

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE SH.R.K.PANDA, ACCOUNTANT MEMBER
AND
SH.K.N.CHARY, JUDICIAL MEMBER**

**ITA No. 6068/Del/2015
(ASSESSMENT YEAR: 2013-14)**

Surya Roshni Ltd., 2 nd Floor, Padma Tower-I, 5, Rajendra Place, New Delhi-110008. PAN-AAACS3558C	vs	DCIT, Circle-I, LTU New Delhi.
(Appellant)		(Respondent)

Appellant by	Sh. Arvind Kumar, Adv.
Respondent by	Sh. Amit Jain, Sr.DR
Date of Hearing	18.10.2017
Date of Pronouncement	27.10.2017

ORDER

PER K.N.CHARY, JUDICIAL MEMBER

This appeal preferred by the assessee is directed against the order dated 26.08.2015 in appeal No.173/14-15 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-22, New Delhi for 2013-14 Assessment Year, on the following grounds:

1. *"That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in holding that charging interest under section 234B & 234C on amount of MAT payable calculated under section 115JB of the Income Tax Act, '1961 on book profit instead of tax payable calculated as per normal provision of Income tax Act, 1961 on current income of the relevant financial year.*
2. *That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in disregarding the law settled down by Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Tulsyan NEC Limited [2011]*

196 TAXMAN 181 that MAT credit balance is to be considered for the purpose of determination of liability to pay advance tax, consequently for the purpose of levy of interest under sections 234B & 234C also.

3. *That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law in considering only the part of judgment and disregarding the settled legal position laid down in the case of Commissioner of Income Tax v Jindal Exports Limited [2009] 179 TAXMAN 391 that MAT credit balance available for set off in a year falls within the meaning of "Advance Tax".*
 4. *That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in fact and in law by disregarding the legal position already settled by the Hon'ble ITAT in the appellant's own case that MAT Credit available is to be first reduced from advance tax payable for the purpose of computation of interest under section 234B & 234C of the Income Tax Act, 1961.*
 5. *That the appellant craves leave to add, amend or alter any of the grounds of appeal."*
2. Briefly stated facts are that the assessee is a MAT company and for the AY 2013-14, they have filed their return of income on 27.11.2013 declaring a total income of Rs.33,86,51,780/-. The book profits calculated in accordance with the provision u/s 115JB of the Act were Rs.76,74,99,427/-. According to the assessee, tax paid on the income calculated as per the normal provisions of the Act i.e. Rs.33,86,51,780/- was Rs.10,91,86,476/- whereas MAT payable on the book profit was Rs.15,35,59,367/-. Intimation u/s 143(1) indicated that interest u/s 234B & 234C at Rs.36,64,620/- and Rs.40,38,823/- respectively was charged on the MAT payable of Rs.15,35,59,367/- on the book profit of Rs.76,74,99,427/-. The assessee challenged this levy of interest by way appeal before the Ld.CIT(A) and the Ld.CIT(A) by way of the impugned order dismissed this appeal, holding that MAT credit can be claimed for set off only in respect of the tax as per the

normal provision of the Act over and above the MAT but not in respect of the MAT in excess of the normal tax. Hence this appeal by the assessee.

3. It is the argument of the Ld.AR that the findings of the Ld.CIT(A) that the MAT credit could be sought set off only in respect of the tax calculated under the normal provisions of the Act in excess of MAT but not against the advance tax liability, is not reasonable or equitable and at least for the deletion of interest charged u/s 234 B & C, MAT credit amount may be considered. He submits the following submissions before the ITAT:-

1. *“Section 115JB of the Income tax Act, 1961 only creates a Legal Fiction for taxing a 'Deemed Income'. Legal fiction has been created to levy tax on 'deemed income'. Its purpose is served by taxing such income. As per the established principles of Law, provisions of section 115JB of the Income tax Act, 1961 cannot be made to travel beyond that.*

