

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.666/Del./2014
(ASSESSMENT YEAR : 2010-11)**

M/s. AMQ Agro India Pvt. Ltd., vs. ACIT,
C – 134, Ground Floor, Defence Colony, CPC,
New Delhi – 110 024. Bangalore.

(PAN : AAECA0929M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : S/Shri Rakesh Gupta, Somil Agarwal and
Abhishek Anand, Advocates
REVENUE BY : Shri K.K. Jaiswal, DR

Date of Hearing : 07.04.2016

Date of Order : 29.04.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. AMQ Agro India Pvt. Ltd. (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 14.11.2013 passed by CIT (A) confirming the rectification order u/s 154 of the Income-tax Act, 1961 (hereinafter 'the Act') passed by the Assessing Officer qua the Assessment Year 2010-11 on the grounds inter alia that:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the

action of Ld. AO in not giving due tax credit of MINIMUM ALTERNATE TAX (MAT) of Rs.5,11,611/- under section 115JAA of Income Tax Act, 1961 as claimed by the assessee in its return of income.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that claim of the assessee for an amount of Rs.43,58,319/- as MAT credit is not allowable.

3. That in any case and in view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in not allowing the MAT credit u/s 115JAA is bad in law and against the facts and circumstances of the case and impugned order has been framed without giving adequate opportunity of hearing and without following the principles of natural justice.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.

5. That the appellant prays for leave to add, alter, amend or delete any of the above Grounds of Appeal either before or at the time of hearing.”

2. Briefly stated, the facts of this case are : the assessee claimed credit of Minimum Alternate Tax (MAT) u/s 115JAA to the tune to Rs.43,58,319/- in column no.6 under MAT Schedule MATC of ITR-6, in its return of income filed on 26.09.2010. However, the Central Processing Centre (CPC) vide its intimation u/s 143 (1) has given the credit to the assessee to the tune of Rs.38,43,706/-. Even after rectification filed by the assessee u/s 154 for getting full credit, he was not allowed full credit and vide order dated 16.08.2012 passed u/s 154, a demand of Rs.5,95,010/- has been raised.

3. The assessee carried the matter before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. The Id. CIT (A) dismissed the claim of the assessee as to not giving the due tax credit for MAT to the tune of Rs.5,11,611/- u/s 115JAA of the Act by returning following findings :-

“5.3 I have carefully considered the submissions of the Id. AR and perused the order passed by the CPC, Bangalore. I find that in the order u/s 154 dated 16.08.2012 it has been mentioned in the column 1 serial no. 19 against tax payable of total amount comes to Rs.72,73,251/-. The tax payable u/s 115JB comes to Rs.34,26,545/- and gross tax payable comes to Rs.72,73,251/-. The credit for tax paid u/s 115JAA has been given at Rs.38,46,706/-. I further find that regular tax has been calculated at Rs.72,73,251/-. The surcharge of Rs.7,27,325/- and education cess of Rs.2,40,017/- has been added making the total regular tax at Rs.82,40,593/-. Tax under MAT has been calculated at Rs.34,26,545/- and surcharge on MAT at Rs.3,42,654/-. Thus, the total of tax under MAT comes to Rs.37,69,199/-. Education cess on this amount comes to Rs.1,13,076/-. Thus, the total amount under MAT comprising of tax, surcharge and education cess comes to Rs.38,82,274/-. Accordingly, the CPC has allowed the credit of Rs.38,46,706/-. However, the appellant has claimed the credit of Rs.43,58,319/- by calculating the surcharge and education cess on total amount of MAT at Rs.38,82,274/- which is not allowable under the Act. In view of the above facts, I do not find any infirmity in the order passed u/s 154. Therefore, these grounds are rejected.”

6. Undisputedly, the assessee has claimed the credit of Rs.43,58,317/- inclusive of surcharge and education cess on the

total amount of MAT i.e. Rs.38,82,274/-. The CIT (A) disallowed the claim of the assessee to the tune of Rs.5,95,010/- on the ground that credit of surcharge and education cess on the total amount of MAT is not allowable.

7. Now, the sole question arises for determination in this case is **“as to whether the assessee is entitled for the credit of Rs.43,58,319/-, by calculating surcharge and education cess on the total amount of Rs.38,82,274/-.”**

8. This issue has been decided by the Hon'ble Apex Court in judgment cited as **Commissioner of Income-tax, Kerala vs. K. Srinivasan – (1972) 83 ITR 346** and the operative part of the judgment is reproduced for ready reference as under :-

“ The term "income-tax" as employed in section 2 of the Finance Act, 1964, includes surcharge and additional surcharge wherever provided. The surcharge, the special surcharge and the additional surcharge form a part of income-tax and super-tax.

Sub-section (2) of section 2 of the Finance Act, 1964, provides that, when the total income of an assessee not being a company includes any income chargeable under the head "Salaries", income-tax and super-tax payable by the assessee on the salary portion of the total income shall be the proportionate amount payable according to the rates provided in the Finance Act, 1963. Under the Finance Act, /963, income-tax shall be increase by a surcharge, special surcharge and additional surcharge, while super-tax shall be increased by a surcharge and special surcharge in the manner provided in the said Act. But sub-section (2) of section 2 of the Finance Act, 1964, did not mention any of these surcharges. The assessee, whose total income included Rs.42,900 under the head" Salaries ", contended that the salary portion of his total income was chargeable only to income-tax and super-tax, and not to any of the surcharges :

Held, that in assessing income-tax and super-tax on the salary received by the assessee, in accordance with section 2(2) of the Finance Act, 1964, nor merely the income-tax and super-tax at the rates applicable under the Finance Act, 1963, but the surcharges prescribed thereunder had to be charged.”

9. Even otherwise Explanation 2 of section 115JB categorically clarifies that the amount of Income-tax shall inter alia include surcharge, if any and education cess on income-tax etc. For facility of reference, provisions contained under Explanation (2) of section 115JB are reproduced as under :-

“[Explanation 2.—For the purposes of clause (a) of Explanation 1, the amount of income-tax shall include—

- (i) any tax on distributed profits under section 115-O or on distributed income under section 115R;
- (ii) any interest charged under this Act;
- (iii) surcharge, if any, as levied by the Central Acts from time to time;
- (iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and
- (v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.]

10. By applying the ratio of the judgment in case of **K. Srinivasan** (supra) and provisions contained under Explanation (2) of section 115JB, we are of the consider view that the CIT (A) has erred in not giving the due credit of MAT of Rs.5,11,611/- u/s 115JAA of the Act as MAT includes surcharge on MAT as well as

education cess and the same was undisputedly paid by the assessee during the year under assessment. Consequently, the impugned order is set aside.

11. In view of what has been discussed above, we hereby allow the present appeal filed by the assessee for statistical purposes.

Order pronounced in open court on this 29th day of April, 2016.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of April, 2016
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**