

TAX FLASH NEWS

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Disallowance of expenditure under Section 14A does not apply to insurance business

Recently, the Delhi High Court in the case of Oriental Insurance Co Ltd¹ (the taxpayer) dealt with the disallowance of expenditure related to exempt income² of insurance business. The High Court held that the provisions for disallowance of expenditure relating to exempt income are not applicable to insurance business.

Facts of the case

The taxpayer³, a general insurance company⁴, made investment which earned taxable as well as tax free income. The Assessing Officer (AO) made estimated disallowance⁵ on account of expenditure incurred to earn exempt income. The Tribunal held the decision in favour of the taxpayer.

High Court's decision

The High Court held that provisions with respect to computation of income of insurance business⁶ begins with a non-obstante clause and overrides other provisions of the Act including provisions for disallowance of expenditure related to exempt income⁷.

Provisions for disallowance of expenditure related to exempt income does not have independent legs to stand on. It inter alia begins with the words 'for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of expenditure incurred..'. The referred chapter is Chapter IV. This Chapter IV also contains the provisions relating to computation of profits and gains of business or profession⁸.

Provisions with respect to computation of income of insurance business specifically excludes the provisions relating to computation of income of profits and gains of business or profession⁸. Thus, the exclusion would take within its sweep provisions for disallowance of expenditure related to exempt income.

The AO could not have travelled beyond Section 44 in the first schedule of the Income-tax Act, 1961 (the Act). Besides, the Tribunal has also invoked the rule of consistency since the same view of the Tribunal has prevailed in respect of the earlier assessment years.

Our comments

The Courts/Tribunal⁹ in various cases have held that disallowance provision for expenditure relating to exempt income¹⁰ has no application to the profit and gains of insurance business. Section 44 of the Act is a special provision dealing with the computation of profits and gains of business of insurance and it prevails over other provisions of the Act.

The Supreme Court in the case of General Insurance Corporation of India¹¹ held that the provisions of Section 44 is a special provision for computation of taxable income earned from business of insurance. It mandates the tax authorities to compute the taxable income in respect of insurance business in accordance with the provisions of the First Schedule to the Act.

The Delhi High Court in the present case has held that the provisions for disallowance of expenditure relating to exempt income are not applicable to insurance business.

¹ PCIT v. Oriental Insurance Co Ltd - [TS-148-HC-2020 (Del)] – Taxsutra.com

² Under Section 14A of the Act

³ Facts are from Tribunal's decision

⁴ During the Assessment Year 2011-12

⁵ Under Section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962

⁶ Section 44 of the Act

⁷ Section 14A of the Act

⁸ Section 28 to Section 43B of the Act

⁹ IICI Prudential Insurance Co. Ltd. v. ACIT [2012] 28 Taxmann.com 257(Mum), Aegon Life Insurance Company v. DCIT (ITA No. 3726/Mum/2017, 20 December 2018), Bajaj Allianz General Insurance Co. Ltd. v. ACIT (ITA No. 1447/PN/2007, dated 31 August 2009) (Pune)

¹⁰ Under Section 14A of the Act

¹¹ General Insurance Corporation of India v. CIT [1999] 240 ITR 139 (SC)

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