

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM and Shri B.R.Baskaran, AM

IT(TP)A No.2349/Bang/2019 : Asst.Year 2009-2010

M/s.Waters (India) Private Limited No.36A, 2 nd Phase, Peenya Industrial Area Bengaluru – 560 058. PAN : AAACW1411C.	v.	The Dy.Commissioner of Income-tax, Circle 12(5) Bangalore.
(Appellant)		(Respondent)

Appellant by : Smt.G.Vaidehi, Adovcate
Respondent by : Sri.Priyardarshi Mishra, Addl.CIT-DR

Date of Hearing : 28.09.2021	Date of Pronouncement : 28.09.2021
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ORDER

Per George George K, JM

This appeal was disposed of by the ITAT vide its order dated 25.11.2020. The assessee filed Miscellaneous Petition No.41/Bang/2021. The Tribunal vide its order dated 25.06.2021 recalled the ITAT's order dated 25.11.2020 for the limited purpose of adjudication of additional ground (which was omitted to be adjudicated by the ITAT). The additional grounds read as follows:-

Ground No.2.5 : Deduction in respect of `education cess on Income-tax' and `secondary and higher education cess on Income-tax' for the year under consideration, while assessing the total income of the appellant.

“The learned Assessing Officer (“Learned AO”) and Hon’ble Commissioner of Income Tax (“Hon’ble CIT(A)”), while assessing the total income of the

Appellant for the year under consideration, have erred in not allowing a deduction for education cess and secondary & higher education cess (collectively known as `education cess') for the year under consideration.

On the facts and circumstances of the case and in law, the learned AO and Hon'ble CIT(A) ought to have allowed deduction of education cess for the year under consideration, though not claimed as a deduction by the Appellant while filing its return of income."

2. The brief facts of the case are as follows:

For the assessment year 2009-2010, the assessee had remitted education cess and secondary and higher secondary education cess (collectively known as `education cess') of a sum of Rs.7,09,741. The assessee omitted to claim the same as an expense in its return of income. In this regard, the assessee filed a petition for admission of additional ground of appeal on 24.09.2020 seeking deduction of the same while computing the total income chargeable to Income-tax. The learned AR submitted that education cess ought to be allowed as a deduction in view of the judgment of the Hon'ble Bombay High Court in the case of Sesa Goa Limited v. JCIT [(2020) 423 ITR 426 (Bom.)]. The learned Departmental Representative present was duly heard.

3. We have heard rival submissions and perused the material on record. The issue raised in the additional ground is a pure legal issue, which does not require any verification of facts. Therefore, we admit the same for adjudication. The Hon'ble Bombay High Court in the case of Sesa Goa Limited

v. JCIT (supra) had held education cess is an allowable expenditure as the word “cess” is conspicuously absent under the provisions of section 40(a)(ii) of the I.T.Act. The relevant finding of the Hon’ble High Court reads as follows:-

“23. If the legislature intended to prohibit the deduction of amounts paid by a Assessee towards say, “education cess” or any other “cess”, then, the legislature could have easily included reference to “cess” in clause (ii) of Section 40(a) of the I.T.Act. The fact that the legislature has not done so means that the legislature did not intend to prevent the deduction of amounts paid by a Assessee towards the “cess”, when it comes to computing income chargeable under the head “profits and gains of business or profession”.

3.1 The Hon’ble High Court also placed reliance on the CBDT Circular dated 18.05.1967, which clarified that upon omission of the term “cess” from the present section 40(a)(ii) of the I.T.Act, only rates or taxes needs to be disallowed, and hence, education cess ought not to be treated as Income-tax to be disallowed u/s 40(a)(ii) of the I.T.Act.

3.2 The Hon’ble Rajasthan High Court in the case of CIT v. Chambal Fertilizers and Chemical Limited (D.B. IT Appeal No.52 of 2018 (judgment dated 31.07.2018) had held education cess is not to be disallowed u/s 40(a)(ii) of the I.T.Act. The relevant finding of the Hon’ble Rajasthan High Court, reads as follows:-

“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”.

3.3 The Mumbai Bench of the Tribunal in the case of Voltas Limited in ITA No.6612/Mum/2018 (order dated 30.06.2020) had admitted additional ground of appeal with regard to the claim of education cess and adjudicated the matter in favour of the assessee, by following the judgment of the Hon'ble Bombay High Court in the case of Sesa Goa Limited v. JCIT(supra). In the light of the aforesaid judicial pronouncements, we hold that education cess is to be allowed as deduction. It is ordered accordingly.

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

Order pronounced on this 28th day of September, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 28th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-7, Bengaluru.
4. The Pr,CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore