

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BENCH 'B', BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.168/Bang/2017
(Asst. Year – 2012-13)

The Asst. Commissioner of Income Tax,
LTU,
Bengaluru. . Appellant

Vs.

M/s Mindtree Ltd.,
Global Village, RVCE Post,
Mysore Road,
Bengaluru. . Respondent

Appellant by : Ms. Neera Malhotra, CIT
Respondent by : Shri Tata Krishna, Advocate

Date of Hearing : 27-9-2017

Date of Pronouncement : 28-9-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against order of Commissioner of Income-tax (Appeal) - 14, LTU, Bangalore dated 28/4/2015 for asst. year 2012-13.

2. Briefly stated, the relevant facts of the case are as under:-

2.1 The assessee, a company engaged in the business of software development, consultancy services and provision of internet

enabling technology, filed its return for asst. year 2012-13 on 28/9/2012 declaring total income of Rs.101,12,19,490/- after claiming deduction of Rs.147,80,38,833/- u/s 10AA of the Income-tax Act, 1961 (in short 'the Act'). The assessment was completed u/s 143(3) of the Act vide order dated 24/3/2015 wherein the income under the normal provisions was determined at Rs.101,66,39,840/- in view of disallowance of a portion of the deduction claimed u/s 10AA of the Act and disallowance out of club expenses. 'Book profits' u/s 115JB of the Act were computed at Rs.255,29,37,583/-.

2.2 Aggrieved by the order of assessment dated 24/3/2015 for asst. year 2012-13, the assessee preferred an appeal before the CIT(A)-14, LTU, Bangalore. The ld CIT(A) disposed off the appeal, allowing the assessee partial relief.

3.1 Revenue, being aggrieved by the order of the CIT(A)-14, LTU, Bangalore, has filed this appeal, wherein it has raised the following grounds:-

1. *The order of Ld. CIT(A) is opposed to law and facts of the case.*
2. *The Ld. CIT(A) erred in deciding that the MAT credit should include surcharge and education cess.*
3. *For these and such other grounds that may be urged at the time of hearing."*

3.2. The sum and substance of the issue raised in Revenue's appeal (Supra) is that the ld CIT(A) erred in holding that MAT

credit should include surcharge and education cess. The Id DR was heard in support of the grounds raised.

3.3 Per contra, the Id AR for the assessee submitted that there was no error in the order of Id CIT(A) on this issue as this issue is no longer res integra in view of the decision of the Hon'ble Apex Court in the case of CIT Vs. Tulsyan NEC Ltd., (330 ITR 226). The Id AR also placed reliance on the decision of the Hon'ble Calcutta High Court in the case of Srei Infrastructure Finance Ltd., Vs. DCIT (2016) 289 CTR 412 (Calcutta) and of the ITAT Delhi Bench in the case of AMQ Agro India Pvt. (ITA No.666/Del/2014 dated 29/4/2016).

3.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. On a perusal of the impugned order, we find that the Id CIT(A) following the decision of the Hon'ble Apex Court in the case of Tulsyan NEC Ltd., (Supra) has allowed the assessee's claim that there should be full grant of MAT credit i.e, including surcharge and cess. The relevant portion of the impugned order of the CIT(A) at para 8 and 8.1 is extracted hereunder:-

“8. The AO did not carry forward the surcharge and education cess component on MAT. The appellant pointed out that the definition of 'Tax' u/s. 2(43) of the ITA should be read with Explanation 2 to section 115JB which states that "tax" includes all the three components: tax, surcharge and cess. It was argued

that the same meaning should apply to all the provisions of MAT and, hence, there should be full grant of MAT credit i.e. including surcharge and cess. Reliance was placed upon on the 'Supreme Court's decision in the case of CIT v. Tulsyan NEC Ltd.(330 ITR 226).

8.1 I am in agreement with the above interpretation. The AO is directed to recompute accordingly. This ground, therefore, succeeds.”

3.4.2 The ITAT, Delhi Bench in the case of AMQ Agro India Pvt. Ltd., in ITA No.666/Del/2014 dated 29/4/2016 has considered the identical issue and at para 7 to 10 thereof has held as under:-

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, 1963, income-tax shall be increased 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 1153B 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 115-0 or on distributed income tinder 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 1153B, 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.”

3.4.3 Similar view has been taken by the Hon'ble Calcutta High Court in the case of Srei Infrastructure Finance Ltd., (2016) 289 CTR 412 (Calcutta); wherein following the decision of the Hon'ble Apex Court in the case of CIT Vs. Tulsyan NEC Ltd., (2011) 330 ITR 226 (SC), the Hon'ble Court held that MAT credit is to be allowed against tax on total income including the amount of surcharge and cess instead of adjusting the same tax on total income before charging such surcharge and education cess.

3.4.4 Taking into considering the facts and circumstances of the case and respectfully following the decision of the Hon'ble Apex Court in Tulsyan NEC Ltd., (Supra); of the Hon'ble Calcutta High Court in the case of Srei Infrastructure Finance Ltd., (Supra) and of the ITAT, Delhi Bench in the case of AMQ Agro India Pvt. Ltd., (Supra), we uphold the order of the Id CIT(A) granting the assessee MAT credit u/s 115JB of the Act against tax on total income including surcharge and cess instead of adjusting the same on total income before charging such surcharge and education cess. Consequently, finding no merit in the grounds 1 to 3 (Supra) raised by Revenue, we dismiss the same.

4. In the result, Revenue's appeal for asst. year 2012-13 is dismissed.

Order pronounced in the open court on **28th September, 2017.**

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore

Dated : 28/9/2017

Vms

- Copy to :
1. The Assessee
 2. The Revenue
 3. The CIT concerned.
 4. The CIT(A) concerned.
 - 5 .DR
 6. GF

By order

Sr. Private Secretary, ITAT, Bangalore.