

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.46/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Saarloha Advanced Materials Pvt. Ltd.,
(Previously known as Kalyani Carpenter
Special Steels Pvt. Ltd.),
Mundhwa, Pune-411036

PAN : AABCK1779L

.....अपीलार्थी / Appellant

बनाम / V/s.

Addl. Commissioner of Income Tax,
Range - 1, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil S. Pathak
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 08-09-2021

घोषणा की तारीख / Date of Pronouncement : 08-09-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 18-10-2017 passed by the Commissioner of Income Tax (Appeals)-7, Pune ['CIT(A)'] for assessment year 2014-15.

2. The assessee raised ground Nos. 1.1 to 1.6 questioning the action of CIT(A) in restricting the disallowance made by the AO on account of section 14A of the Act in the facts and circumstances of the case.

3. Brief facts relating to the issue on hand are that the assessee is a joint venture, engaged in the manufacture of carbon and alloy steels and other engineering applications. The assessee declared total income of Rs.47,15,79,870/- and the AO determined the same at Rs.47,78,06,500/- inter alia making disallowance of Rs.62,26,625/- u/s. 14A of the Act vide its order dated 26-12-2016 u/s. 143(3) of the Act. The CIT(A) restricted the disallowance with a direction to rework the disallowance under Rule 8D(2)(ii) of the Income Tax Rules. Having aggrieved by the order of CIT(A), the assessee is before us.

4. Heard both the parties and perused the material available on record. We note that the assessee made investment in IDFC Mutual Fund to an extent of Rs.20 crores which yielded tax free dividend of Rs.13,022/-. Since, no disallowance of expenditure made by the assessee, the AO show caused the assessee why expenditure incurred for earning such exempt income should not be disallowed as per the provisions of section 14A r.w. Rule 8D. It was explained that no direct expenditure was incurred by the assessee to earn such tax free dividend and contended the provisions of section 14A are not applicable. The AO did not accept the submissions of assessee and disallowed expenses of Rs.62,26,625/- under Rule 8D(2)(iii) being 0.5% of the average value of investments treating the same the expenses attributable to exempt income. The CIT(A) was of the opinion that certain expenditure is required to be made to execute transactions of

investments of Rs.20 crores, other administrative expenditure are required to maintain the investment like salary of staff, stationery, documentation, salaries of managers/directors handling the investment portfolio, other administrative overheads like telephone, computer, office equipments, vehicles etc. Further, he held that the assessee failed to demonstrate the availability of interest free fund and directed the AO to rework the disallowance under Rule 8D(2)(ii) of the Rules. The main contention of ld. AR is that the disallowance should not exceed the exempt income earned and placed reliance on the decisions of Hon'ble High Court of Bombay and referred to legal case laws paper book and argued that this Tribunal consistently following the decision of Hon'ble High Court of Bombay in the case of M/s. Nirved Traders Pvt. Ltd. reported in 421 ITR 142 (Bom) restricting the disallowance to the exempt income earned.

5. We note that in the case of M/s. Nirved Traders Pvt. Ltd. (supra) a substantial question of law was raised "*Whether ITAT was right in law in confirming the disallowance under Section 14A of the Income Tax Act, 1961 in excess of exempt income earned by the Assessee during the assessment year in question?*" The Hon'ble High Court of Bombay by placing reliance in the case of Cheminvest Ltd. reported in 378 ITR 33 (Delhi) and reversed the decision of Tribunal to the extent of limiting the disallowance to the exempt income earned therein. In the present case as discussed above, there is no dispute that the assessee earned exempt income of Rs.13,022/- and by applying the decision of Hon'ble High Court of Bombay we restrict the disallowance to the extent exempt income earned. Accordingly, the order of CIT(A) is set aside and the grounds raised by the assessee in this regard are allowed.

6. The assessee also raised additional grounds of appeal seeking deduction 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 submitted that this Tribunal taking support from the decision of Hon'ble High Court of Bombay in the case of Sesa Goa Ltd. reported in 423 ITR 426 directed the AO to allow deduction paid towards Education Cess.

7. After hearing both the parties, we note that the assessee paid Education Cess while computing the taxable income under normal provision of the I.T. Act. The Hon'ble High Court of Bombay in the case of Sesa Goa Ltd. (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."

8. 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.

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

Order pronounced in the open court on 08th September, 2021.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 08th September, 2021.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune
4. The Pr. CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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