

Cess paid can be deducted while computing Income chargeable under the head 'Profits and Gains of Business or Profession

Overseas Polymers Private Limited vs. The ACIT, Mumbai

Case No.- ITA No. 6754/MUM/2018

Date- 17/12/2020

Fact of the Case

- ⇒ In the present case Overseas Polymers Private Limited is the assessee
- ⇒ The assessee, Overseas Polymers Private Limited 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.
- ⇒ The counsel for the assessee, Mr. Dhanesh Bafna submitted that the judicial position on admissibility of the deduction for amounts paid towards education cess and secondary & higher education cess is now settled pursuant to the decision of the Bombay High Court in the case of Sesa Goa Ltd. v. JCIT and the Rajasthan High Court in the case of Chambal Fertilizers & Chemicals Ltd. v. CIT, 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.
- ⇒ On the other hand, the Departmental Representative, Manpreet Duggal argued 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”.

Decision of the Case

- ⇒ The coram consists of Saktijit Dey and N.K. Pradhan in the light of the Sesa Goa Ltd. v. JCIT and Chambal Fertilizers & Chemicals Ltd. v. CIT noted that the legislature in Section 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”.
- ⇒ The tribunal also 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).
- ⇒ Therefore, the ITAT held that there was no prohibition on the deduction of any amount paid towards “cess” in Section 40(a)(ii), while computing the income chargeable under the head “profits and gains of business or profession”.

⇔ “The assessee shall be entitled to a deduction of education cess and higher & secondary education cess while computing income chargeable under the head “profits and gains of business or profession,” the ITAT said.