

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 5308/DEL/2018 [A.Y 2015-16]

M/s AMD Industries Ltd
18, 1st Floor, Pusa Road
Karol Bagh, New Delhi

Vs.

The J.C.I.T.
Special Range-1
New Delhi

PAN : AAACA2843 C

[Appellant]

[Respondent]

Date of Hearing : 21.09.2021

Date of Pronouncement : 21.09.2021

Assessee by : Shri Suresh K. Gupta, C.A.

Revenue by : Shri Bhopal Singh, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against order of the Commissioner of Income Tax [Appeals] - 32, New Delhi dated 30.05.2018 pertaining to Assessment Year 2015-16.

2. The grievance of the assessee relates to the addition of Rs. 5,07,008/- made u/s 14A of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] r.w.r. 8D of the Rules when exempt income is only Rs. 14,451.

3. The assessee has also raised one additional ground which reads as under:

"Whether on the facts and in the circumstances of the case and position of law education cess and secondary and higher education cess amounting to Rs. 7,59,662/- is a disallowable expenditure u/s 40A(ii) of the Act?"

4. For admission of this additional ground, strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of NTPC Ltd 229 ITR 383 and Jute Corporation of India Ltd 187 ITR 688.

5. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned dividend income which he claimed as exempt from tax. The Assessing Officer was of the opinion that provisions of section 14A r.w.r 8D squarely apply and, accordingly, computed disallowance at Rs. 5,07,008/-.

6. The assessee agitated the matter before the ld. CIT(A) and strongly contended that disallowance should be restricted to the extent of exempt income of Rs. 14,451/-.

7. Though the ld. CIT(A) was convinced with the claim of the assessee, but he found that the assessee itself computed suo moto disallowance of Rs. 1,34,268/- u/s 14A of the Act and accordingly, restricted the total disallowance to Rs. 1,34,268/-.

8. Before us, the ld. counsel for the assessee vehemently stated that by the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Caraf Builders and Constructions Pvt Ltd 414 ITR 122, disallowance u/s 14A of the Act cannot exceed exempt income.

9. The ld. DR strongly stated that the assessee itself has suo moto disallowed Rs. 1,34,268/- and the disallowance restricted to that amount by the ld. CIT(A) is fully justifiable.

10. We have carefully considered the orders of the authorities below. It is true that the assessee has suo moto disallowed Rs. 1,34,268/- on exempt income of Rs. 14,451/-. However, in light of the decision of

the Hon'ble Jurisdictional High Court of Delhi [supra], contention of the assessee cannot be brushed aside lightly. We, therefore, direct the Assessing Officer to restrict the disallowance to the extent of exempt income of Rs. 14,451/-. This ground is, accordingly allowed.

11. Coming to the additional ground, we find that such claim has been allowed by the co-ordinate benches in several cases and we refer to the decision in the case of ExlServices.Com India Pvt Ltd ITA No. 7392/DEL/2018. The relevant findings read as under:

"20. Before us, Learned AR submitted that assessee in the return of income did not claim deduction for the education cess paid amounting to Rs.70,98,828/- before the due date of filing return of income. He submitted that Hon'ble Rajasthan High Court in the case of Chambal Fertilisers and Chemicals Ltd. vs. JCIT D.B ITA No.52/2018, vide order dated 31.07.2018 has held that education cess is an allowable deduction while computing the income under the head "profits and gains from business or profession" as it does not fall within section 40(a)(ii) of the Act. He further submitted that identical issue arose in assessee's own case for A.Y. 2012-13, 2013-14 and 2015-16 in ITA Nos. 8452/Del/2019, 5435 & 5436/Del/2017 wherein the Co-ordinate Bench of Tribunal allowed the additional ground raised in this regard and directed the AO to allow claim of deductibility of cess as deductible business expenditure. He pointed to the copy of relevant order placed at Page No.49. He

therefore submitted that by following the order of Tribunal on identical facts in assessee's own case in earlier years, the grounds be allowed.

21. Learned DR on the other hand did not controvert the submissions made by the Learned AR.

22. We have heard the rival submissions and perused the materials available on record. The issue in the present additional ground is with respect to claim of deduction of Rs.70,98,828/- on account of payment of education cess. We find that identical issue arose in assessee's own case and the Co-ordinate Bench of Tribunal decided the issue in favour of the assessee by observing as under:

"33. By way of additional ground, the assessee has claimed deductibility of education cess.

34. Before us, the Id. counsel for the assessee stated that in the return of income filed for relevant A.Ys, the assessee did not claim deduction for education cess paid before the due date for filing return of income for subject A.Ys. It is the say of the Id. counsel for the assessee that the Hon'ble Rajasthan High Court in the case of Chambal Fertilizers and Chemicals Limited in ITA No. 52/2018 order dated 31.07.2018 has held that education cess is an allowable deduction while computing the income under the head "Profits and gains from profession or business".

35. Even the CBDT, in its Circular No. 91/58/66-ITJ(19) dated 18.05.1967 has clarified that the word "Cess" has been omitted from clause and effect of omission of the word "Cess" is that only taxes paid are to be disallowed in the assessments for the years 1961-63 onwards.

36. In light of the decision of the Hon'ble Rajasthan High Court [supra] we direct the Assessing Officer to allow claim of deductibility of cess from the income in the captioned A.Ys. Additional ground in all the appeals is allowed."

23. We find that facts of the case in the year under consideration are identical to that of the earlier years. Further no distinguishing feature in the facts of the case in the year under consideration and that of the earlier years has been pointed out by the Revenue. Before us, Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years on identical issue has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of the Tribunal in assessee's own case for earlier years and for similar reasons direct the AO to allow the claim of deductibility of cess amounting to Rs.70,98,828/-. Thus the ground of the assessee is allowed".

12. Respectfully following the findings of the coordinate bench [supra], we allow the additional ground. The Assessing Officer is directed to allow the deduction on cess, education cess and higher education cesss.

13. In the result, the appeal of the assessee in ITA No. 5308/DEL/2018 is allowed.

The order is pronounced in the open court on 21.09.2021.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 21st September, 2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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