

Budget Proposal

The Finance Bill 2022 has clarified that tax shall include and deemed to have always included any surcharge or cess, by whatever name called, on such tax.

Accordingly, education cess & others would not be allowed as a deduction while computing “Profits and gains of business or profession”. This amendment is proposed to come into effect from April 1, 2005, and accordingly would apply in relation to AY 2005-06 and thereafter.

Impact

The proposed retrospective amendment will impact the taxpayers that have been claiming deduction of education cess while computing “Profits and gains of business or profession” by relying on the decision of Rajasthan High Court in the case of Chambal Fertilisers (ITA 52 of 2018) and Bombay High Court in the case of Sesa Goa (117 taxmann.com 96).

The proposed amendment overrules the principle laid by the judicial rulings including above rulings of Rajasthan High Court and Bombay High Court in the context of Section 40(a)(ii) of the Income-tax Act 1961 (IT Act) and the decision of the Kolkata Tribunal in case of ITC Limited (ITA no. 685/Kol/2014) and Gloster Ltd. [2021] (187 ITD 626) in the context of Section 37 of the IT Act, where the deduction was held and allowed.

ELP’s Insights

The proposal affirms the principle laid by Kolkata ITAT in case of Kanoria Chemicals and Industries Ltd. (ITA 2184/Kol/2018) wherein the ITAT ruled in favour of the IT Department by relying on the decision of Hon'ble Supreme Court (SC) judgment in case of CIT v. K Srinivasan [1972] 83 ITR 346 and contradicting the earlier jurisdictional ITAT judgments as well as the rulings of Bombay High Court and Rajasthan High Court.

This proposal will adversely impact the taxpayers who have claimed a tax deduction of education cess in their return of income and/or in the course of assessment proceedings. Further, given the retrospective nature of the amendment, appeals on this issue, pending before the Tribunals/ Courts may stand disposed in favour of the IT Department. That said, favourable rulings by the High Courts and the clarificatory nature of the amendment should provide a strong defence against potential penalty, if any, raised or to be raised by the tax authorities.

It may also be noted that the position, hence, stands clarified for cesses and surcharges paid on income tax. The position for deductibility of cesses and surcharges on any other tax or duty sustains.

