

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 776/Ind/2019
Assessment Year 2016-17

M/s. Agrawal Coal Corporation Pvt.Ltd, 5, Yashwant Niwas Road, Indore	Vs.	ACIT 1(1) Indore
(Appellant)		(Respondent)
PAN No. AACCA8468K		

Revenue by	Shri Ashish Porwal, Sr.DR
Assessee by	Shri Ajay Tulasiyan, CA
Date of Hearing	20.08.2020
Date of Pronouncement	.08.2020

O R D E R

PER MANISH BORAD, AM:

The above captioned appeal filed by the revenue for Assessment Year 2016-17 is directed against the order of ld. Commissioner of Income-tax (Appeals)-I, Indore, dated 17.06.2019, which is arising out of the order u/s 143(3) of the Income Tax Act dated 25.12.2018 framed by the DCIT-1(1), Indore.

2. Assessee has raised following grounds of appeal:-

1. The learned CIT(A) erred in rejecting the claim of cess of Rs.21,72,114/- incurred during the year under consideration and which was claimed during the assessment proceedings. That on the facts of the case and in law the appellant is entitled to deduction of cess which is prayed to be now allowed.

2. The appellant craves leave to add, to alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before final hearing, if necessary so arises.

3. Brief facts of the case as culled out from the records are that the appellant company is engaged in the business of coal trading and operates in most of the states of India. The appellant procures coal from various sources i.e. from Indian collieries, purchase from local market and also import coal from different countries. The appellant had filed its Return of Income for Assessment Year 2016-17 declaring total income of Rs.21,54,87,530/-. Case selected for scrutiny and during the course of assessment proceedings the appellant filed written submissions providing information called for by the Ld. A.O. The appellant made a fresh claim of deduction of Education Cess before Ld. A.O during the course of assessment proceedings which was not accepted by the Ld. A.O. The

assessment u/s 143(3) was completed on 25.12.2018 making additions/disallowances and assessed the total income at Rs.21,60,45,130/-. Aggrieved assessee preferred an appeal before Ld. CIT(A) and partly succeeded. The ground of fresh claim of education was dismissed by Ld. CIT(A).

4. Now the assessee is in appeal before the Tribunal raising the sole issue of allowability of education cess.

5. At the outset Ld. Counsel for the assessee submitted that the issue stands squarely covered in favour of the assessee by various judgments mentioned herein below:-

For the proposition that the rightful claim made during the course of assessment proceedings cannot be denied by taking recourse of revised return and shelter of the case of Goetz India. It is the benevolent duty of Assessing Officer to assess the correct taxable income of a person as per law even if the assessee fails to claim the same in the return of income.

- (i) Hon'ble Apex Court in the case of CIT Vs. Mahalaxmi Sugar Mills Co. Ltd 58 CTR 0138.
- (ii) Hon'ble Bombay High Court in the case of CIT Vs. Pruthvi Brokers & Shareholders (P) Ltd 349 ITR 0336 – Goetz India
- (iii) Hon'ble Indore I.T.A.T.in the case of ACIT vs. Admanum Finance Limited, Indore in ITA No.389/Ind/2012, 807 & 808/Ind/2014.

(iv) *Hon'ble Punjab and Haryana High Court in the case of CIT V/s Ramco International (2011) 332 ITR 306.*

For the proposition that the cess is an allowable expenditure and is not hit by the disallowance contemplated u/s 40(1)(ii) of the Act.

(v) *Hon'ble Rajasthan High Court in the case of Chambal Fertilizers and Chemicals Limited D.B.I.T.A No.52/2018 dated 31.7.2018.*

(vi) *Copy of decision of Honourable I.T.A.T. Indore Bench, Indore in the appellant's own case for A.Y 2012-2013 to A.Y. 2014-15 in ITA No. 801 to 803/Ind/2018 filed by the department and in ITA No. 778/Ind/2018 and C.O.No.23 & 24/Ind/2019 filed by the appellant.*

6. Per contra Ld. Departmental Representative strongly opposed the submissions of the Ld. Counsel for the assessee and contended that fresh claims cannot be made during the course of assessment proceedings, however he could not controvert the fact that such claims if allowable under the provisions of law can be entertained at the appellate stage and also could not controvert the fact that the issue stands squarely covered in favour of the assessee by the decision of the Indore Tribunal in assessee's own case vide ITA No. 801 to 803/Ind/2018 filed by the department and in ITA No. 778/Ind/2018 and C.O.No.23 & 24/Ind/2019 order dated 28.11.2019.

7. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments relied by the Ld. Counsel for the assessee. The sole grievance raised in this appeal by the assessee relates to rejection of claim of expenditure of education cess of Rs.21,72,114/- incurred during the year. We observe that similar issue stands adjudicated by us in assessee's own case for the Assessment Year 2012-13 to 2014-15 vide ITA No.801 to 803/Ind/2018, ITA No.778/Ind/2018 & CO Nos. 23 & 24/Ind/2019 wherein we have decided in favour of the assessee allowing the claim of education cess to be allowed as an expenditure after relying the judgment of Hon'ble High Court of Rajasthan in the case of Chambal Fertilizers and Chemicals Limited (*supra*) observing as follows:-

38. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments relied by the Ld. Counsel for the assessee. The other issue commonly raised by the assessee for Assessment Year 2013-14 is that whether the education cess paid by the assessee along with the income tax and surcharge is deductible as expenditure u/s 37 or it is not deductible as per provisions of Section 40(a)(ii) of the Act which refers to the 'amount not deductible'.

39. We observe that similar issue came up before the Hon'ble High Court of Rajasthan in the case of Chambal Fertilizers and Chemicals Limited (supra) wherein Hon'ble High Court referred to Circular No. No.91/58/66-ITJ(19) dated 18.5.1967 and also various judgments. The relevant extract of the judgment of the Hon'ble High Court in this case is mentioned below:-

(i) Hon'ble High Court of judicature for Rajasthan Bench, Jaipur in the case of CIT, Kota V/s Chambal Fertilizers and Chemicals Ltd, Kota D.B. IT No.52/2018 order dated 31.7.2018 raised following substantial question of law:-

“3. Whether under the facts and circumstances of the case the Ld. ITAT has not erred in holding that the education cess is a disallowable expenditure u/s 40(a)(ii) of the Act?

“Regarding Question no.3, Mr. Jhanwar has taken us to the order of CIT(A) and tribunal and strongly relied upon the circular dt. 18.5.1967 which reads as under:-

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS CIRCULAR

F.NO. 91/58/66-ITJ(19) DT. 18TH MAY, 1967

BUSINESS EXPENDITURE

SECTION 40(a)(ii)

Recently a case has come to the notice of the Board where the ITO has disallowed the 'cess' paid by the assessee on the ground that there has been no material change in the provisions of s. 10(4) of the old Act and s.40(a)(ii) of the new Act.

2.The view of the ITO is not correct. Clause 40(a)(ii) of the IT Bill, 1961 as introduced in the Parliament stood as under:

“(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains”.

When the matter came up before the Select Committee, it was decided to omit the word 'cess' from the clause. The effect of the omission of the word 'cess' is that only taxes paid are to be disallowed in the assessments for the year 1962-63 and onwards.

3.The Board desire that the changed position may please be brought to the notice of all the ITOs so that further litigation on this account may be avoided.”

Reliance were placed by the Ld. Counsel for the assessee on the following judgments;

In Instalment Supply (P) Ltd & Ors Vs/ Union of India & Ors (1962) 2 SCR 644, it has been held as under:-

“19. There is another answer to the point of res judicata

raised on behalf of the petitioners, relying upon the decision of the Punjab High Court in Installment Supply Ltd, New Delhi v State of Delhi MANU/PH/0068/1956. It is well settled that in matters of taxation there is no question of res judicata because such year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period. (See the decision in the House of Lords in Society of Medical Officers of Health v. Hope (Valuation Officer) (1960) A.C. 551 approving and following the decision of the privy Council in Broken Hill Proprietary Company Limited v Municipal Council of Broken Hill (1925) A.C. 94.

In Godrej & Boyce Manufacturing Company Ltd vs. Dy. Commissioner of Income Tax & ors (2017) 247 Taxman 361 (SC), it has been held as under:-

“33.While answering the said question this Court considered the object of insertion of Section 14A in the Income Tax Act by Finance Act, 2001, details of which have already been noticed. Noticing the objects and reasons behind introduction of Section 14A of the Act this Court held that:

Expenses allowed can only be in respect of earning of taxable income.

In paragraph 17, this Court went on to observe that:

Therefore, one needs to read the words “expenditure incurred” in Section 14A in the context of the scheme of

the Act and, if so read, it is clear that it disallows certain expenditure incurred to earn exempt income from being deducted from other income which is includible in the “total income” for the purpose of chargeability to tax.

The views expressed in Walfort Share and Stock Brokers P.Ltd (supra), in our considered opinion, year again militate against the plea urged on behalf of the assessee.

34. For the aforesaid reasons, the first question formulated in the appeal has to be answered against the Appellant-Assessee by holding that Section 14A of the Act would apply to dividend income on which tax is payable Under Section 115-0 of the Act.”

The Hon’ble High Court decided the issue holding that;

“12. We have heard counsel for the parties.

13. On the third issue in appeal No.52/2018, in view of the circular of CBDT where word “cess” is deleted, in our considered opinion, the tribunal has committed an error in not accepting the contention of the assessee. Apart from the Supreme Court decision referred that assessment year is independent and word Cess has been rightly interpreted by the Supreme Court that the Cess is not tax in that view of the matter, we are of the considered opinion that the view taken by the tribunal on issue no.3 is required to be reversed and the said issue is answered in favour of the assessee”

40. We, therefore respectfully following the judgment of Hon’ble Rajasthan High Court in the case of CIT, Kota V/s Chambal

Fertilizers and Chemicals Limited (supra) find that the facts of the case are identical to the facts of the case in appeal before us and thus are inclined to hold that the education cess is not a tax and thus is an expenditure u/s 37 of the Act which cannot be claimed against the profits and gains of the business carried out by the assessee. Thus finding of Ld. CIT(A) is reversed. The additional ground No.3 raised by the assessee for Assessment Year 2012-13 and Ground No.1 of Cross Objection Nos. 23 & 34/Ind/2019 for A.Y. 2013-14 & 2014-15 stands allowed.

8. We therefore in the given facts and circumstances of the case and respectfully following the decision of Indore ITAT in the assessee's own case direct the revenue authorities to allow the claim of education cess of Rs.21,72,114/- as an expenditure. Thus the sole ground raised by the assessee stands allowed.

9. The other ground is general in nature which needs no adjudication.

10. In the result the appeal of the assessee is allowed.

Order pronounced in open Court on 24.08.2020.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 24 August, 2020

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore