

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 9463/MUM/2025

(Assessment Year: 2009-10)

**Deputy Commissioner of Income Tax -
3(1)(1),**

Room No.607, 6th Floor, Aayakar Bhawan,
Mumbai - 400020

..... Appellant

v/s

Export Import Bank of India,

Centre One Building, Floor 21,
World Trade Centre Complex,
Cuffe Parade,
Mumbai - 400005
PAN : AAACE2769D

..... Respondent

ITA No. 9464/MUM/2025

(Assessment Year: 2009-10)

Export Import Bank of India,

Centre One Building, Floor 21,
World Trade Centre Complex,
Cuffe Parade,
Mumbai - 400005
PAN : AAACE2769D

..... Appellant

v/s

**Assistant Commissioner of Income Tax -
3(1)(2),**

Room No.607, 6th Floor, Aayakar Bhawan,
Maharshi Karve Road,
Mumbai - 400020

..... Respondent

Assessee by : Ms. Aarti Vissanji

Revenue by : Shri Ritesh Misra, CIT-DR

Date of Hearing - 25/03/2026

Date of Order - 30/03/2026

ORDER

PER BENCH :

The assessee and the Revenue have filed the present appeals against the impugned order dated 03.10.2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*"), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2009-10.

ITA No.9464/Mum/2025 **Assessee's Appeal – A.Y. 2009-10**

2. In this appeal, the assessee has raised the following grounds: -

"1. In the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of managerial and administrative expenses made by the AO w/s. 14A of the Act r.w. Rule 8D(2)(iii) of the Income Tax Rules, 1962 of Rs. 90,93,173/- holding that the said disallowance was suo-motto made by the appellant without appreciating the records of the appellant and rejecting the basis of working out the inadmissible expenditure at Rs. 20,610/- which is in relation to the expenditure incurred on the "Treasury Department" being limited to the expenditure incurred on Staff salaries & allowances, communication expenses and printing & stationery. Accordingly, it is humbly prayed to Your Honours that a direction be given to the AO to accept the working of appellant in quantifying the inadmissible expenditure u/s 14A of the Act as regards managerial and administrative expenditure at Rs. 20,610/-."

3. The solitary grievance of the assessee is against the disallowance made under section 14A read with Rule 8D(2)(iii) of the Income Tax Rules, 1962 ("*the Rules*").

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an entity established by an Act of Parliament titled the Export-Import Bank of India Act, 1981. The entire capital of the assessee is subscribed by the

Government of India. The main object of the assessee is to facilitate export. For this purpose, various types of activities, including long-term project finance outside India and other export financing, have been taken up by the assessee since its establishment.

5. Pursuant to the directions of the Coordinate Bench of the Tribunal in assessee's appeal for the assessment year 2009-10 in ITA No.7796/Mum/2012, vide order dated 24.10.2018, the AO vide order dated 31.12.2019 giving effect to the Tribunal's directions accepted the contentions of the assessee that during the year under consideration its own funds were more than the investments, after verification, and deleted the disallowance computed under Rule 8D(2)(iii) of the Rules. However, in compliance with the directions of the Tribunal that only investments which have yielded exempt income be considered, the AO computed a disallowance of Rs. 90,93,173/- under section 14A read with Rule 8D(2)(iii) of the Rules. The learned CIT(A), vide impugned order, after noting the fact that the assessee *suo motu* disallowed an amount of Rs. 90,93,173/- under section 14A of the Act, held that no further disallowance under section 14A read with Rule 8D of the Rules is warranted. Accordingly, the learned CIT(A) dismissed the ground raised by the assessee on this issue.

6. During the hearing, the learned Authorised Representative ("*learned AR*") fairly admitted that the computation of disallowance under section 14A read with Rule 8D(2)(iii) of the Rules is in conformity with the directions of the Tribunal and the AO has only considered the investments which have yielded exempt income for the purpose of disallowance. Therefore, we do not

find any infirmity in the findings of the learned CIT(A) on this issue, and the same are held. Accordingly, the sole ground raised by the assessee is dismissed.

7. In the result, the appeal by the assessee for the assessment year 2009-10 is dismissed.

ITA No.9463/Mum/2025
Revenue's Appeal – A.Y. 2009-10

8. In this appeal, the Revenue has raised the following grounds:

"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the deduction of Education Cess including Secondary and Higher Education Cess u/s.37 of the Act despite the amendment as per explanation 3 to section 40(a)(ii) of IT Act introduced by the Finance Act, 2022 w.e.f 01.04.2005, wherein it is clarified that for the purposes of this sub-clause, the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax."

9. The solitary grievance of the Revenue is against the findings of the learned CIT(A) allowing the deduction of Education Cess, including Secondary and Higher Education Cess, under section 37 of the Act.

10. We have considered the submissions of both sides and perused the material available on record. Vide impugned order, the learned CIT(A) allowed the ground raised by the assessee on this issue, observing as follows: -

"6. Additional Grounds:

The appellant has grievance against the action of the A.O. of not granting deduction of Education Cess including Secondary and Higher Education Cess u/s.37 of the Act attributable to tax on income from business as may be levied in this regard pursuant to the Order(s) as may be passed by the Ld. AO giving effect to the Order(s) of the appellate authority(ies). Since the grievance of the appellant is found very much legitimate, the AO is hereby directed to grant Education Cess including Secondary and Higher Education Cess u/s.37 of the Act, if applicable to the appellant. Subject to these remarks, the ground of appeal is allowed."

11. We find that the Finance Act, 2022, vide retrospective effect from 01/04/2005, inserted Explanation 3 to section 40(a)(ii), whereby it has been provided that the term "tax" shall include and shall be deemed to have always included any surcharge of cess, by whatever name called, on such tax. We further find that the Hon'ble Supreme Court in JCIT Vs. Chambal Fertilisers & Chemicals Ltd., reported in [2022] 145 taxmann.com 420 (SC), allowed the Revenue's appeal against the Hon'ble Rajasthan High Court's decision in Chambal Fertilisers & Chemicals Ltd. Vs. JCIT, [2019] 107 taxmann.com 484 (Raj.) and held that education cess paid by the respondent-assessee would not be allowed as an expenditure under Section 37 read with 40(a)(ii) of the Act. Thus, respectfully following the decision of the Hon'ble Supreme Court cited *supra*, the ground raised by the Revenue is allowed.

12. To sum up, the appeal by the assessee is dismissed, while the appeal by the Revenue for the assessment year 2009-10 is allowed.

Order pronounced in the open Court on 30/03/2026

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 30/03/2026

Prabhat

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai