

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2561/Del/2017  
Assessment Year: 2007-08

Thomson Press India Ltd. 9, K-Block, Cannaught Circus New Delhi – 110 001.	Vs.	ACIT Special Range – 9, New Delhi
PAN No. AAAC T 4827 F		
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Shri Sunil Agarwal, Adv. Shri Sailesh Gupta, Adv.
Respondent by	Shri Saras Kumar, Sr. D.R.

Date of hearing:	21/07/2020
Date of Pronouncement:	27/07/2020

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 16.01.2017 of the Commissioner of Income Tax (A)-33, [‘CIT(A)’] New Delhi relating to Assessment Year 2007-08.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a company which is stated to be engaged in the business of commercial printing and photo typesetting. Assessee filed its return of income for A.Y. 2007-08 on 31.10.2007 declaring total income of Rs.17,65,29,535/-. The case was selected for scrutiny and thereafter initially the assessment was framed u/s 143(3) vide order dated 30.12.2009 and the total income was determined at Rs.18,91,41,620/-. Subsequently, the case was reopened by issuing notice u/s 148, which was issued and served to the assessee on 20.03.2012. Consequently, the case was taken for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 148 vide order dated 22.03.2013 and the total income was determined at Rs.20,11,00,353/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 16.01.2017 in Appeal No.96/15-16 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds of appeal:

1. *“That the order of the Ld CIT(A) is contrary to law and the facts of the case is required to be quashed.*
2. *That the Ld CIT(A) has further erred both in law and on facts in sustaining the initiation of the proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/147 of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act.*
3. *2.1 That further, the reason record were mere reasons to suspect and were just to make finishing and roving enquiries and were a mere change of opinion without there being any tangible material coming to the fore of the assessing officer after scrutiny assessment and as such the proceedings initiated under section 148 was a mere pretence.*

4. *That the Learned CIT(A) has gone wrong in disallowing a sum of Rs.14,21,208/-.*
- 4.1 *That the Learned CIT(A) has gone wrong in disallowing a sum of Rs.14,21,208/- by holding that 'cess is an integral part of the income tax'.*
5. *That the appellant reserves the right to add, alter, amend, delete any/all grounds of appeal either before or at the time of the hearing of the appeal."*

4. In the present case the assessment was initially framed u/s 143(3) of the Act and thereafter the AO had resorted to the reopening of case by issuing notice u/s 148 of the Act. The AO as per the recorded reasons, had resorted of the reopening of the assessment for two reasons. Firstly, assessee had claimed and has been allowed deduction of expenditure on account of cess on income tax of Rs.14,21,208/-, which according to AO was not allowable u/s 40(a)(ii) of the Act. The second reason for reopening was that assessee had made a provision for doubtful debt amounting to Rs.2,02,10,084/- in the Profit and Loss Account but while computing the total income, it had added back only Rs.96,72,559/- resulting into underassessment of income by Rs.1,05,37,525/- on that count. In reassessment order framed u/s 143(3) rws 147 of the Act, AO made the additions of aforesaid two amounts.

5. Aggrieved by the reassessment order of AO, Assessee carried the matter before CIT(A). Before the CIT(A), assessee challenged the reopening of assessment and on merits also challenged the additions made by AO. Out of the two additions, CIT(A) deleted

the addition made on account of provision made for doubtful debt but however upheld the action of AO with respect to the addition on account of education cess on income tax. The assessee is therefore, now before us.

6. Before us, at the outset, Learned AR pointing to the grounds of appeal submitted that Ground No.1 is general and therefore requires no adjudication. He submitted that in Ground Nos. 2 & 3 Assessee is challenging the reassessment proceedings and in Ground No.4 Assessee is challenging the disallowance of Rs.14,21,208/- on account of cess on income tax. He submitted if the ground on the merits of addition of Rs 14,21,208/- is decided in favour of the Assessee, then the grounds raised by Assessee challenging the reassessment proceedings would be rendered academic. He thereafter pointing to the order of CIT(A) submitted that CIT(A) while disposing of the appeal, had not adjudicated the issue wherein the Assessee had challenged the reassessment proceedings but had granted partial relief whereby he had deleted the addition made on account of provision for bad debts.

7. On the issue of addition of Rs. 14,21,208/- towards cess of income tax, he submitted that CIT(A) was not justified in upholding the addition made by AO. He submitted that assessee had debited the aforesaid amount to the Profit and loss account and had claimed it as deduction. The AO was of the view that

cess was an integral part of income tax and covered under the provisions of s. 40(a)(ii) and therefore cannot be allowed as deduction. He accordingly disallowed the amount of cess on income tax u/s 40(a)(ii) of the Act. When the matter was carried by the Assessee before the CIT(A), the order of AO was upheld by CIT(A).

8. Before us, Learned AR submitted that the issue that the cess on income tax is not covered u/s 40(a)(ii) is covered in assessee's favour by the decision of Hon'ble Bombay High Court in the case of Sesa Goa Ltd. vs. JCIT reported in [2020] 117 taxmann.com 96 (Bombay), the copy of the judgment which is placed in the paper book. He submitted that the Hon'ble Bombay High Court in the aforesaid decision has held that education cess and higher and secondary education cess are liable for deduction while computing income chargeable under the head of 'profits and gains of business or profession'. He therefore, submitted that on merits the addition is not called for. Learned DR on the other hand did not controvert the submissions made by the Learned AR but however supported the order of lower authorities.

9. We have heard the rival submissions and perused the relevant materials available on record. The issue in the present ground is with respect to disallowance of Rs. 14,21,208/- u/s 40a(ii) of the Act. It is AO's contention that the aforesaid amount

is towards the cess on income tax and is not allowable u/s 40a(ii) of the Act. We find that Hon'ble Bombay High Court in the case of Sesa Goa Ltd. (supra) has held that education cess and higher and secondary education cess to be eligible for deduction while computing income chargeable under the head of Profit and Gains of Business. The Hon'ble High Court has held that though cess may be collected as part of income tax but that does not render such cess either rate or tax which cannot be deducted in terms of provision of section 40a(ii) of the Act. We further find that Hon'ble High Court while arriving at the aforesaid conclusion had also considered the CBDT Circular No. F. No. 91/58/66-ITJ(19), dated 18.05.1967.

10. Before us, Revenue has not placed any contrary binding decision in its support. In such situation, we, relying on the decision of Hon'ble Bombay High Court in the case of Sesa Goa (supra) hold that the AO was not justified in disallowing the amount of cess paid on income tax. We therefore, direct its deletion. **Thus, ground of appeal of the assessee is allowed.**

11. Before us, Ld AR had submitted that if the ground on merit is decided in Assessee's favour, the grounds raised by him challenging the reassessment proceedings would be rendered academic. Since we have herein above have decided the issue on merit in assessee's favour, the grounds raised by the assessee

challenging the reassessment proceedings are rendered academic and therefore, requires no adjudication and accordingly the same are dismissed.

**12. In the result, the appeal filed by the assessee is partly allowed.**

**Order pronounced in the open court on 27.07.2020**

**Sd/-**

**Sd**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

\*Priti Yadav, Sr.PS\*

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

*Date:- 27.07.2020*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI