

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1364/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Prima Private Ltd.,
Chaitanya, 774 Budhwar Peth,
Pune- 411002.

PAN : AABCP1938J

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-10,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah
Revenue by : Shri M. J. Jasnani

सुनवाई की तारीख / Date of Hearing : 17.01.2022

घोषणा की तारीख / Date of Pronouncement : 19.01.2022

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. CIT(A)-6, Pune dated 19.04.2018 as per the following grounds of appeal on record :-

"On facts and in law & without prejudice to each other -

- 1. The Ld. A.O (and Ld. CIT(A)) has erred in applying Rule 8D without justifying as to why assessee is not correct in applying section 14A of the Income-tax Act, 1961.*
- 2. The Ld. A.O. (and Ld. CIT(A)) has erred in increasing disallowance u/s 14 A by Rs. 14,24,055/-*
 - 2.1) The Ld. A.O. (and Ld. CIT(A)) has erred in not considering the fact that assessee has Huge Reserves and Interest free funds.*

- 2.2) *The Ld. A.O. (and Ld. CIT(A)) has erred in not considering the fact that there is huge Interest Income which should be set off against Interest income while applying Rule 8D.*
3. *The appellant craves its right to add to or alter the Grounds of Appeal at any time before or during the course of hearing of the case."*

2. The brief facts in this case are that the assessee company is a domestic private limited company engaged in the business of manufacturing of Motor Vehicle Parts and Electricity Generation through Windmills. The assessee had filed its return of income for A.Y. 2014-15 on 27.11.2014 declaring total income of Rs.3,91,77,710/-. The Assessing Officer completed the assessment u/s 143(3) on 24.11.2016 determining a total income of Rs.4,02,73,110/-. The Assessing Officer had worked out disallowance u/s 14A of Rs.16,15,218/- and made disallowance of Rs.14,24,055/- after accounting the amount disallowed by the assessee in the computation of income of Rs.1,91,163/-.

3. In this case, the assessee has raised some additional grounds of appeal along with the regular grounds of appeal in the appeal memo, which reads as under :-

"Additional Ground -1

The Ld. AO be directed to allow deduction of Rs. 3,60,000/- paid towards Education Cess under Finance act while computing the taxable income under normal Provision of the IT Act.

Additional Ground -2

The disallowance made u/s 14A r.w.r. 8D is invalid as it is without recording appropriate satisfaction by the Ld. AO."

4. The additional ground of appeal no.2 is not pressed at the time of hearing of appeal and the same is dismissed as not pressed. Therefore, there is only two issues i.e. to be adjudicated in the present appeal with regard to

the disallowance u/s 14A (raised in regular grounds of appeal) and other issue is with regard to the education cess (raised in additional ground of appeal no.1).

5. At the very outset, the ld. Counsel for the assessee submitted that the issue with regard to the disallowance u/s 14A has been decided in the same facts and circumstances in assessee's own case for A.Y. 2013-14 in ITA No.360/PUN/2018 dated 20.05.2021. The ld. DR fairly conceded the submissions of the assessee.

6. In the above referred decision, the facts were as follows :

“4. The brief facts pertaining to this issue are that the assessee has made huge investment to the tune of Rs. 15.30 Crores as against the share capital and reserves of Rs. 37.11 Crores as shown in the Balance Sheet. That however as evident from the order of the Assessing Officer vide Para 4.2 and order of the Ld. CIT(Appeals) vide para 5.1 of their respective orders, the assessee in this case was unable to establish through evidences and relevant documents that the interest free funds have been only utilized for making investment during the year under consideration.

5. At the time of hearing, the Ld. AR for the assessee submitted that in the present scenario, there is a presumption in favour of the assessee that the ITA No.360 /PUN/2018 A.Y.2013-14 investments were made from the interest free funds available with the assessee. The assessee for this proposition has placed reliance on the decision in its own case in ITA No. 65/PUN/2018 for the assessment year 2012-13. The Ld. AR therefore, claimed that it should be presumed, the assessee has made investment from its own interest free funds.

6. Per contra, the Ld. DR invited our attention at Para 5.1 of the Ld.CIT(Appeals)' order where the Ld. CIT(Appeals) has categorically held that the immediate sources of investment were out of the OD account and when the investment has been made in such manner, the presumption which the assessee claims is no longer valid.”

7. After considering the submissions and the facts and circumstances on the issue, the Tribunal held as follows :-

“7. We have heard the rival contentions and analyzed the facts and circumstances in this case. We have also considered the judicial pronouncements placed on record. We find that in front of both the Sub ordinate

Authorities in spite of opportunities being given, the assessee has not established through evidences and relevant documents that the investments were made out of its own reserves and interest free funds. The Authorities below, therefore, was unable to have an opportunity to examine the interest free funds available with the assessee vis-a-vis the investment made during the relevant year under consideration. The case laws relied upon by the assessee in its own case by the Co-ordinate Bench of the Tribunal (supra.) is substantially distinguishable on facts for the reason that in this relevant year, factually it was not established by the assessee and neither therefore, it was examined by the Sub ordinate Authorities that investments were made by the assessee in the year under consideration only from reserves and interest free funds available with the assessee. That further, there is an observation by the Ld. CIT(Appeals) that investments were ITA No.360 /PUN/2018 A.Y.2013-14 directly made from OD account where both own funds and interest bearing funds are intermixed. Therefore, it becomes necessary to factually verify whether the entire investments were made only from interest free funds. We are of the considered view, therefore, in the interest of justice, this issue should be remanded back to the file of the Assessing Officer for verification of investments made vis-a-vis interest free funds available with the assessee during the year under consideration. In view, thereof, we set aside the order of the Ld. CIT (Appeals) on this issue and remand the same back to the file of the Assessing Officer for adjudication after complying with the principles of natural justice as indicated hereinabove.”

8. Respectfully following the above-stated decision on the issue and in the same parity of reasoning under the same set of facts and circumstances as also admitted by the parties herein, we set-aside the order of the ld. CIT(A) on this issue and remand the same back to the file of the Assessing Officer for adjudication after complying with the principles of natural justice. Thus, the issue raised in the regular grounds of appeal related to the disallowance u/s 14 is allowed for statistical purposes.

9. The next issue raised in the additional ground of appeal no.1 is with regard to the education cess. The ld. Counsel for the assessee submitted that the said issue raised by the assessee is purely legal 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.

10. 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 said judgment reads as follows:

"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."

11. 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 Act and placing reliance on the decision of the Hon'ble Bombay High Court (supra.), we direct the Assessing Officer to allow deduction in respect of Education

Cess paid by the assessee. Accordingly, the additional ground of appeal no.1 raised by the assessee is allowed.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on this 19th day of January, 2022.

Sd/-

Sd/-

(INTURI RAMA RAO)

(PARTHA SARATHI CHAUDHURY)

लेखा सदस्य/ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th January, 2022.

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, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.