

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं**  
**माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकर अपील सं. ITA No.2508/Chny/2024**  
**(निर्धारण वर्ष / Assessment Year: 2022-23)**

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| Shri Sankaranarayanan Ramasubramanian<br>J-193/851, 6 <sup>th</sup> Avenue,<br>Anna Nagar S.O. Chennai-600 040. | <b>बनम/</b><br>Vs. | <b>ACIT</b><br>Non-Corporate Circle-7(1)<br>Chennai. |
| स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AFRPR-4067-C</b>  |                    |  |
| (पीलार्थी/ <b>Appellant</b> )   | :                  | (प्रत्यर्थी / <b>Respondent</b> )                    |

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| अपीलार्थी की ओरसे/ <b>Appellant by</b>   | : | Shri K. Ramakrishnan (CA) - Ld.AR      |
| प्रत्यर्थी की ओरसे/ <b>Respondent by</b> | : | Ms. R. Kavitha (Addl.CIT) - Ld. Sr. DR |

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| सुनवाई की तारीख/ <b>Date of Hearing</b>       | : | 18-12-2024 |
| घोषणा की तारीख / <b>Date of Pronouncement</b> | : | 31-12-2024 |

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2022-23 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 30-07-2024 in the matter of an intimation issued by CPC u/s 154 of the Act on 02-05-2023 levying education cess on total tax liability including tax liability as per rates as prescribed under Double Taxation Avoidance Agreement (DTAA). The short question that arises for our consideration is to determine whether the education cess would apply to DTAA rates or not.

2. From case records, it emerges that the assessee is citizen of USA and residing permanently in India. The assessee declared income of Rs.668.30 Lacs out of which income earned in India amounted to Rs.9.13 Lacs. The CPC processed the return of income and raised demand of Rs.3.11 Lacs after levying education cess on entire tax including DTAA rates. The assessee preferred rectification application u/s 154 which was rejected. In first appeal, the assessee submitted that the rates as specified in DTAA include surcharge and surtax. The education cess would be applicable only for income earned in India. Reliance was placed on various decisions of Tribunal to support the same. However, Ld. CIT(A) rejected the same on the ground that education cess is an additional levy that is applied on the basic tax liability by the Government to generate revenue for education. The assessee claimed relief u/s 90. The case laws being relied upon by the assessee were held to be not applicable. Aggrieved, the assessee is in further appeal before us.

3. Upon perusal of rectification order u/s 154 dated 02-05-2023, it emerges that the total income as declared by the assessee for Rs.668.30 Lacs has been accepted by CPC. The income earned in India is Rs.9.13 Lacs whereas the remaining income is earned from abroad which has been subjected to tax at special rates as per DTAA. The Tax on normal income has been computed as Rs.0.92 Lacs whereas other tax at special rates has been computed as Rs.132.49 Lacs. The total tax liability thus works out to be Rs.133.41 Lacs. The same has also been accepted by CPC. The only dispute is that CPC has computed education cess on entire tax liability whereas the assessee has computed cess on tax liability only on income as arising in India. The Ld. CIT(A) has denied

the claim on the ground that the assessee has claimed relief u/s 90. However, in our considered opinion, tax rates are computed first and thereafter, applicable relief is granted to the assessee. As per Article 2(1)(b)(i) & (ii) of India-USA DTAA, surcharge and surtax are included in the maximum rates as specified under Articles 10 and 11 of DTAA. Therefore, when Article-2 states that surcharge is included in Income Tax and the Tax Rate as prescribed under Article 10 / 11 shall be deemed to include tax surcharge and since cess is nothing but an additional surcharge, the prescribed tax rates under DTAA shall be deemed to include the cess also. We find that this issue has been addressed in various decisions of Tribunal. In the decision of Kolkata Tribunal in the case of **DDIT vs. The BOC Group Ltd. (ITA No.571/Kol/2013 dated 30-11-2015)**, it was held that surcharge and education cess is not leviable when the tax rates are prescribed under DTAA. Similar is the decision of Cochin Tribunal in **ITO vs. M/s M. Far Hotels Ltd. (ITA Nos.430 to 435/Coch/2011 dated 05-04-2013)** as well as the decision of Mumbai Tribunal in **Sunil V. Motiani vs. ITO (ITA No.276/Mum/2012 dated 27-02-2013)**. No contrary decision has been shown to us. Accordingly, we hold that the tax rates as prescribed under DTAA would embed education cess as well. The CPC is directed to re-compute the tax liability of the assessee.

4. The appeal stand allowed in terms of our above order.

*Order pronounced on 31<sup>st</sup> December, 2024*

Sd/-  
(MANU KUMAR GIRI)  
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 31-12-2024  
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF