

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "C": DELHI  
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA.No.1876/Del./2018  
Assessment Year 2013-14

HT Media Ltd., 18-20, Kasturba Gandhi Marg, New Delhi, Delhi. PAN NO. AABCH3165P	vs.	Addl. CIT, Range-4, New Delhi.
(Appellant)		(Respondent)

&

ITA.No.1920/Del./2018  
Assessment Year 2013-14

Addl. CIT, Special Range-4, New Delhi.	vs.	HT Media Ltd., 18-20, Kasturba Gandhi Marg, New Delhi, Delhi. PAN NO. AABCH3165P
(Appellant)		(Respondent)

For Assessee :	Sh. V.P. Gupta, Adv. Sh. Anunav Kumar, Adv.
For Revenue :	Ms. Sunita Singh, CIT DR

Date of Hearing :	24.08.2021
Date of Pronouncement :	26.08.2021

**ORDER****PER VIJAY PAL RAO, J.M.**

1. These cross appeals are directed against the order dated 07.12.2017 of Ld. CIT(Appeals) for the AY 2013-14.
2. The assessee is a Public Limited Company and engaged in the business of printing and publication of newspapers and periodicals and FM broadcasting. The assessee filed its return of income on 29.11.2013 declaring total income of Rs. 60,51,920/- which was subsequently revised on 25.03.2015 to declare the income under the provisions of section 115JB of the Income Tax Act, 1961. During the scrutiny assessment, the AO noted that the assessee has made investments in quoted shares, mutual funds, etc. on which the assessee has earned dividend income of Rs. 7.04 crores which is exempt from tax. The AO further noted that the assessee has made *suo moto* disallowance u/s 14A of Rs. 9,75,000/-. The AO asked the assessee to explain the basis of the *suo moto*

disallowance of Rs. 9,75,000/- but the assessee has not explained the basis as to how this figure of Rs. 9,75,000/- has arrived. Accordingly, the AO proceeded to make the disallowance u/s 14A as per the formula of apportionment of the indirect expenses provided under Rule 8D of Income Tax Rules, 1962. The AO consequently computed the disallowance on account of interest expenditure at Rs. 1,89,86,065/- and disallowance on account of administrative expenses @ 0.5% of the average investment which comes to Rs. 1,15,50,027/-. Thus, the AO has computed the total disallowance u/s 14A of Rs. 3,05,36,092/- as against the *suo moto* disallowance of Rs. 9,75,000/- consequently a differential disallowance of Rs. 2,95,61,092/- was made by the AO. The assessee challenged the AO before the CIT(A) and submitted that the disallowance made by the AO u/s 14A on account of indirect interest expenditure is unjustified and unwarranted as assessee has not utilized any borrowed funds for the purpose of investments made

in the shares and securities/mutual funds. The assessee further contended before the CIT(A) that the assessee has not incurred any expenditure for earning the exempt income. However, the assessee has estimated the disallowance of expenditure of Rs. 9,75,000/- against which the AO has made a huge disallowance without even recording the satisfaction as to how a disallowance made by the assessee is not reasonable and proper. The assessee also relied upon the order of the CIT(A) for the AY 2011-12 & 2012-13. The CIT(A) while allowing the part relief to the assessee has accepted the contention of the assessee regarding the disallowance made by the AO on account of interest expenditure as well as exclusion of the amount of investment made in the subsidiary company of the assessee. Therefore, the substantial relief was granted by the CIT(A) while restricting the disallowance u/s 14A to Rs. 13.71 lacs as against the disallowance of Rs. 2,95,61,092/-. Thus, both the Revenue as well as Assessee are aggrieved by the impugned order of the

CIT(A) and filed these cross appeals. The assessee as well as Revenue has raised the following grounds of appeal: -

*Grounds of Assessee's appeal read as under: -*

1. That on the facts and circumstances of the case and in law, the CIT(A) erred in sustaining additional disallowance of Rs 1,371,000/- made by the Assessing Officer over and above the disallowance of Rs 975,000/- suo moto made by the Appellant, both under normal provisions as well as provisions of Section 115JB of the Act, towards administrative expenses under clause (iii) of Rule 8D of the Income Tax Rules without appreciating that making a disallowance as per Rule 8D results in arbitrary, unreasonable and unjustified disallowance.
2. That the CIT(A) erred in not appreciating the fact that the Appellant had added an amount of Rs 975,000/- in the return of income on account of disallowance under section 14A of the Act for administrative expenses which ought to have been accepted by the Assessing Officer, being reasonable and justified considering fact of the case.
3. That the CIT (A) erred in not appreciating the fact that the Assessing Officer has not discussed and recorded satisfaction to the effect that disallowance of Rs 975,000/- made by the Appellant in the return of income under section 14A of the Act was not appropriate in the facts and circumstances of the case.
4. That the Appellant craves leaves to add, alter, amend or forgo any ground(s) of the appeal before or at the time of hearing.

*Grounds of Revenue's appeal read as under: -*

1. *"On the facts and circumstances of the case the Ld. CIT(A) erred in law in restricting the disallowance of Rs. 2,95,61,092/- to Rs. 13.71 lacs made by the Assessing Officer u/s 14A of the Income Tax Act, 1961 r.w.r. 8D of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in law as Ld. CIT(A) has not given any basis for deleting the disallowance of interest expenses and changing the computation of disallowance of interest u/s 14A r.w.r. 8(D)(2)(iii) of Income Tax Rules, 1962.*

3. *Whether for application of section 14A(1) of the Income Tax Act, 1961 the purpose for making investment and earning tax exempt income thereon is an essential legal requirement.*
4. *Whether the term “in relation to” as used in section 14A of the Act contemplates a direct and proximate nexus between “expenditure incurred” and “earning of exempt income”.*
5. *Whether the CIT(A) is legally justified in not upholding disallowance u/s 14A of the Income Tax Act, 1961 without considering legislative intent of introducing section 14A by the Finance Act, 2001 as clarified by CBDT Circular No. 5/2014 dated 10.02.2014.*
6. *Whether the CIT(A) is legally justified in not upholding disallowance u/s 14A of the Income Tax Act, 1961 without considering a legal principle that allowability/disallowability of expenditure under the Act is not conditional upon the earning of income as upheld by Hon’ble Supreme Court in the case of CIT vs. Rajendra Prasad Moody (1978) 115 ITR 519?*
7. *Whether the CIT(A) is justified in excluding the investment in subsidiary company, namely, Hindustan Media Venture Ltd. for working out disallowance u/s 14A r.w.r. 8D, without appreciating that investment in subsidiary company also result in non-taxable income against the law of land decided by the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. vs. Commissioner of Income Tax, New Delhi.*
8. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.”*

3. The solitary issue in the cross appeals is regarding the disallowance made by the AO u/s 14A while computing the income under normal provisions of the Income Tax Act as well as adjustment while computing book profit u/s 115JB of the Income Tax Act.
4. The Ld. AR of the assessee has submitted that the Assessing Officer has not recorded any satisfaction

while rejecting the *suo moto* disallowance made by the assessee u/s 14A of the Income Tax Act, 1961 and, therefore, the disallowance made by the AO is not justified and liable to be deleted. In support of his contention he has relied upon the decision of the Hon'ble Jurisdictional High Court in assessee's own case i.e. M/s HT Media Ltd. Vs. CIT 399 ITR 576. The Ld. AR has pointed out that an identical issue was considered by the Hon'ble Jurisdictional High Court in assessee's own case and it was held that since there was a failure by the AO to comply with the mandatory requirement of section 14A(2) of the Act read with Rule 8D of the Income Tax Rules and to record his satisfaction as required there under the question of applying Rule 8D(2)(iii) of the Rule did not arise. Thus, the Ld. AR has given more stress to the argument that in the absence of the satisfaction recorded by the AO against the *suo moto* disallowance made by the assessee invoking of the provisions of the Rule 8D(2)(iii) is not valid and consequently the

disallowance sustained by the CIT(A) is liable to be deleted.