2. *As per proviso to sub-section (2A) of section 115JAA of the Income tax Act, 1961, no interest is payable by the Government on the 'Tax Credit' allowed on the tax paid under section 115JB of the Income tax Act, 1961. If the Government is not liable to pay any interest on payments made under section 115JB of the Income tax Act, 1961, then equity demands that the assessee also, in the absence of any specific provision, cannot be made liable to pay any interest on non-payment / short-payment of tax on deemed income computed under the same provision.*

3. *That the tax credit of earlier years is available to the assessee for the purposes of set off in a assessment year when the tax as per normal provision is more than MAT and consequentially is taken into consideration for interest levied under section 234B and 234C because of explicit statutory provision (Section 115JAA (4)).*

4. *That in view of the above explicit provision the tax credit of earlier years is not available for set off in an assessment year when the tax as per provision is less than MAT.*

5. *However there is no reason to further expand the scope of above discriminatory treatment and the availability of MAT Credit (though not available for set off) should in the least be taken into account for non charging of interest u/s 234B and 234C of the Income Tax Act on equitable and reasonable consideration.*

6. *That there is no express provision under the Act to prohibit such equitable and reasonable treatment and that therefore such beneficial interpretation would be in the spirit of the scheme of MAT credit/.interest on default in payment of advance tax.*

7. That the above issue is not directly addressed by the Hon'ble Courts in the decision of *CIT v. Jindal Exports Limited (Supra)* ; *CIT v. Tulsyan NEC Limited* or *JCIT v. Rolta India Ltd.* [2011] 196 Taxman 594 (SC).

8. That the following observations of jurisdictional High Court of Delhi has however in the case of *Jindal Exports Ltd. (Supra)* are however relevant for the issue of levy of interest in the facts of the case, which are as below:-

"44 ".....the available tax credit under section 115JAA would fall within the meaning of tax paid prior to the date of determination of total income under section 143(1) or completion of regular assessment. And, significantly, this conclusion is not dependent upon the amendment brought about by the Finance Act, 2006 which makes the position explicit and beyond doubt. It is also noteworthy that the said Circular No. 14 of 2006 itself recognizes the fact that the amendment was introduced because it had been represented from several quarters that the tax credit allowed under section 115JAA was no different from the tax paid in advance and credit for having paid the MAT ought to be allowed against the tax liability determined on assessment. This circumstance is another indicator that the amendments were clarificatory in nature.

45. The next step is to proceed to compute interest in terms of section 234B(2). The said provision stipulates that where tax is so paid, interest shall be calculated up to the date on which the tax is paid. Since, we are dealing with tax credit which has been carried forward from a prior year, it is obvious that the tax would be deemed to have been paid on the very first day of the year in question, even prior to the due dates of payment of advance tax. The implication of this is that no interest would be chargeable on such amount. From this it follows that interest under section 234B is to be charged after the carried forward tax credit (MAT credit) available under section 115JAA is set off. The same logic would apply to the computation of interest for delayed payments of advance tax under section 234C.

50. It is apparent that because of the manner in which the two provisions work, it is ensured that a company assessee always pays its MAT computed on the basis of 30 per cent of its book profit. Even the tax credit which is allowed to the assessee can only be set off against the tax payable in excess of the MAT. It is also apparent that the tax credit obtained in a particular year is a part of the MAT of that year. It represents tax paid by the assessee to the Government of India. In the year in which such tax credit is set off in terms of section 115JAA, it is clear that such tax credit was available on the first day of that year. So, in such a year, the tax credit, to the extent it can be set off, represents tax already paid and available as credit at the beginning of the year. Consequently, the assessee cannot be charged interest on something which it had already paid.

9. That the following observation of Hon'ble Supreme Court in the case of *CIT v. Tulsyan NEC Limited (Supra)* is again relevant for the issue of levy of interest in the facts of the case, which are as below:-

"6..... Although the right to avail tax credit gets crystallized in year one, on payment of tax under section 115JA and the set of thereof follows statutorily, the amount of credit available and the amount of set off to be actually allowed as in all cases of deductions/allowances under sections 30-37, is fluid/inchoate and subject to final determination only on adjudication of assessment either under section 143(1) or under section 143(3). The fact that the amount of tax credit to be allowed or to be set off! is not frozen and is ambulatory, does not take away/destroy the right of the assessee to the amount of tax credit. "

10. That therefore, levy of interest under sections 234B and 234C of the Income tax Act, 1961 amounting to Rs 36,64,620/- and Rs 40,38,823/- respectively for short payment of advance tax on book profits as determined under section 115JB of the Income tax Act while processing the return of income of the appellant company under section 143(1), is bad in law and liable to be deleted for the sake of principle equity, equality and natural justice."

4. Per contra, it is the submission of the Ld.DR that in view of the clear provision u/s 234B(4) and 234C(5) and in the light of the decisions of Hon'ble Supreme Court in *Jindal Export Ltd. 314 ITR 137* & *Tulsyan NEC Ltd. 330 ITR 226*, MAT credit cannot be sought for set off against the MAT but the set off is allowable only in respect of the tax calculated under the normal provision of the Act when it exceeds the MAT, otherwise the very purpose of introduction of the provision of section 115JB are defeated inasmuch as after the payment of MAT for the first year for every subsequent year every assessee can seek MAT credit to be set off against the advance MAT liability. According to the Ld.DR, section 115JB is as a self contained code and in view of the fact there is no exclusion of section 115J & 115JA in the levy of interests u/s 234B or 234C as held by the Hon'ble Apex Court in *Rolta India Ltd. 330 ITR 470*.

5. We have carefully gone through the contentions of the parties in the light of the decisions of Hon'ble Apex Court in *CIT vs Rolta India Ltd.* (supra) *CIT vs Tulsyan NEC Ltd.* (supra). Vide paragraph No.11 & 12 , Ld.CIT(A) observed as under:-

11. *“When the decisions of Hon'ble Delhi High Court in the case of Jindal Export Ltd. and the two decisions of the Apex Court discussed above are read with the provisions of section 115JB, 115JAA, 234B & 234C, the settled position of law emerges as under:-*

(a) In any year if an assessee is liable to pay tax u/s 115JB for the reason that the said tax exceeds the tax as per the normal provisions of the Act, the liability to pay advance tax, is to be determined with respect to tax payable u/s 115JB.

(b) In a year in which the assessee is liable to pay tax as per the normal provisions of the Act for the reason that the tax payable as per normal provisions is more than the tax payable on book profit as provided in section 115JB, the advance tax liability will be determined with respect to such tax payable as per the normal provisions of the Act.

(c) The carried forward MAT credit u/s 115JAA of earlier years shall be allowed against the tax payable only in the scenario (b) above and not in the scenario (a) above. The quantum of credit to be set off is governed by section 115JAA.

12. *The distinction made in clause 'c' above was not considered in the orders of my predecessor relied upon by the appellant in respect of A.Y. 10-11 and 11-12. The findings given by CIT(A) and ITAT in earlier years also do not help the case of the appellant in view of the decision of the Apex Court (330 ITR 470) discussed above, holding that interest u/s 234B/234C is payable in respect of tax payable under MAT provisions.”*

6. In *CIT Vs. Tulsyan NEC Ltd.* 330 ITR 226, the Hon'ble Apex Court, vide paragraph No.6, held in unequivocal terms that

“MAT credit is available for set off against the tax payable in succeeding years where the tax payable on income computed under the normal provisions of the Act exceeds the tax payable on book profits computed for that year [see s.115JAA(4), (5)]...

.....
.....

Thus, the MAT credit allowable can be set off by the assessee while computing advance tax/self-assessment tax payable for years 2 to 6 limited to the difference between the tax payable on income computed under the normal provisions and tax payable on book profits in each of those years, as per assessee's own computation. "

No decision is brought to our notice to show that MAT credit is allowable as set off in respect of MAT tax or advance tax to be calculated on the book profits. In these circumstances, we are unable to agree with the submissions of the Ld. Counsel that insofar as the interest liability u/s 215B & 215C is concerned, the MAT credit may be considered on equitable grounds. We, therefore, do not find any merits in this appeal as such the same is liable to be dismissed.

7. In the result, the appeal of the assessee is dismissed.

The order is pronounced in the open court on 27th October, 2017.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

Amit Kumar

Date:-27.10.2017

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI