

Tax Alert:

Section 14A disallowance not applicable to insurance company: Delhi HC

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Summary

The Delhi High Court (HC) has held¹ that section 14A² disallowance is not applicable in case of insurance companies. In this regard, the HC held that special taxing provisions in relation to insurance companies³ would also take within its sweep Section 14A of the Act.

Facts of the case

- The taxpayer⁴ is engaged in the business of general insurance. During Assessment Year (AY) 2011-12, it computed its income applying special provisions of the Act⁵.
- The tax officer invoked provisions of Section 14A of the Act and made additions to the total income of the taxpayer.
- Both the Commissioner (Appeals) and the ITAT⁶ held in favour of the taxpayer. It was held that the income of the taxpayer is to be computed as per the special provisions of the Act and Section 14A has no applicability to profits and gains of an insurance

business. Further, it was held that since the special provisions begin with a non-obstante clause, the tax officer could not travel beyond these provisions.

- Interestingly, the ITAT relied on its earlier ruling in taxpayer's own case⁷ while deciding the matter in favour of the assessee.
- The tax department preferred an appeal before the HC.

Tax department's contention

- The tax department argued that the object of Section 14A was to prevent a taxpayer from claiming double benefit⁸. Thus, the

¹ PCIT v. The Oriental Insurance Co. Ltd. [ITA 172/2020] dated 04 March 2020

² Expenditure incurred in relation to income not includible in total income

³ Section 44 of the Income-tax Act, 1961 (the Act)

⁴ The Oriental Insurance Company Ltd.

⁵ Section 44 read with Rule 5 of the First Schedule to the Act

⁶ Income tax Appellate Tribunal

⁷ pertaining to AY 2000-01, 2001-02 and 2005-06

⁸ by claiming deduction of expenditure incurred in deriving income which does not constitute part of the total taxable income

applicability of the section does not stand excluded upon application of the special provisions of the Act.

- In any event, the ITAT should have remanded the matter back to the tax officer to ensure that the computation of income had been done properly⁹.

HC's decision

- The special provisions¹⁰ (for insurance companies) begins with a non-obstante clause and accordingly, overrides other provisions of the Act relating to computation of income¹¹.
- Since, Section 14A begins with *“for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of expenditure incurred....”*, it does not have independent legs to stand and can be applied only when Chapter IV¹² is invoked. Thus, it held that the exclusion in special provision would

necessarily take within its sweep Section 14A as well thereby, making it inapplicable in the cases of insurance companies.

- The HC also observed that the ITAT has taken the same view as taken in earlier years, thereby invoking rule of consistency.
- Thus, the HC held that the tax officer could not have travelled beyond the special provisions to make disallowance under the Section 14A.
- As regards tax department's second argument, the HC held that since the tax department, before ITAT, confined its challenges only in respect of applicability of the Section 14A, it cannot now argue that the ITAT should have remanded the matter back to the tax officer.
- In absence of any substantial question of law arising from the ITAT order, the HC therefore dismissed the tax department's appeal.

⁹ in terms of the First Schedule of the Act in relation to the assessee, who is carrying on a business of insurance other than life insurance.

¹⁰ Section 44

¹¹ those contained in sections 28 to 43B of the Act
¹² relating to computation of profits and gains of business or profession

Our comments

The issue of applicability of Section 14A of the Act to insurance companies has been a subject matter of debate for a long time. This issue exists not only in the case of non-life insurance companies but also in the case of life insurance companies where it is currently pending before courts (including Bombay HC).

The decision of the HC brings a sigh of relief for the entire insurance industry. While the decision of the HC is rendered in the case of a non-life insurance company, the observations of the HC are relevant for the insurance companies in general i.e. including life insurance companies and foreign re-insurance branches who offer their income to tax in accordance with section 44 read with rules in the First Schedule of the Act.

The decision of the HC seeks to put to rest the legality of the applicability of provisions section 14A in the case of insurance companies. It remains to be seen if the tax department challenges the decision of HC before the Supreme Court of India.

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