आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 323/Ind/2024
Assessment Year: 2018-19

Dewas Metal Sections Ltd., 1,Village Amona, A.B. Road, Dewas	बनाम/ Vs.	DCIT, Range 1(1), Indore.
(Assessee/Appellant)		(Revenue/Respondent)
PAN : AABCDO739K		
Assessee by	Shri P.D. Nagar, AR	
Revenue by	Shri Ram Kumar Yadav, CIT DR	
Date of Hearing	21.08.2024	
Date of Pronouncement	30.08.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 21.02.2024 passed by learned Pr. Commissioner of Income-Tax, Indore-1 ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of assessment-order dated 12.04.2021 passed by learned NFAC, Delhi ["AO"] u/s 143(3) of the act for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee filed return of income of relevant AY 2018-19 which was subjected to scrutiny-assessment and the AO completed assessment u/s 143(3) vide order dated 12.04.2021. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 22.01.2024 and finally passed revision-order dated 21.02.2024. Aggrieved by such revision-order, the assessee has come in this appeal before us.

3. Ld. AR for assessee carried us to revision-order and demonstrated that there is one single issue for which the PCIT undertook revision. The PCIT has noted that the assessee debited an amount of Rs. 14,79,799/- (or Rs. 14,79,263/-) as "Old Balance of Education Cess Written off" and claimed deduction thereof but the same was disallowable u/s 40(a)(ii) because of ***Amendment made by Finance Act, 2022 w.r.e.f. 01.04.2005 [by way of insertion of Explanation 3 to section 40(a)(ii)]*** and decision of ***Hon'ble Supreme Court in M/s Chambal Fertilizers & Chemical Limited, SLP(C) No. 7379 of 2019 judgement dated 14.12.2022***. The PCIT has further noted that during assessment-proceeding, the AO has even not enquired into this issue. Therefore, the assessment-order passed by AO is rendered erroneous-cum-prejudicial to the interest of revenue.

4. Having explained the basis of revision done by PCIT, Ld. AR drew us to

Para 3 of revision-order wherein the reply filed by assessee to show-cause notice issued by PCIT, is re-produced by PCIT himself. Referring to same, Ld. AR explained that it was a submission of assessee to Ld. PCIT that the impugned deduction claimed by assessee was relatable to 'indirect tax/excise duty' and not to 'direct-tax/income-tax'. Explaining further the crux of the matter, Ld. AR submitted that the assessee was eligible to claim credit of Basic Excise Duty and Education Cess thereon paid on purchase of raw materials against Excise Duty and Education Cess payable on sale of finished goods till 30.06.2017 under then prevailing regime of Excise Law called "CENVAT". Subsequently, when GST law came into force in the country from 01.07.2017 in replacement of CENVAT, the assessee was eligible to claim credit of unutilised excise duties against GST liability but still the credit of component of unutilised 'Education Cess' was not allowed by virtue of section 140 of GST Act. Since the assessee was having unutilised education cess as on 30.06.2017 amounting to Rs. 14,79,263/- as per audited books of account, the same was written off in P&L A/c. The assessee also filed unit-wise complete details of unutilised education cess of Rs. 14,79,263/- for its three units located at Dewas, Ranipet and Pune in its reply to PCIT, which is noted by PCIT at Page No. 6 of revision-order. Ld. AR also drew us to the undermentioned portion of section 140 of GST Act which prohibited credit of 'education cess':

> *"Explanation 3 – For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is*

collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act".

Ld. AR has also filed complete text of provision of section 140 of GST Act at Page 4-8 of Paper-Book.

5. Ld. AR then submitted that the provision of section 40(a)(ii) and for that matter the amendment made in said provision by Finance Act, 2022 by way of insertion of Explanation 3 as also the decision in ***Chambal Fertilizer (supra)*** disallows 'income-tax' and 'education cess levied under income-tax' whereas the assessee's case involves deduction of 'education cess relatable to excise duty/CENVAT' which is a component of indirect tax. Therefore, Ld. AR contended, the deduction claimed by assessee is not hit by disallowance provision of section 40(a)(ii) and the Ld. PCIT has wrongly observed that disallowance was attracted.

6. So far as enquiry by AO during assessment-proceeding is concerned, Ld. AR carried us to the enquiry-letter dated 13.02.2021 issued by AO u/s 142(1) wherein vide Para No. 7, the AO asked assessee to furnish ledger accounts and supporting evidences of debit entries exceeding Rs. 1 lac in P&L A/c (Paper-Book Page 15-17) and in reply dated 10.03.2021 vide Para 7(C) the assessee explained that major increase was under the head administrative expenses which included 'education cess written off' amounting to Rs. 14.80 lacs for which input credit was not available due to enactment of GST Act with effect from 01.07.2017 (Paper-Book Page 9-14). Thus, during assessment-proceeding also, the assessee made a clear-cut

explanation qua the impugned item to AO.

7. With above submissions, Ld. AR submitted that there is no error in the assessment-order of AO or even there is no prejudice to the interest of revenue because the claim of assessee was very much allowable as deduction and not hit by the provision of section 40(a)(ii). Accordingly, Ld. AR prayed that the revision-order passed by PCIT is not correct and must be quashed and the AO's assessment-order must be restored.

8. Per contra, Ld. DR only supported the revision-order.

9. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. On a careful consideration, we find that the sole basis of revision undertaken by PCIT is the claim of deduction of 'education cess written off' by assessee. The assessee has filed before AO during assessment-proceeding and before PCIT during revision-proceeding, the nature/details of the impugned claim according to which it was a claim of education cess relatable to excise duty/CENVAT and not to income-tax. There is no dispute or rebuttal by revenue to this factual nature of assessee' claim. Therefore, what remains to be checked is only a legal aspect as to whether the said claim of assessee is disallowable in terms of section 40(a)(ii) or not? Ld. PCIT has viewed that the claim of assessee is disallowable u/s 40(a)(ii) read with Explanation-3 introduced therein

through Finance Act, 2022 but his view, in our considered opinion, is not correct because the provision of section 40(a)(ii) reads as under:

> Section 40(a)(ii):
>
> *"(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.*
>
> *XXX*
>
> *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;"*

Thus, the provision of section 40(a)(ii) disallows any tax levied on the profits or gains of any business and the 'cess' levied on such tax. Such tax and cess would, of course, be 'income-tax' or 'education cess on income-tax'. The Excise duty/CENVAT and education cess thereon was levied on production of goods and not on the profit or gain of business. Therefore, the assessee is very correct in claiming that the education cess written off by it was not hit by the provision of section 40(a)(ii) or by Explanation 3 thereto. When the claim made by assessee is not disallowable u/s 40(a)(ii), there is nothing wrong in the order of AO in giving deduction to assessee. Moreover, during assessment-proceeding, the assessee has submitted the details of claim to AO in response to the notice u/s 142(1), therefore also it is discernible that the AO was very much aware of the allowability of claim of assessee. Thus, looking into these aspects, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the

revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and re-store original assessment-order passed by AO. The assessee succeeds in this appeal.

10. Resultantly, this appeal is allowed.

Order pronounced in open court on 30.08.2024

Sd/-	sd/-
(VIJAY PAL RAO)	(B.M. BIYANI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 30.08.2024
CPU/Sr. PS

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore