14 K.G. Marg, Connaught Place, New Delhi.
TAN/PAN: AAECA2874P (Appellant)		(Respondent)

Appellant by:	Shri Satpal Gulati, CIT-DR.		
Respondent by:	None		
Date of hearing:	23	02	2021
Date of pronouncement:	17	03	2021

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the Revenue against the impugned order dated 11.09.2017, passed by Ld. Commissioner of Income Tax (Appeals)-XXXII, New Delhi for the quantum of assessment passed u/s.143(3)/147 for the Assessment Year 2009-10. The only ground raised by the Revenue reads as under:

“1. On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in deleting addition of Rs.8,75,13,000/- made by the Assessing Officer on account of income earned on investment of corpus fund.”

2. At the outset, ld. counsel submitted that this issue raised by the Revenue stands covered by the decision of the Tribunal in assessee's own case for Assessment Year 2012-13 in ITA No.1279/Del/2016 vide order dated 06.11.2019. The facts in brief are that the assessee-company was set up to provide financial security to persons engaged in agriculture and elite activities, through insurance product and other support services, as per declared policy of the Government of India. The assessee's case was reopened u/s.148 by the Assessing Officer on the ground that assessee has been earning income of Rs.875.13 lac from investing in corpus funds which was not credited in the P&L account. In response, assessee had submitted that the corpus fund pertains to the Government and the income there from has been credited directly to the corpus fund. However, the ld. Assessing Officer held that assessee enjoys all the rights of an ownership of the fund, and therefore, he is obliged to account the resultant revenue in the P&L account which is also highlighted. The details of such income earned by the assessee right from Assessment Years 2008-09 to 2012-13 as under:

<i>Assessment Year</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>
<i>Opening Balance</i>	<i>8649.09</i>	<i>9277.94</i>	<i>10305.60</i>	<i>10423.50</i>	<i>10327.22</i>
<i>Receipts (from govt.)</i>	<i>0.00</i>	<i>152.53</i>	<i>117.18</i>	<i>3537.88</i>	<i>5029.87</i>
<i>Debit adjustment</i>	<i>(272.98)</i>	<i>0.00</i>	<i>(962.20)</i>	<i>(4350.21)</i>	<i>(14.11)</i>

<i>Income share on Corpus fund</i>	901.83	875.13	962.92	716.05	862.47
<i>Closing Balance</i>	9277.94	10305.60	10423.50	10327.22	16205.45

3. Thus, he held that assessee has been earning income from many years and in Assessment Year 2009-10 it has earned Rs.875.13 lac as income on corpus fund which should have been shown and routed through P&L account and held that assessee has diverting the income on investment made out of corpus fund after its receipt, and therefore, the gross revenue has been under reported. Accordingly, he added sum of Rs.875,13,000/-.

4. Ld. CIT(A) has held that similar issue has been adjudicated in the appeal for Assessment Year 2012-13 by the ld. CIT(A) wherein this issue has been decided in favour of the assessee and further in Assessment Year 2014-15 also similar issue was decided in favour of the assessee.

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 ld. 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 ld. 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 ld. DR further stated that the ld. 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 ld. CIT(A) for fresh adjudication.*

12. *Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. In support, the ld. 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 ld. 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 ld. CIT(A) in his order. We, therefore, do not find any error or infirmity in the order of the ld. CIT(A). Accordingly, Ground No. 1 of the Revenue is dismissed.

6. Thus, respectfully following the earlier year precedent, we hold that amount of Rs.8,75,513/- cannot be treated as income of the assessee as it is a diversion of income by overriding title in view of letter from the Government of India, Ministry of Agriculture wherein it has been clearly stated that the corpus fund belongs to the Central and State Government and the interest thereto also belongs to the Government, and therefore, interest accrued on the corpus fund is required to be added in the corpus fund only. Accordingly, the appeal of the Revenue is dismissed.

7. Now we take up the appeal for the Assessment Year 2014-15 wherein the following grounds have been raised by the Revenue.

“1. On the facts and in the circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.13,64,83,292/- made by the Assessing Officer on account of income earned on investment of corpus fund.

2. On the facts and in circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.1,37,35,501/- made by the Assessing Officer on account of disallowance u/s.14A r.w.r. 8D of Income Tax Rules.”

8. In so far as ground no.1 is concern, the same is similar to the ground raised in the appeal for the Assessment Year 2012-13 and is also covered by the decision of the Tribunal in assessee's own case.

9. In so far as the disallowance u/s.14A read with Rule 8D is concern, the ld. Assessing Officer has observed that assessee-company has made investment in subsidiary companies, equity shares in mutual funds and the income derivable from such investment is not includable in such income. However, there is no finding as to whether the assessee had any exempt income or not. He proceeded to make the disallowance under Rule 8D at Rs.1,37,35,501/-.

9. Ld. CIT(A) has deleted the said addition, holding that firstly; Assessing Officer has not recorded his satisfaction before embarking any disallowance u/s.14A read with Rule 8D; and secondly, the Assessing Officer has presumed dividend income u/s.14A and there is no objective analysis of the apparent expenses vis-à-vis the account. One very important fact and legal point noted by the ld. CIT(A) is that

the assessee-company income is to be computed in terms of Section 44 of the Act which is *non obstante* clause and once the income has computed u/s.14A there is no applicability of Section 14A as it has been overlooked by the specific provision of Section 44 of the Act. He further relied upon the appellate order for the Assessment Years 2012-13 and 2013-14, this issue has been deleted.

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.

17. In the light of the above, Ground No. 2 is also dismissed.”

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

12. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 17th March, 2021

Sd/-
[O.P. KANT]
[ACCOUNTANT MEMBER]

DATED: 17/03/2021

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER