

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, KOLKATA
(E-COURT HEARING)

**BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No. 2647/Kol/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

IFGL Refractories Ltd. 3, Mcleod House, Netaji Subhas Road, Hare Street, Kolkata – 700001.	बनाम/ Vs.	JCIT, Range-6, Kolkata Aaykar Bhawan, P-7 Chowringhee Square Kolkata – 700 069
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABCI-7391-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri S.K. Tulsian, Advocate-Ld. AR
Revenue by	:	Smt. Ranu Biswas, Addl. CIT-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	11/11/2021
घोषणा की तारीख / Date of Pronouncement	:	11/11/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order the Ld. Commissioner of Income Tax (Appeals)-20, Kolkata [CIT(A)] dated 07.11.2019 in the matter of assessment framed by the Ld. AO u/s 143(3) of the Income Tax Act, 1961 on 19.12.2011.
2. The assessee has filed additional ground of appeal on 18.12.2020. Similar ground was admitted by Tribunal in assessee’s own case for AY 2012-13 in ITA No.684/Kol/2019 order dated 17/02/2021. Therefore, considering the same and keeping in view the ratio down by Hon’ble Supreme Court in the case of **National Thermal Corporation Ltd. (229**

ITR 383), we admit the same as ground no.6. Ground Numbers 4 & 5 is general grounds which do not require any specific adjudication. Ground Nos. 1 to 3 relates to deduction of education cess and surcharge u/s 37.

3. The Ld. Counsel, at the outset, submitted that the original ground as well additional ground stood covered / adjudicated by the Tribunal in assessee's own case for AY 2012-13, ITA No.684/Kol/2019 order dated 17/02/2021. A copy of the same has been placed on record. The Ld. Sr. DR relied on the orders of lower authorities but could not controvert the aforesaid fact. In the above background, our adjudication would be as under.

4. Deduction of Education Cess and Surcharge u/s 37 (Ground Nos. 1 to 3)

This issue was raised for the first time before Ld. CIT(A). The assessee claimed deduction of education cess and surcharge as business expense u/s 37 which was denied by Ld. CIT(A). Aggrieved, the assessee is in further appeal before us. We find that this issue is covered in para-13 of the cited order of Tribunal for AY 2012-13. The bench, relying upon the decisions of Hon'ble Bombay High Court in **Sesa Goa Ltd. Vs. JCIT (117 Taxmann.com 96)** and the decision of Hon'ble Rajasthan High Court in **Chambal Fertilizers and Chemicals Ltd. V/s JCIT (ITA No.52/2018 dated 31/07/2018)** held that this expenditure is an allowable deduction. Facts being pari-materia the same, we direct Ld. AO to allow the deduction of the same. The grounds thus raised stand allowed.

5. Refund of Dividend Distribution Tax (Ground No.6)

The Ld. AR has submitted that this ground is a new claim and the refund is allowable as per the cited decision of Tribunal for AY 2012-13. The Ld.

AR submitted that facts are pari-materia the same in this year. It has been submitted that the assessee paid dividend to a Japanese Company and paid dividend distribution tax (DDT) in terms of Sec.115-O @16.995%. However, the applicable rate for payee, in terms of Double Taxation Avoidance Agreement (DTAA), would be 10%. Therefore, the excessive tax paid would be refundable to the assessee. We find that this issue is contained in paras 14 to 16 of ITA No. 684/Kol/2019 wherein the bench has restored the matter back to the file of Ld.AO for examination with a direction to the assessee to furnish all the necessary details. Taking the same view, we admit the claim and restore the matter back to the file of Ld. AO on similar lines. This ground stand allowed for statistical purposes.

Conclusion

6. The appeal stand partly allowed in terms of our above order.

Order pronounced on 11th November, 2021.

Sd/-

(Aby T. Varkey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

Kolkata; दिनांक Dated: 11/11/2021

Biswajit, Sr. P.S.

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant: IFGL Refractories Ltd.
2. प्रत्यर्थी/ The Respondent: JCIT, Range-6, Kolkata.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, DR, ITAT
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

Senior P.S

आयकरअपीलीयअधिकरण, ITAT, Kolkata.