

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1933/MUM/2022
(Assessment Year: 2019-20)**

Cotecna Inspection India Private Limited,
213.214.215, The Summit Business Bay,
Opp. Cinemax, Off Andheri-Kurla Road,
Prakashwadi, Andheri (East),
Mumbai - 400069
[PAN: AACCC4428K]

..... **Appellant**

Assistant Director of Income Tax,
Central Processing Centre-Bengaluru
1st Floor, Prestige Alpha No. 48/1 48/2,
Beratennagrahara Begur, Hosur Rd,
Uttarahalli Hobli, Bengaluru

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Hemlata Bhungare,
Ms. Mukti Gosar
For the Respondent/Department : Shri Dilip K Shah

Date

Conclusion of hearing : 03.01.2023
Pronouncement of order : 29.03.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 10/06/2022 passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeals Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2019-20, whereby the CIT(A) had dismissed the appeal filed by the Appellant/Assessee against the

intimation/order, dated 06/05/2020, issued/passed by Assistant Commissioner of Income Tax, CPC under Section 143(1) of the Act.

2. The Appellant has raised following grounds of appeal:

- "1 On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not allowing education cess amounting to INR 47,16,892 as a business expenditure.*
- 2. Without prejudice to Ground No. 1 above and on the facts and circumstances of the case, the Ld. CIT(A) has erred in not appreciating that education cess is not in the nature of tax or surcharge covered under section 40(a)(ii) of the Act and hence shall be allowed as business expenditure for the year under consideration.*
- 3. Without prejudice to Ground No. 1 & 2 above and on the facts and circumstances of the case, the Ld. CIT(A) has failed to appreciate that the provisions of Explanation 3 in the section 40(a)(ii) of the Act should be made applicable from April 1, 2022 and therefore shall be applicable for the relevant AYs beginning on or after April 1, 2022."*

3. The relevant facts in brief are that the Appellant claims to have filed return of income for the Assessment Year 2019-20 without inadvertently claiming deduction for education cess of INR.47,16,892/- under Section 37 of the Act. The return filed by the Appellant was processed under Section 143(1) of the Act.

4. However, the Appellant preferred appeal before the CIT(A) raising against the intimation/order, dated 06/05/2020, issued under Section 143(1) of the Act. In appeal the sole ground, which was raised as a fresh claim by the Appellant before the CIT(A), was that the Appellant is entitled to claim deduction for education cess of INR 47,16,892/- under Section 37 of the Act, inter alia, in view of the judgment of the Hon'ble Rajasthan High

Court in the case of Chamber Fertilizers and Chemicals Limited Vs. Joint Commission of Income Tax: [2019] 107 taxmann.com 484 (Rajasthan)[31-07-2018]. The CIT(A) dismissed the appeal vide order dated 10/06/2022, by placing reliance of Explanation 3 to Section 40(a)(ii) of the Act inserted by the Finance Act, 2022 with retrospective effect from 01/04/2005.

5. Being aggrieved, the Appellant her preferred the present appeal. The Learned Authorised Representative for the Appellant submitted that the Appellant was entitled to claim deduction for education cess under Section 37 of the Act since cess is not in the nature of tax or surcharge and that the Explanation 3 to Section 40(a)(ii) of the Act cannot be said to be clarificatory in nature and therefore, cannot be applied retrospectively. The Learned Departmental Representative relied upon the order passed by the CIT(A).
6. We have considered the rival submission and perused the material on record. Explanation 3 to Section 40a(ii) reads as under:

"40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall **not** be deducted in computing the income chargeable under the head "Profits and gains of business or profession",

(a) in the case of any assessee:

xx xx

ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

xx xx

Explanation 3: For the removal of doubts, it is hereby clarified that for the purposes of this sub-clause, the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax;" (Emphasis Supplied)

Finance Act, 2022 clearly provided that the above Explanation 3 would shall be inserted and shall be deemed to have been inserted with effect from 01/04/2005. The relevant extract of the Finance Act, 2022 reads as under:

"Amendment of section 40.

13. In section 40 of the Income-tax Act, in clause (a), in sub-clause (ii), after Explanation 2, the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2005, namely:

xx xx"

7. Given the clear language of Explanation 3 to Section 40(a)(ii) and the legislative intent to give effect to the amendment with effect from 01/04/2005, we do not find any infirmity in the order passed by the CIT(A). Further, we note that the Hon'ble Supreme Court has, while allowing the petition preferred by the Revenue against the judgment of the Hon'ble Rajasthan High Court in the case of Chamber Fertilizers and Chemicals Limited (supra), held as under:

"1. Leave granted.

2. Learned senior advocate appearing on behalf of the respondent-assessee states that in view of the amendment vide the Finance Act, 2022 with retrospective effect from 1-4-2005 to section 40(a)(ii) of

the Income Tax Act, 1961, the present appeal has to be allowed.

3. In view of the statement made, we direct that the Education cess paid by the respondent-assessee would not be allowed as an expenditure under section 37 read with 40(a)(ii) of the Income-tax Act, 1961.

4. Learned senior advocate appearing on behalf of the Respondent-assessee states that they have also paid the applicable tax on the disallowance."

Thus, basis on which the Appellant had set up claim before CIT(A) also does not survive.

8. In view of the above, we do not find any merit in the grounds raised by the Appellant. The order passed by the CIT(A) is sustained and appeal preferred by the Assessee is dismissed.

In result, the present appeal filed by the Assessee is dismissed.

Order pronounced on 29.03.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : .03.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai