

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"E" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 338/MUM/2021 (A.Y: 2011-12)

Tata Consulting Engineering Ltd., Empire Tower, Cloud City Campus Thane-Belapur Road, Airoli New Mumbai - 400708 PAN: AABCT0772E	v.	Addl. CIT-7(3) Room No. 614, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Ketan Ved Ms. Urvi Mehta
Department by	:	Shri B.K. Bagchi
Date of Hearing	:	10.11.2021
Date of Pronouncement	:	07.02.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals) – 15, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.08.2020 for the A.Y.2011-12.

2. Assessee raised following grounds in its appeal: -

"1:0 Re: Improvements to Leasehold premises

The Assessing Officer / the Commissioner of Income-tax (Appeals) have erred in treating the expenses incurred on improvements to leasehold premises of Rs.5,16,28,446/- as capital expenditure and accordingly disallowed a sum of Rs.4,64,65,600 after granting depreciation @ 10% on the said expenditure.

The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the expenses incurred by it during the year under consideration on improvements to leasehold premises are revenue in nature and are therefore allowable as deduction and the stand taken by the Assessing Officer / the Commissioner of Income-tax (Appeals) in this regard is incorrect, erroneous and misconceived,

The Appellant submits that the Assessing Officer be directed to delete the addition and to re-compute its total income and tax thereon accordingly.

2:0 Re.: Deduction in respect of 'Education Cess on income-tax' and 'secondary and higher education cess on income-tax' (collectively referred to as 'education cess on income-tax') while computing total income of the Appellant:

The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, "education cess on income-tax", ought to be allowed as a deduction while assessing its income for the year under consideration.

The Appellant submits that the Assessing Officer be directed to re-compute its total income and tax thereon after allowing deduction for "education cess on income-tax".

3:0 Re.: General

The Appellant craves leave to add, alter, amend, vary, omit and/or substitute all or any of the foregoing grounds of appeal or add a new ground(s) at or before the hearing of the appeal."

3. Ground No. 1 is in respect of improvements to leasehold premises, Ld. AR brought to our notice that similar ground which assessee has raised before the Coordinate Bench in ITA.No. 3595/Mum/2013 for the A.Y.2008-09 and ITA.No. 6786/Mum/2012 for the A.Y. 2009-10 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee by order dated 25.11.2016 and he brought to our notice Para No. 5 and 6 of the order and requested the same may be followed for the assessment year under consideration. Copy of the Tribunal order is placed before us.

4. Ld. DR fairly agreed that the issue is covered in favour of the assessee.

5. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2008-09 and 2009-10 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

"5. Issue no.2 is in connection with the confirmation of the expenditure incurred upon lease hold improvements. The assessee took some premises for the purpose of his business. The premises were taken for the lease period of three years. The assessee did some improvement such as cabling work for computers / LAN, tiles, flooring, partition, fixing floor mats and other interior work etc., electrical fixtures and other

electrical works, switches and distribution boards. The Assessing Officer was of the view that the same was of the capital in nature, therefore, the same is not liable to be allowed and the same view of Assessing Officer was confirmed by the CIT(A) by virtue of order in question. The learned representative of the assessee has argued that the expenditure on lease hold is revenue in nature and also relied upon the law settled in CIT Vs. Talathi & Panthaki Associates (P.) Ltd. (343 ITR 309) (Bom.) and CIT Vs. HEDE Consultancy (P.) Ltd. (258 ITR 380) (Bom.) and CIT Vs. Hi Line Pens (P.) Ltd. (175 Taxman 132) (Delhi) and Urban Infrastructure Venture Capital Ltd. Vs. DCIT (48 taxmann.com 156) (ITAT Mumbai) and Peri India (P.) Ltd. Vs. JCIT (71 taxmann.com 79)(ITAT Mumbai). On the other hand Ld representative of the department has placed reliance upon the order passed by the CIT(A) in question.

6. Keeping in view of the arguments advanced by the learned representative of the parties and perusing the concerned record it came into the notice that the assessee took some premises on lease for the period of three years. The assessee makes improvement such as cabling work for computers / LAN, tiles, flooring, partition, fixing floor mats and other interior work etc., electrical fixtures and other electrical works, switches and distribution boards. The provision of explanation 1 of the section 32 does not disallow the leasehold improvement expenditure if it is revenue in nature. Moreover, this controversy has also been decided in the above mentioned law i.e. CIT Vs. Talathi & Panthaki Associates (P.) Ltd. (343 ITR 309) (Bom.) and CIT Vs. HEDE Consultancy (P.) Ltd. (258 ITR 380) (Bom.) and CIT Vs. Hi Line Pens (P.) Ltd. (175 Taxman 132) (Delhi) and Urban Infrastructure Venture Capital Ltd. Vs. DCIT (48 taxmann.com 156) (ITAT Mumbai) and Peri India (P.) Ltd. Vs. JCIT (71 taxmann.com 79)(ITAT Mumbai). In view of the above said law it is quite clear that the expenditure incurred on lease hold premises has been treated by the above said authorities as revenue expenditure, therefore, in view of the said circumstances we are of the view that the finding of the CIT(A) on this issue is wrong against law and facts, therefore is not liable to be sustainable in the eyes of law hence we set aside the finding of the CIT(A) on this issue and direct the Assessing Officer to consider the expenditure as revenue in nature. Accordingly, this issue is decided in favour of the assessee against the revenue.

6. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2008-09 & 2009-10, we allow the ground raised filed by the assessee. Ground raised by the assessee is allowed.

7. Coming to Ground No. 2 which is in respect of Deduction of 'education cess on income-tax' while computing total income of the Assessee. Ld. AR of the assessee invited our attention to the decision of the Hon'ble Jurisdictional High Court in the case of Sesa Goa Ltd., v. JCIT [(2020) 423 ITR 426] wherein it has been specifically stated that "education cess" is deductible while computing income under "business income". In support of his contention Ld. AR relied on the following decisions of the Coordinate Bench:

(i). *Tata Capital Ltd., v. DCIT in ITA.No. 7058/Mum/2017 (Mumbai Tribunal)*

(ii). *Voltas Ltd. v. ACIT in ITA.No. 6612/Mum/2018 (Mumbai Tribunal)*

8. On the other hand, Ld. DR supported the order of the Ld.CIT(A).

9. Considered the rival submissions and perused the material on record in the light of the case laws relied by the parties. We observe that similar issue has come up for adjudication in the case of ACIT v. M/s. Shree Pushkar Chemicals and Fertilizers Ltd., in ITA.No. 7008/Mum/2019 dated 09.08.2021 where the Coordinate Bench has decided the issue in favour of the assessee by relying on the decision of the Hon'ble Jurisdictional High Court in the case of Sesa Goa Ltd., v. JCIT (supra). For the sake of brevity, it is reproduced below: -

"8. Considered the rival submissions and perused the material on record in the light of the case laws relied upon by either party. In the instant case, the Revenue has challenged the order passed by the CIT(A) in inter-alia allowing the assessee's claim of education cess as an allowable business expenditure. We find that provisions of Section 40(a)(ii) of the Act, the education cess paid on Income Tax doesn't come under the purview of the definition as it is levied on the amount of Income Tax, but not on profits of business. We also find that the assessee also relied on the CBDT Circular no.91/58/66-ITJ(19) dated 18th May 1967, which states that the effect of the omission of the words "cess" from section 40(a)(ii) of the Act is that, only taxes paid are to be disallowed in the assessment for the assessment years 1962- 63 onwards. The assessee also relied on the judgment of Hon'ble Rajasthan High Court wherein identical issue was decided in favour of the assessee and particularly held that education cess is an allowable expenditure. We also note that the learned CIT(A) has also allowed the claim by referring to the contents of the CBDT Circular (supra) as while relying upon the judgment of the Hon'ble Rajasthan High Court. We further notice that the Hon'ble Jurisdictional High Court in the case of Sesa Goa Ltd. v/s JCIT, [2007] 294 ITR 101 (Bom.), held the similar view. In view of the aforesaid, we see no legal infirmity in the impugned decision of the learned CIT(A) and do not warrant us to interfere with the order passed by the learned CIT(A) at the instance of the Revenue. Thus, the Revenue fails on this ground."

10. Respectfully following the said decision, we allow the grounds raised by the assessee. Even in this case, Ld. AR relied on Sesa Goa Ltd., v. JCIT (supra). Ground raised by the assessee is allowed.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced on 07.02.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 07.02.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum