

आयकर अपीलिय अधिकरण
मुंबई पीठ "ए", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आअसं. 2872/मुं/2023 (नि. व. 2013-14)
ITA NO.2872/MUM/2023 (A.Y.2013-14)
आअसं. 2871/मुं/2023 (नि. व. 2014-15)
ITA NO.2871/MUM/2023 (A.Y.2014-15)
आअसं. 2874/मुं/2023 (नि. व. 2015-16)
ITA NO.2874/MUM/2023 (A.Y.2015-16)
आअसं. 2870/मुं/2023 (नि. व. 2016-17)
ITA NO.2870/MUM/2023 (A.Y.2016-17)

Aarti Drugs Limited,
Plot No.9D 3rd Floor,
Mahendra Industrial Estate, Road No.29,
Sion East, Mumbai 400 022.

PAN: AAACA-4410-D

..... अपीलार्थी/Appellant

बनाम Vs.

ACIT –CC -3(2),
Room NO.1913, 19th Floor,
Air India Building,
Nariman Point, Mumbai – 400 021

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vipul Jain
प्रतिवादीद्वारा/ Respondent by : Shri Manoj Mumar Sinha
सुनवाई की तिथि/ Date of hearing : 14/12/2023
घोषणा की तिथि/ Date of pronouncement : 14/12/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These four appeals by the assessee for Assessment Years 2013-14,
2014-15, 2015-16 and 2016-17 are directed against the order of Commissioner

of Income Tax (Appeals)-51,Mumbai [in short 'the CIT(A)'] for the respective Assessment Years. All the impugned orders are of even date i.e. 20/06/2023.

2. Since identical grounds have been raised in all these appeals, they are taken up together for adjudication and are decided vide this common order. For the sake of convenience, the appeal in ITA No.2872/Mum/2023 for Assessment Year 2013-14 is taken as the lead appeal.

3. The assessee in appeal has raised following grounds:

“ 1.0 That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) [here-in-after referred to as Ld. CIT (Appeals)] was not justified and grossly erred in confirming the disallowance of education cess.

1.1 That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming the disallowance of education cess relying on retrospective amendment made in Finance Act 2022.

2.0 That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.”

4. Shri Vipul Jain appearing on behalf of the assessee submitted that the CIT(A) has erred in confirming the disallowance in respect of education cess by placing reliance on the amendment introduced by way of Finance Act, 2022, considering to be retrospective.

5. Per contra, Shri Manoj Kumar Sinha representing the Department submitted that the issue is now settled by the Hon'ble Supreme Court of India in the case of JCIT vs. Chambal Fertilizers & Chemicals Ltd., 450 ITR 164 and again in the case of CIT vs. Sesa Goa Ltd.,155 taxmann.com 34 holding Education Cess is not an allowable deduction.

6. Both sides heard. The solitary issue raised in appeal by the assessee is in respect of disallowance of education cess. It is no more res-integra that 'education cess' is not an allowable deduction under the provisions of section 37(1) r.w.s. 40(a)(ii) of the Income Tax Act, 1961 [in short 'the Act']. The Hon'ble Apex Court in the case of JCIT vs. Chambal Chemical & Fertilizers Ltd. (supra) has held that education cess paid by the assessee is not an allowable deduction u/s. 37(1) r.w.s. 40(a)(ii) of the Act. The Hon'ble Court again in the case of JCIT vs. Sesa Goa Ltd.(supra) has reiterated that education cess cannot be allowed as deduction in computing income chargeable under the head "Profits and Gains of Business or Profession." In light of aforesaid decisions we find no merit in the appeal of assessee, the same is dismissed.

ITA NO.2871/MUM/2023-A.Y.2014-15
ITA NO.2874/MUM/2023 – A.T. 2015-16 &
ITA NO.2870/MUM/2023 – A.Y. 2016-17:

7. Identical grounds have been raised by the assessee in Assessment Year 2014-15 to 2016-17. The said appeals of the assessee are dismissed for parity of reasons as stated in Assessment Year 2013-14.

8. In the result, appeals of the assessee for 2013-14 to 2016-17 are dismissed.

Order pronounced in the open court on Thursday the 14th day of December, 2023.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER
 मुंबई/Mumbai, दिनांक/Dated: 14/12/2023
 Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
- 5.. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai