

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI S.S. GODARA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCE)**

ITA No.370/Hyd/2020 (Assessment Year : 2016-17)		
M/s. CDK Global (India) Pvt. Ltd., Hyderabad. PAN AAGCR 9879K	Vs.	Asst. Commissioner of Income Tax, Circle 1(2), Hyderabad.
Appellant		Respondent

Appellant By : Shri H. Srinivasulu, Adv.

Respondent By : Shri K. Madhusudan, CIT-DR.

Date of Hearing : 10.01.2022.

Date of Pronouncement : 17.01.2022.

ORDER

Per Shri S.S. Godara, J.M. :

This assessee's appeal for Asst. Year 2016-17 arises from the Commissioner of Income Tax (Appeals)-1, Hyderabad's order dt.05.02.2020 passed in case No.10422/DCIT-1(2)/Hyd/CIT(A)-1/2019-20 in proceedings under Section 143(3) of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. The assessee's first and foremost substantive grievance seeks to reverse both the lower authorities' action disallowing depreciation claim on goodwill involving a sum of Rs.37,97,16,442 raised u/s. 32 of the Act. Suffice to say, it emerges during the course of hearing that the assessee had raised the very substantive ground in the preceding year A.Y. 2015-16 appeal ITA No.1045/Hyd/2019 as well wherein he had restored the same back to the Assessing Officer for his necessary verification of the unilateral advance pricing agreement "APA" dt.18.-08.2021 and the corresponding terms incorporated therein u/s. 92CC of the Act excluding the goodwill in issue from "operating expenses" under clause (I)(b)(ii) thereof. Suffice to say, we therefore adopt judicial consistency and direct the Assessing Officer to finalise its contiguous factual verification as per law. We further make it clear that the assessee had not challenged the impugned disallowance on goodwill on merits or legality otherwise. This first and foremost substantive ground is treated as partly allowed for statistical purposes therefore.

3. Next comes the second issue of 40(a)(ia) disallowance alleged to have been disallowed in preceding assessment year but claimed in the impugned assessment year on actual payment basis in light of first proviso thereof. The fact remains that the CIT(A) has refused to entertain the assessee's corresponding additional ground as an after thought one only. Faced with this situation and more so in view of the fact that the assessee's foregoing first substantiate ground already stands restored back to the Assessing Officer, we adopt the very course of action herein and leave it open to the Assessing Officer to finalise this consequential verification in light of 40(a)(ia) first proviso as per law. Ordered accordingly.

4. Next comes the third issue of short grant of interest amounting to Rs.37,97,16,442 u/s.244A of the Act. Both the parties are ad idem opinion during the course of hearing that instant third issue also requires the Assessing Officer's factual verification regarding the corresponding refund figure; if any. We therefore restore the instant issue as well back to the assessing authority in the very terms.

5. Lastly comes the fourth issue of deduction of education cess u/s. 40(a)(ii) of the Act. The Revenue case before us is that the assessee is precluded from raising the instant additional ground before the tribunal. We find no merit in the Revenue's stand in light of our detailed finding in Assessment Year 2015-16 order (supra) read as under :

5. Lastly comes the assessee's petition dt.06.10.2020 seeking to claim education cess liability of Rs.5,77,565 as an allowable deduction by way of additional ground. Case law Allcargo Global Logistics Ltd. Vs. DCIT 137 ITD 217 (Bom) (SB) after considering National Thermal Powre Co. Ltd. Vs. CIT 229 ITR 383 (SC) holds that we can very well entertain such a pure question of law so as to determine correct tax liability of an assessee provided all facts relevant thereto are already on record. We therefore reject Revenue's technical aspects against the assessee's foregoing petition in very terms.

6. Coming next to merits of education cess disallowance, case law Sesa Goa Ltd. Vs. JCIT (2020) 117 taxmann.com 96 (Bom), Chambal Fertilisers and Chemicals Ltd. Vs. CIT ITA

52/2018 (Raj) hold such an education cess as an allowance deduction in light of CBDT Circular dt.18.05.1967. We therefore accept additional substantive ground and direct the Assessing Officer to treat the impugned education cess as an allowable expenditure to be followed by his consequential computation as per law.”

We adopt the above precedence *mutatis mutandis* to accept the assessee's last substantive ground in very terms. The Revenue's vehement contention qua all these four substantive issues are rejected in foregoing terms.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 17th Jan.,2022.

Sd/-

(A.MOHAN ALANKAMONY)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt. 17.01.2022.

* Reddy gp

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3.	Pr. C I T-1, Hyderabad.
4.	CIT(Appeals)-1, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.