5. On the other hand, Ld. DR has submitted that the AO has discussed the issue in detail while rejecting the claim of *suo moto* disallowance of Rs. 9,75,000/- which amounts to record satisfaction by the AO while invoking the provisions of Rule 8D(2)(iii) of the Income Tax Rules. She has referred to the order of the AO in para 3.2 and submitted that the AO has discussed each and every aspect of the issue by referring the relevant facts and, therefore, it cannot be said that the AO has made a disallowance u/s 14A without recording his satisfaction.
6. We have considered the rival submissions as well as relevant material on record. The AO has recorded the primary facts regarding the investment made by the assessee in the shares/mutual funds as on 31.03.2013 to the tune of Rs. 162.89 crores. The AO further noted that the working of *suo moto* disallowance by the assessee u/s 14A was considered

but no basis was explained by the assessee to arrive at the said figure of Rs. 9,75,000/-. Thus, in computation of the *suo moto* disallowance of Rs. 9,75,000/- the assessee has not explained as what is the basis of the *suo moto* disallowance. Once the AO has specifically asked the assessee to explain the basis of the *suo moto* disallowance and there was no satisfactory reply by the assessee to explain a reasonable and proper basis of such disallowance then proceeding further by the AO to take up the issue under the provisions of section 14A read with Rule 8D cannot be said to be without his satisfaction on the claim of *suo moto* disallowance. The Assessing Officer has discussed this issue in para 3.2 as under:

3.2 The submissions advanced by the assessee company have duly been considered. The working of disallowance of the assessee u/s 14A read with rule 8D of the I.T. Rules has been gone through and considered. On what basis the assessee has arrived at the figure of Rs. 975,000/- is not clear. Similarly, the assessee's claim that it has not incurred any other expenses in respect of management of investment affairs is also not acceptable. The CBDT circular No. 5/2014 dated 10.02.2014 explaining legislative intend of introducing section 14A by the Finance Act. 2001 has clarified that expense relating to exempt income has to be considered for the disallowance u/s 14A of the Act irrespective of fact whether such income has been earned during financial year or not. Here the assessee has also earned the dividend of Rs. 7.04 crores which is exempt from tax and made the disallowance of Rs. 9,75,000/- on adhoc basis in this regard. Hence the submission of the assessee is not acceptable and I am not satisfied with the claim made by the assessee that no expenditure has been incurred and the claim made by the assessee that no expenditure has been incurred.

7. Thus, the initiation of the proceedings u/s 14A is in pursuant to failure of the assessee to show the reasonable and proper basis of *suo moto* disallowance. We further note that there is a change and churning in the investment portfolio of the assessee during the year under consideration which shows that the assessee has sold some of the investments and also made certain new investments. The assessee being a Public Limited Company is required to take the decision of making the investment, timing of investment, selection of the securities and selling of the certain investments at the top level of the

management. Therefore, the decision of making and selling the investments involves the top management of the assessee and hence, claim of the assessee that no expenditure has been incurred is contrary to the basic facts and thus, not acceptable. Even otherwise once the assessee has made a *suo moto* disallowance the claim of no expenditure is self contradictory. Before the CIT(A) the assessee itself has pleaded that the disallowance may be restricted to Rs. 13.71 lacs as recorded in para 5.2 of the impugned order:

5.2 On the basis of above data it has been submitted that the company had received dividend income with reference to average investments of Rs.103.78 crores and excluding investment in subsidiary company, namely, Hindustan Media Ventures Ltd., of Rs.56.86 crores, balance average investment comes to Rs.46.92 crores. On above amount of average investment disallowance at 0.5% works out to Rs.23.46 lacs. On the basis of above it has been submitted that the disallowance is to be restricted to Rs.23.46 lacs in view of the orders of CIT(A) in appeals for A.Yrs. 2011-12 and 2012-13. Since appellant company had already made disallowance of Rs.9.75 lacs further disallowance is to be restricted to Rs.13.71 lacs as against disallowance of Rs.2,95,61,092/- made by the Assessing Officer.

8. The CIT(A) after considering the submissions of the assessee has decided the issue in para 5.3 and 5.4 as under:

**5.3** I have considered the submissions of the appellant company and has also perused the orders of CIT(A) in appeals of the appellant company for A.Yrs. 2011-12 and 2012-13. I am inclined to accept the contention of the company to the effect that no disallowance on account of interest is called for in view of the facts of the case and also the orders in appeals for earlier years. Further, as regards administrative expenses also I agree with my predecessors and would hold the disallowance on average investment on which dividend income has actually been received by the company excluding the investment in subsidiary company. On this basis disallowance works out to Rs.23.46 lacs being 0.5% of average investment of Rs.46.92 crores. Since the appellant company has already made disallowance of Rs.9.75 lacs in the return of income, further disallowance is to be restricted to Rs.13.71 lacs.

**5.4** Consequent upon holding given hereinabove in regard to disallowance u/s 14A of the Act, adjustment in computation of book profit u/s 115JB of the Act is also to be restricted to Rs.13.71 lacs.

9. Accordingly, the CIT(A) has restricted/sustained the disallowance to the extent of 13.71 lacs as pleaded by the assessee.

10. In view of the above facts and circumstances of the case, we do not find any substance or merits in the objection of the assessee regarding non recording of satisfaction by the AO while making the disallowance u/s 14A of the Income Tax Act. So far as the quantum of the disallowance sustained by the CIT(A), we find that this issue is common in both the appeals, therefore, the objections raised by the Revenue are to be considered before giving any concluding finding on the quantum disallowance.

11. The Ld. DR has submitted that the CIT(A) has granted the relief to the assessee by deleting the disallowance made by the AO on account of interest and further by reducing the investments made by the assessee in the subsidiary company while computing the administrative expenditure @ .5% of average investment. The Ld. DR has submitted that the CIT(A) has granted this relief which is contrary to the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. Commissioner of Income Tax 402

ITR 640. The Ld. DR has also referred to the decision of this Tribunal in assessee's own case for the AY 2012-13 dated 22.02.2021, wherein this Tribunal has decided this issue in favour of the Revenue and against the assessee by following the decision of Hon'ble Jurisdictional High Court in assessee's own case. Thus, the Ld. DR has contended that the impugned order of the CIT(A) is not sustainable to the extent of excluding the investment made in the subsidiary company while computing the average investment. She has relied upon the order of the Assessing Officer as regards the disallowance made on account of interest income.

12. On the other hand, the Ld. AR of the assessee has accepted that so far as the exclusion of the investment in the subsidiary company the issue is covered by the decision of Hon'ble Supreme Court as well as decision of Hon'ble High Court in assessee's own case. However, as regards the disallowance made on account of interest expenditure the same is

unjustified and unsustainable as the assessee has not utilized any borrowed fund for the purpose of making investment.

13. We have considered the rival submissions as well as relevant material on record. So far as the issue of excluding the investment made in the subsidiary company while computing the average investment for the purpose of disallowing the indirect administrative expenses under Rule 8D(2)(iii) of the Income Tax Rules the issue is now covered by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Vs. CIT (supra) as well as the decision dated 29.03.2019 of Hon'ble Jurisdictional High Court in assessee's own case in ITA No. 281/2019. This Tribunal for the AY 2012-13 has considered this issue in para 6 & 7 as under:

*"6. At the outset, the Counsels fairly brought to the notice of the Bench, the order of the Hon'ble Jurisdictional High Court clarifying the exclusion of income derived from strategic investments for the purpose of computation of disallowance. The order of the Hon'ble High Court is as under:*

*IN THE HIGH COURT OF DELHI AT NEW DELHI  
ITA 281/2019 & CM APPL. 14303/2019  
THE PR. COMMISSIONER OF INCOME TAX-4 .....Appellant*

Through : Mr. Ruchir Bhatia, Sr. Standing Counsel.

Versus

H.T. MEDIA LTD. .... Respondent

Through : Mr. V.P. Gupta and Mr. Arunav Kumar, Advs.

CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

29.03.2019

"The question urged by the Revenue in its appeal is with respect to the correctness of the remand made by the ITAT in its impugned order; the remand was on two aspects i.e. the calculation of average investments (confined to the income generating part thereof) and the exclusion of tax exempt income derived from strategic investments.

The observation of the ITAT on the latter aspect, i.e. **exclusion of tax exempt income derived from a strategic investments, is not a correct view in the light of the decision of the Supreme Court in Maxopp Investment Ltd. Vs. Commissioner of Income Tax, (2018) 402 ITR 640.**

Accordingly, the observations of the ITAT on this aspect are set aside. **However, its observations with respect to the calculation of disallowance u/s 14A being confined to investments that derived tax exempt income are valid in the light of the Division Bench ruling in ACB India Ltd. Vs. ACIT, (2015) 374 ITR 108 (Del.).**

In view of the above clarification, the ITAT's order, to the extent that it makes observations with respect to exclusion of income derived from strategic investments, is hereby set aside."

7. Following the order of the Hon'ble High Court, the revised disallowance is comprehensively determined as under:

"CIT(A) vide para 5.1d of the order upheld the disallowance to the extent of Rs. 26,70,000/-, which was determined as under following the judgment of Hon'ble Delhi High Court in the case of ACB India Ltd. vs. ACIT, 374 ITR 108 (Del.).

<b>Particulars</b>	<b>Investment as on 31.03.2011 (crores)</b>	<b>Investment as on 31.03.2012 (crores)</b>	<b>Average Investment (crores)</b>
Investments on which dividend income was received during the year.	117.75	102.75	110.25
Less: Investment in subsidiary company.	56.85	56.85	56.85
Remaining investment	60.90	45.90	53.40

Disallowance at 0.5%			Rs. 26,70,000
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*In view of judgment of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (2018) 402 ITR 640 (SC), investment in subsidiary company is also to be considered for the purpose of disallowance. Accordingly, the order of CIT(A) is to be reversed to the extent he had excluded average investment of Rs. 56.85 crores in the subsidiary company. Accordingly, disallowance following the judgment of Hon'ble Delhi High Court in the case of ACB India Ltd. Vs. ACIT, 374 ITR 108 (Del.) and taking into consideration the aforesaid judgment of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. disallowance as per Rule 8D would work out as under: -*

<b>Particulars</b>	<b>Investment as on 31.03.2011 (crores)</b>	<b>Investment as on 31.03.2012 (crores)</b>	<b>Average Investment (crores)</b>
<i>Investments on which dividend income was received during the year.</i>	117.75	102.75	110.25
<b>Disallowance at 0.5%</b>			Rs. 55,12,500

13.1 Accordingly, this issue is decided against the assessee and in favour of the Revenue and to that extent the order of the CIT(A) is set aside. The AO is directed to re-compute the disallowance by including the investment made in the subsidiary company.

14. As regards the disallowance made by the AO on account of interest expenditure, we find that the AO has not disputed the fact that there is no direct interest expenditure for earning the exempt income.

Further, once the assessee has brought on record the fact that the loans were taken from the Banks for specific purpose of business as well as the projects then the same cannot be utilized for the purpose of investment made in shares and mutual funds and consequently the question of apportionment of interest expenditure u/s 14A read with Rule 8D does not arise. This issue was also considered by the Hon'ble Jurisdictional High Court in assessee's own case reported in 399 ITR 576. The CIT(A) has also recorded this fact that the loans taken by the assessee in the earlier years were utilized for the specific purpose as those were taken for setting up of the projects as well as for the purpose of financing import of raw material. These facts as recorded by the CIT(A) has not been disputed by the AO while filing the cross appeal. Even during the course of hearing, the Revenue has not disputed the fact that the assessee has taken the loans for specific purpose and the AO has not brought any material or fact on record to say that the assessee has

diverted the loan to the investment made in the shares and mutual funds. Further, during the year under consideration, though there is a change in the investment portfolio, however, the total investment as on 31.03.2013 is less than the investment as on 31.03.2012. Accordingly, there is no extra fund utilized by the assessee during the year for making the investment in shares or securities but the sale proceeds of the existing investment is more than the purchases, if any made during the year. The AO has not made any disallowance on account of interest expenditure u/s 14A of the I.T. Act in the preceding years. Therefore, when no fresh investment is made other than the proceeds of the sale of existing investment then the disallowance of interest expenditure is not warranted. Hence, we do not find any error or illegality in the impugned order of the CIT(A) qua this issue of deleting the disallowance made by the AO u/s 14A of the Act on account of interest.

15. The assessee has also raised an additional ground vide application dated 07.08.2021 under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963. The additional ground raised by the assessee reads as under:

*“2.That the Applicant/Appellant seeks the permission of Hon’ble Tribunal to raise, urge and argue the below mentioned additional ground of appeal in addition to grounds of appeal raised in the appeal filed by it: -*

***“On the facts and circumstances of the case & in law, the Ld. AO, while computing the income of the Appellant under the head ‘Profits and Gains from Business and Profession’, ought to have allowed the deduction in respect of ‘Education Cess’ and ‘Secondary and Higher Education Cess’ of Rs. 1,07,09,737/- as determined by him vide order of assessment.”***

16. We have heard the Ld. AR as well as the Ld. DR on the admission of the additional ground. At the outset, we note that for the AY 2012-13 the assessee has raised an identical additional ground before this Tribunal which was admitted and decided by this Tribunal in para 9 to 13 as under:

9. The assessee has filed application under Rule 11 of the Income Tax(Appellate Tribunal) Rules, 1963 for admission of additional grounds of appeal. The additional grounds read as under:

*"On the facts and circumstances of the case & in law, the Id. AO, while computing the income of the Appellant under the head 'Profits and Gains from Business and Profession', ought to have allowed the deduction in respect of 'Education Cess' and 'Secondary and Higher Education Cess' of Rs.1,93,84,058/- as determined by him vide order of assessment."*

10. The Id. AR relied on the judgment of Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383. Admission of the additional ground has been opposed in principle by the Id. DR. The relevant portion of the said judgment is as under:

*"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to*

*file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*

6. *In the case of Jute Corporation of India Ltd. v. C.I.T. this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.*

7. *The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T. v. Anand Prasad (Delhi), C.I.T. v. Karamchand Premchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. . Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.*

8. *The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a*

*question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."*

11. Respectfully, following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

12. With regard to the issue of 'Education Cess' taken up by the Id. AR, we find that this issue has been adjudicated in the following cases:

- *Chambal Fertilisers and Chemicals Ltd. Vs JCIT in ITA No.57/2018 dated 31.07.2018 (Raj. HC)*
- *ITC Vs ACIT in ITA No. 685/Kol/2014 dated 27.11.2018*
- *Peerless General Finance & Investment Co. Ltd. Vs DCIT in ITA No.937 & 938/Kol/2018 dated 24.03.2019*
- *DCIT Vs M/s. Agrawal Coal Corporation Pvt. Ltd ITA Nos. 801 to 803/Indore/2018.*
- *Atlas Copco India Ltd. Vs ACIT in ITA No. 736/Pune/2011*
- *Tata Autocomp Hendrickson Vs DCIT in ITA No. 2486/Pune/2017*
- *Symantec Software India Pvt. Ltd. Vs DCIT in ITA No. 1824/Pune/2018*
- *Sicpa India Pvt. Ltd. Vs ACIT in ITA No. 704/Kol/2015*
- *Philips India Ltd. Vs ACIT in ITA No. 2612/Kol/2019*
- *DCIT Vs The Peerless General Finance & Investment & Co. Ltd. in ITA No. 1469/Kol/2019.*
- *ACIT Vs ITC Infotech in ITA No. 220/Kol/2017*
- *Reckitt Benckiser India Pvt. Ltd. Vs DCIT (2020) 117 taxmann.com 519 (Kol.)*
- *Crystal Crop. Protection Pvt. Ltd. Vs JCIT in ITA No. 1539/Del/2016*
- *Midland Credit Management India Vs ACIT in ITA No. 3892/Del/2017*
- *Voltas Ltd. Vs ACIT in ITA No. 6612/Mum/2018*
- *Sesa Goa Ltd. Vs JCIT (2020) 117 taxmann.com 96 (Bom.)*

13. Hence, keeping in view the provisions of the Act pertaining to Section 40(a)(ii) and Section 115JB, Circular of the CBDT No. 91/58/66-ITJ(19), the orders of Co-ordinate Benches of ITAT and judicial pronouncements of the Hon'ble High Court of Bombay and Hon'ble High Court of Rajasthan, we hereby direct the revenue to consider the claim of deduction of the 'Education Cess' as per the provisions of Section 37 of the Income Tax Act.

17. To maintain the rule of consistency, we follow the earlier order of this Tribunal in assessee's own case for the AY 2012-13. The AO is directed to consider the claim of deduction of Education Cess as per law in the same terms as directed by this Tribunal in the earlier decision.

18. In the result, the assessee's appeal is partly allowed for statistical purpose and Revenue's appeal is partly allowed.

Order pronounced in the open Court on 26.08.2021

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

Dated: 26<sup>th</sup> August, 2021

\*Kavita Arora, Sr. PS

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar, ITAT Delhi Benches :  
Delhi.