

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2549/Chny/2017

निर्धारण वर्ष / Assessment Year : 2011-12

The Assistant Commissioner of
Income Tax,
Large Taxpayer Unit – 2,
Chennai - 600 034.

M/s Saint Gobain Glass India
Limited,
v. Plot No.A-1, Sipcot Industrial
Park, Sriperumbudur,
Kanchipuram District.
PIN: 602 105.

(अपीलार्थी/Appellant)

PAN : AABCS 4338 M
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Asish Tripathy, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 24.05.2018

घोषणा की तारीख/Date of Pronouncement : 31.05.2018

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -17, Chennai, dated 21.08.2017 and pertains to assessment year 2011-12.

2. Shri Asish Tripathy, the Ld. Departmental Representative, submitted that the only issue arises for consideration is whether the surcharge and education cess is part of the income-tax. Placing reliance on the decision of Mumbai Bench of this Tribunal in M/s Savita Oil Technologies Ltd. v. ACIT in I.T.A. No.3066/Mum/2015 dated 07.02.2017, the Ld. D.R. submitted that the surcharge and education cess have to be worked out on the tax liability. According to the Ld. D.R., from the gross amount so arrived, the amount of credit available under Section 115JB of the Income-tax Act, 1961 (in short 'the Act') on account of income-tax, surcharge and education cess have to be deducted and the net tax payable after setting off credit available under Section 115JB of the Act has to be worked out. However, according to the Ld. D.R., the CIT(Appeals) by placing reliance on another decision of Mumbai Bench of this Tribunal in Wyeth Limited v. ACIT in I.T.A. No.6682/Mum/2011 dated 09.01.2015, found that this decision of the Mumbai Bench of this Tribunal was followed by the Chennai Bench in Saint Gobain Gyproc India Ltd., therefore, surcharge and education cess have to be adjusted against the tax payable.

3. On the contrary, Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that surcharge and education cess are part of income-tax in view of Article 271 of the Constitution of India. Placing reliance on the judgment of Apex Court in CIT v. K. Srinivasan (1972) 83 ITR 346, the Ld.counsel submitted that income-tax includes surcharge and education cess. Therefore, when the income-tax was adjusted, the surcharge and education cess also need to be adjusted. Hence, according to the Ld. counsel, the CIT(Appeals) by rightly following the order of this Tribunal in Saint Gobain Gyproc India Ltd. (supra), directed the Assessing Officer to recompute and allow the MAT credit against the tax liability.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that if surcharge and education cess form part of income-tax, then it has to be adjusted against the tax liability under the MAT scheme. Article 271 of the Constitution of India in categorical term says that surcharge and education cess include income-tax. This was also clarified by the Apex Court in the case of K. Srinivasan (supra). Therefore, this Tribunal do not find any reason to interfere

with the order of the lower authority and accordingly the same is confirmed.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 31st May, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-17, Chennai
4. CIT, LTU, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.