

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6754/MUM/2018
Assessment Year: 2013-14**

Overseas Polymers Private
Limited,
A-41, Vinmar House, MIDC
Road No. 2, Andheri East,
Mumbai-400093.

PAN No. AAACV1895M
Appellant

Vs. The ACIT-10(3)(1),
Mumbai-400021.

Respondent

Assessee by : Mr. Dhanesh Bafna, AR
Revenue by : Mr. Manpreet Duggal, DR

Date of Hearing : 17/12/2020
Date of pronouncement : 17/12/2020

ORDER

PER N.K. PRADHAN, A.M.

The appeal filed by the assessee is directed against the order passed by the Assistant Commissioner of Income Tax, 10(3)(1), Mumbai u/s 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (the Act).

2. In the beginning of hearing, the Ld. counsel for the appellant submits that the 1st, 2nd and 3rd grounds of appeal are not pressed only due to smallness of the amount. Having heard the above contentions and examined the facts of the case, the above grounds of appeal are dismissed as not pressed due to smallness of amount.

3. The assessee has filed an additional ground of appeal to claim deduction for the payment made by it towards education cess and secondary and higher education cess. This being a pure question of law, relying on the judgment of the Hon'ble Supreme Court in the case of *NTPC Ltd. v. CIT* (1998) 229 ITR 383 (SC), wherein it is held that a question of law can be raised before the Tribunal for the first time which has a bearing on the tax liability of an assessee, notwithstanding the fact that the same was not raised before the lower authorities, we admit the above additional ground for adjudication.

4. Before us, the Ld. counsel submits that the judicial position on admissibility of deduction for amounts paid towards education cess and secondary & higher education cess is now settled pursuant to the decision of the Hon'ble Bombay High Court in the case of *Sesa Goa Ltd. v. JCIT* (2020) 117 taxmann.com 96 and the Hon'ble Rajasthan High Court in the case of *Chambal Fertilizers & Chemicals Ltd. v. CIT* (ITA No. 52/2018), wherein it is held that the expression "cess" ought not to be read or included in the expression "any rate or tax levied" as appearing in section 40(a)(ii) of the Act.

5. On the other hand, the Ld. Departmental Representative (DR) argues that "cess" is nothing but "tax" and therefore, there is no question of deduction of amounts paid towards "cess" when it comes to computation of income chargeable under the head "profit or gains of any business or profession". In support of the above contentions, the Ld. DR relies *inter alia* on the decision in *Travancore Titanium Products Ltd. v. CIT* (1966) 3 SCR 321, *Smith Kline amp; French (India) Ltd. v. CIT* (1996) 219 ITR 581 (SC).

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

In *Sesa Goa Ltd.* (supra), the following substantial question of law inter alia was raised :

“(iii) Whether on the facts and in the circumstances of the case and in law, the Education Cess and Higher and Secondary Education Cess is allowable as a deduction in the year of payment.”

The Hon'ble Bombay High Court has observed that the legislature in Sec. 40(a)(ii) has though provided that “any rate or tax levied” on “profits and gains of business or profession” shall not be deducted in computing the income chargeable under the head “profits and gains of business or profession”, but then there was no reference to any “cess”. Also, the High Court observed that there was no scope to accept that “cess” being in the nature of a tax was equally not deductible in computing the income chargeable under the head “profits and gains of business or profession”. It is further observed that if the legislature would had intended to prohibit the deduction of amounts paid by an assessee towards say, “education cess” or any other “cess”, then, it could have easily included a reference to “cess” in clause (ii) of Section 40(a). On the basis of its aforesaid observations, the Hon'ble High Court has concluded that now when the legislature had not provided for any prohibition on the deduction of any amount paid towards “cess” in clause (ii) of Sec. 40(a), therefore, holding to the contrary would amount to reading something which is not to be found in the text of the provision of Sec. 40(a)(ii). Accordingly, the Hon'ble High Court has concluded that there was no prohibition on the deduction of any amount paid towards “cess” in Sec. 40(a)(ii), while computing the income chargeable under the head “profits and gains of business or profession”.

6.1 Similar view has been taken by the Hon'ble Rajasthan High Court in *Chambal Fertilizers & Chemicals Ltd.* (supra), after considering the decision

in *Travancore Titanium Products Ltd.* (supra) and *Smith Kline amp; French (India) Ltd.* (supra).

6.2 Respectfully following the decision in *Sesa Goa Ltd.* (supra) and *Chambal Fertilizers & Chemicals Ltd.* (supra), we hold that the assessee shall be entitled for deduction of education cess and higher & secondary education cess while computing income chargeable under the head “profits and gains of business or profession”.

6.3 Accordingly, the additional ground of appeal is allowed.

7. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 17/12/2020.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 17/12/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai