

## Assessee, not liable to pay education cess and secondary and higher education cess when tax as per DTAA

**Summary – The Mumbai ITAT in a recent case of Parke Davis and Company LLC, (the Assessee) held that Assessee, a US based company, was not liable to pay education cess and secondary and higher education cess on tax payable by it, when tax was determined as per article 12 of DTAA between India and USA.**

### Facts

- The Commissioner (Appeals) held that the education cess and secondary and higher education cess was leviable on tax payable by the assessee, a US based company. The said tax had been determined as per article 12 of the DTAA between and USA.
- On second appeal, the assessee submitted that the education cess and secondary and higher secondary education cess was not liable to be payable when tax was determined as per DTAA between India and USA.

### Held

- The ITAT held that the issue raised by the assessee is covered in its favour by the decision of the Mumbai Bench of the Tribunal rendered in the case of *Sunil V. Motiani v. ITO* [\[2013\] 33 taxmann.com 252/59 SOT 37 \(Mum.\)](http://taxmann.com/252/59_SOT_37_(Mum.)). Following the said decision, the order passed by the Commissioner (Appeals) was liable to be set aside.
- In the result, the appeal filed by the assessee deserved to be allowed.