

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DLEHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA Nos. 2562 & 2563/Del/2022
Assessment Years: 2016-17 & 2017-18**

DCIT, Circle 1(1),
New Delhi.

Versus Agriculture Insurance Company
Of India Ltd., Plate B & C, 5th Floor,
Office Block 1, EAST Kidwai
Nagar, New Delhi
PAN: AAECA2874P
(Respondent)

(Appellant)

Assessee by: Sh. Akash Singhal, C.A.
Revenue by: Ms. Sapna Bhatia, CIT-DR

Date of hearing : 17.05.2023
Date of pronouncement : 29.05.2023

ORDER

PER SAKTIJIT DEY, J.M.:

Captioned appeals by the Revenue arise out of two separate orders, both dated 06.09.2022, passed by National Faceless Appeal Centre (NFAC) pertaining to the assessment years 2016-17 and 2017-18.

2. Grounds raised in both the appeals are common except variance in figures. Therefore, for ease of reference, we reproduce the effective grounds raised in ITA No. 2562/Del/2022 :

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.5,65,41,062/- on account of corpus fund without routing the income through the profit and loss account. The Ld. CIT(A) was not justified in not treating the same as diversion of income.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,98,98,976/- made by the A.O. on account of disallowance u/s. 14A r.w.r. 8D of the Income-tax Rules.”

3. First issue relates to deletion of addition made on account of corpus fund without routing the income through profit and loss account.

4. Briefly, the facts are, the assessee is a public limited company and has been set up to provide security to persons engaged in agriculture and allied activities through insurance product and other support services as per declared policy of the Government of India. In sum and substance, the assessee is engaged in the business of agricultural crops insurance. In course of assessment proceedings, the Assessing Officer noticed that the corpus fund received from Central and State Governments has been directly credited to the balance sheet without routing through the profit and loss account. After issuing a show cause notice to the assessee and rejecting assessee's explanation, the Assessing Officer proceeded to add

the amount of corpus fund to the income of the assessee. The addition so made was deleted by the Id. Commissioner (Appeals).

5. Before us, it is a common point between the parties that this issue is squarely covered by the decision of the coordinate Bench in assessee's own case in assessment years 2008-09 and 2012-13. In this context, learned counsel placed before the bench respective orders of the Tribunal.

6. Having considered rival submissions and perused the material on record, we find, while deciding identical issue in assessee's own case in assessment year 2012-13, the Tribunal in order dated 06.11.2019 in ITA No. 1279/Del/2016 has upheld the decision of the first appellate authority observing as under :

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 Id. 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

Id. CIT(A) in his order. We, therefore, do not find any error or infirmity in the order of the Id. CIT(A). Accordingly, Ground No. 1 of the Revenue is dismissed.”

7. Same view was reiterated by the Tribunal in assessment year 2008-09 vide ITA No. 6647/Del/2016. Facts, being identical, respectfully following the decisions of the coordinate Benches in assessee’s own case, we uphold the decision of Id. Commissioner (Appeals). Grounds raised are dismissed.

8. Second issue relates to deletion of disallowance made u/s. 14A r.w.r. 8D, being expenditure incurred for earning exempt income.

9. Before us, it is a common point between the parties that this issue is also squarely covered by the decision of coordinate Bench in assessee’s own case for the assessment year 2012-13 (supra).

10. Having considered the submissions of the parties, we find, while deciding the issue in assessment year 2012-13 (supra), the Bench has observed as under :

“16. 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.

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

11. Facts, being identical, respectfully following the decision of the coordinate Bench in assessee's own case, as discussed above, we uphold the decision of learned Commissioner (Appeals). Grounds raised are dismissed.

12. In the result, appeals are dismissed.

Order pronounced in the open court on 29/05/2023.

Sd/-

**(G.S. PANNU)
PRESIDENT**

Sd/-

**(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 29.05.2023

*aks/-