

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 99/Mum/2022 (A.Y. 2012-13)

Dy.CIT, CC-6(4),
Room No. 1925, 19th Floor,
Air India Building, Nariman Point,
Mumbai-400021.

..... Appellant

Vs.

India bulls Financial Services Ltd.
M-62 & 63, 1st Floor,
Connaught Place, New Delhi-110001
PAN: AAACI8570Q

..... Respondent

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| Appellant by | : | Sh. K.C. Kanojiya, CIT-DR |
| Respondent by | : | Sh. K. Gopal, Adv. Sh. Om Kandalkar, Adv. |
| Date of hearing | : | 13/07/2022 |
| Date of pronouncement | : | 07/10/2022 |

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the Revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter referred to as ['CIT(A)'] dated 20.10.2021 passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as ['the Act'] for the Assessment Year (AY) 2012-13. The Revenue has raised the following grounds of appeal:

1. *"On the facts and in the circumstances of the case, whether the learned CIT (A) erred in deleting the addition on account of Unexplained Expenditure u/s.69C of Rs.95, 000/-, the details of which were maintained in the Cash Transaction Record maintained in an excel sheet by Shri Ashok Sharma, which was found and seized during the search in the case of the India bulls Group."*
2. *"On the facts and in the circumstances of the case, whether the learned CIT(A) was justified in relying upon the decision of the Hon'ble Income Tax Settlement Commission under section 245D(4) of the Income tax Act, 1961, dated 30.04.2019. in the case of 16 other India bulls Group entities which has been challenged before the Hon'ble High Court by the revenue, in Writ Petition No. 330 of 2020, as these 16 entities of the India bulls Group had not made true and full disclosure before the Hon'ble Commission."*
3. *"On the facts and in the circumstances of the case, whether the learned CIT(A) erred in holding that all the entries of the Cash Transaction Record has been offered by the 16 entities of the India bulls Group, which had filed applications before the Hon'ble Income Tax Settlement Commission, without quantifying and identifying, which of the 16 entities, who were before the Hon'ble Income tax Settlement Commission offered the income relevant to the entries found in the name of the assessee."*
4. *"On the facts and in the circumstances of the case, whether the learned CIT (A) justified in the allowing the deduction of education cess of Rs.5, 76, 77,571/- from the business income of the assessee without considering the fact that income tax includes surcharge and education cess."*
5. *"On the facts and in the circumstances of the case, whether the learned CIT(A) erred in the allowing the deduction of education cess of Rs.5,76,77,571/- from the business income of the assessee without appreciating the order of the Hon'ble Supreme Court of India in the case of CTT vs. K. Srinivasan reported in [1972] 83 ITR 346, wherein it has been held that income tax includes Additional Surcharge, and the Finance Bill 2004 clarified that Additional Surcharge is Education Cess, both of which were not considered in the case of Sesa Goa Ltd. vs. JCIT reported in 423 ITR 426 (Bom) and PCIT vs. Chambal Fertilizers and Chemicals Ltd. in DB ITA No.52/2018."*
6. *"On the facts and in the circumstances of the case, whether the learned CIT (A) erred in the allowing the deduction of education cess of Rs.5, 76, 77,571/- from the business income of the assessee, relying upon the decision of the Hon'ble Jurisdictional High Court in the case of Sesa Goa Ltd. vs. JCIT reported in 423 ITR 426 (Bom), without appreciating that the same is pending for adjudication before the Hon'ble Supreme Court of India."*

7. *"The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be."*

2. The assessee is a company engaged in housing and finance and other ancillary services. Return of income was filed on 29th September, 2012 at ₹ 610, 34, 46,645/-. Assessment under Section 143(3) of the Income-tax Act, 1961 (the Act) concluded at income OF Rs. 613, 92, 78,690/-. Subsequently, search took place on 13th July, 2016 on India Bulls Group and consequently, notice under Section 153A of the Act was issued on 25th July, 2017. The assessee filed return of income on 12th August, 2017 at ₹ 610, 34, 46,645/-. During the course of assessment proceedings, the learned Assessing Officer made an addition of ₹95,000/- as unaccounted expenditure under Section 69C of the Act. Consequent to that, assessment order under Section 143(3) read with Section 153A of the Act was passed on 18th May, 2018 at the total income of ₹ 613,93,73,688/-.

3. Being aggrieved, Assessee preferred the appeal before the learned CIT (A). The learned CIT (A) deleted the addition of ₹95,000/- following the decision of learned CIT (A) for A.Y. 2011-12. Before him, assessee raised an additional ground of appeal in respect of deduction of education cess of ₹5, 76, 77,571/-. The learned CIT (A) admitted the same in India bulls Housing Finance Ltd; A.Y. 12-13 and allowed the claim following his order for A.Y. 2011-12. Therefore, the learned Assessing Officer is aggrieved with the same and has preferred this appeal.

4. We have heard the rival contentions. We have also perused the orders of the lower authorities. Ground no.1 to 3 relates to the addition of ₹95,000/- as unexplained expenditure. We find that identical issue arose in the case of the assessee for A.Y. 2011-12, the learned CIT (A) has deleted the identical addition, the facts in the assessment order shows that the above entries on which the

addition has been made were duly recorded in the regular books of account of the assessee and assessee also produced the copies of the relevant books of account showing the withdrawals and deposits. The learned Assessing Officer did not believe the same because of the difference in narration in the bank account. We find that there is identical expenditure which is held to be unexplained expenditure for seven years which has been deleted by the learned CIT (A). Further, it was also the claim of the assessee that the transactions have already been offered as income before the settlement commission. The learned CIT (A) deleted this addition for the reason that the amount has already been considered in income of the assessee and other entities before the settlement commission. In view of this, we do not find any infirmity in the order of the learned CIT (A) in deleting the addition. Merely because the order of the settlement commission has been challenged before the Hon'ble High Court, unless that order is reversed, we do not find any infirmity in the order of the learned CIT (A). Accordingly, ground no. 1 to 3 of the appeal is dismissed.

5. Grounds no. 4 to 6 of the appeal is with respect to the allowability of deduction of education cess. We have gone through the ratio laid down by the Hon'ble Apex Court in the case of CIT vs. K. Srinivasan (1972) 83 ITR 346 on which Revenue relied and wherein it has been held that Income Tax includes Additional Surcharge, and the Finance bill 2004 clarified that Additional Surcharge is Education Cess. Assessee relied on Hon'ble jurisdictional High Court in the case of Sesa Goa Ltd. Vs. JCIT 423 ITR 426 (Bom.) and PCIT vs. Chambal Fertilizers and Chemicals Ltd. in DB ITA No. 52/2018 (Raj.). In both the case laws relied upon by the assessee had not discussed the law laid down by the Hon'ble Apex Court in CIT vs. K. Srinivasan (1972) 83 ITR 346. We find that in view of amendment by

introduction of explanation 3 inserted by Finance Act, 2022 with retrospective effect from 1st April, 2005, assessee is not entitled for deduction of education cess. Accordingly, grounds no. 4 to 6 of the appeal is allowed.

6. In the result, appeal filed by the Revenue is partly allowed.

Order pronounced in the open court on 7th day of October, 2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 07/10/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai