आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 1492/Ahd/2016

(**निर्धारण वर्ष /** Assessment Year : 2012-13)

The Deputy Commissioner of Income Tax, Range-1, Ahmedabad 1st Floor, Navjivan Trust Bldg., Off. Ashram Road, Ahmedabad	**बनाम**/ Vs.	**M/s. Gopal Glass Works Limited,** 182, Gagan Vihar Khanpur, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG5599H		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri James Kurian, Sr. D.R.
प्रत्यर्थी की ओर से / **Respondent by :**	Shri Pamil H. Shah, A.R.

सुनवाई की तारीख / **Date of Hearing**	06/08/2018
घोषणा की तारीख /**Date of Pronouncement**	21/08/2018

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the CIT(A)-2, Ahmedabad ('CIT(A)' in short), dated 30.03.2016 arising in the assessment order dated 02.12.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning assessment year 2012-13.

2. The grounds of appeal raised by the Revenue reads as under:-

> *"1. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance u/s 36(1)(iii) of the Act amounting to Rs.46,85,028/-.*
>
> *2. The Ld. CIT(A) has erred in law and on facts in restricting the disallowance of Rs.23,148 made u/s 14A to Rs.8801/-.*
>
> *3. The Ld. CIT(A) has erred in law and on facts in allowing MAT Credit of Rs.1,69,59,061/-."*

3. When the matter was called for hearing, the learned DR for the Revenue relied upon the order of the AO and submitted that CIT(A) has wrongly granted the relief on all the three counts as per the grounds of appeal.

4. The learned AR, on the other hand, submitted that ground no.1 concerns disallowance of Rs.46,85,028/- under s.36(1)(iii) on the ground that the assessee has given interest free advances of Rs.3,94,91,530/- to its subsidiary company namely Govind Glass & Industries Ltd. which is a related party covered under s.40A(2)(b) of the Act. It was contended that as against the aforesaid advances of Rs.3.94 Crores, the assessee has substantial amount of Rs.20.80 Crore as its own funds at its disposal. Therefore, the presumption is available in favour of the assessee that own funds have been utilized for the purposes such advances. The learned AR accordingly pointed out that the CIT(A) has rightly decided the issue in favour of the assessee.

5. On perusal of the orders of the CIT(A) and AO, we find that CIT(A) has relied upon the decision of the hon'ble Gujarat High Court in the case of CIT vs. Raghuveer Synthetics Ltd. [2013] 354

ITR 222 (Guj), CIT vs. Torrent Leasing & Finance Pvt. Ltd. in Tax Appeal No. 620 to 625 of 2006 dated 17.12.2014 (Guj), CIT vs. Amod Stamping Pvt. Ltd. [2014] 45 Taxman.com 427 (Guj) and also referred to the decision of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities & Power Ltd., [2009] 313 ITR 340 (Bom.) and host of decisions of the co-ordinate bench of Tribunal for the proposition that when the interest free funds were available at the disposal of the assessee in excess of the interest free advances, presumption is required to be drawn in favour of the assessee that such interest free investments were out of interest free funds available at the disposal of the assessee. We find that the CIT(A) has correctly approached the issue in proper perspective. The assessee has own funds (interest free) which is nearly six times of the corresponding interest free advances. Thus, on facts presumption required to be drawn in favour of the assessee that interest free investment in sister concern is utilized out of own funds. In this view of the matter, no interference with the conclusion of the CIT(A) is called for.

6. In the result, Ground no.1 of the Revenue's appeal is dismissed.

7. Ground no.2 concerns disallowance of Rs.8801/- under s.14A of the Act. The learned DR relied upon the order of the AO. The learned AR on behalf of the assessee, on the other hand, submitted that the disallowance of Rs.23,148/- was on account of proportionate interest under Rule 8D(2)(ii) of the Act without taking cognizance of the interest income. The learned AR submitted that once the interest income is set off against the

interest expenditure in tune with the decision of the Hon'ble Gujarat High Court in the case of Pr.CIT vs. Nirma Credit & Capital Pvt. Ltd. [2017] 85 taxmann.com 72 (Guj). The CIT(A) has correctly scaled down the disallowance of proportionate interest from Rs.23,148/- to Rs.8,801/-. We find that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court in the case of Nirma Credit & Capital Pvt. Ltd. (supra). Thus, we find no infirmity in the order of the CIT(A) on this score.

8. In the result, ground no.2 of the Revenue's appeal is dismissed.

9. Ground no.3 concerns allowability of set off of MAT credit of Rs.1,69,59,061/- (correct figure Rs.35,59,296/- as transpired in the course of hearing). While it is the case of the assessee that it is eligible for claim of MAT credit under s.115JAA including 'education cess' and 'surcharge' paid earlier against tax liability of the current year. Per contra, it is the case of the AO that the 'surcharge' and 'education cess' are on different pedestal and are not covered by the definition of 'tax'. The AO accordingly excluded the component of surcharge and the education cess amounting to Rs.35,59,296/- and allowed the MAT credit of Rs.1,33,99,765/- as against the MAT credit claim of Rs.1,69,59,061/- by the assessee during the year. The CIT(A) reversed the withdrawal of the credit on account of education cess and surcharge in first appeal.

10. Before us, the learned DR relied upon the order of the AO whereas the learned AR relied upon the order of the CIT(A) as

well as the decision of the co-ordinate bench of Tribunal in the case of Bhagwati Oxygen Ltd. vs. ACIT (2017) 88 taxmann.com 28 (Kolkata-Trib.) for the proposition that the payment of entire tax (including surcharge and cess) is eligible for MAT credit under s.115JAA. We find merit in the plea of the assessee for inclusion of surcharge and cess for the purposes of claim of MAT credit in view of the aforesaid decision of the co-ordinate bench in Bhagwati Oxygen Ltd. (supra). The identical issue again recently came up for consideration before the Hon'ble Delhi Tribunal in the case of Consolidated Securities Ltd. vs. ACIT ITA No.3739/Del/2015 order dated26.07.2018. The co-ordinate bench after detailed discussion adjudicated the issue in favour of the assessee. The relevant operative para of the order of the co-ordinate bench of Delhi Tribunal reads as under:

> *"4. We have heard both the sides and perused the relevant material on record. Section 115JAA of the Act deals with tax credit in respect of tax paid on deemed income relating to certain companies. Sub-section (1A) of this section provides that where any amount of tax is paid u/s 115JB(1), then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section. Sub-section (2A) further mandates that: "The tax credit to be allowed under sub-section (1A) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JB and the amount of tax payable by the assessee on its total income computed in accordance with the other provision of the Act." To put it simply, the prescription of section 115JAA(2A) is that if the amount of tax under the regular provisions is, say, Rs.110/- (tax of Rs.100 and surcharge and cess etc. at Rs.10) and u/s 115JB(1) it is Rs.121/- (tax of Rs.110 and surcharge and cess etc. at Rs.11), the assessee is entitled to tax credit of Rs.11/- (Rs.121/- minus Rs.110/-) in subsequent years. The amount of tax credit of Rs.11 has two components, viz., tax of Rs.10 and surcharge etc. of Rs.1. The parallel of the tax credit of Rs.11 in the hypothetical situation is Rs.l.05 crore in the instant case, which as per the assessee has tax component of Rs.95.83 lac and surcharge and cess etc. at Rs. 10.25 lac. The Id. AR could not place on record the veracity of such two figures and on a pointed query frankly agreed that the same can be examined by the AO.*

5. We revert to the main question as to the stage at which deduction should be allowed for the tax credit. The Id. AR submitted that the tax component of Rs.95.83 lac should have been allowed deduction from the amount of tax computed on total income at Rs.2.96 crore immediately before the levy of surcharge and education cess etc. and the amount of Rs.10.25 lac, being the component of surcharge and education cess etc. in the overall tax credit, should be reduced from the amount of surcharge and cess payable for the year under consideration.

6. Section 4 of the Act is a charging provision. Sub-section (1) of section 4 provides that : 'Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income'. Rates of tax and also the surcharge and cess etc. are provided in the respective Finance Acts. Such rates vary from the year to year or from class of assesses even for the same year. When we talk of tax on total income for a year (other than interest payable under the provisions Act), it refers not only to the amount of income-tax but also the surcharge and education cess etc. as is applicable on it. Distinct from interest payable under the Act, tax includes both the components, namely, tax on one hand and surcharge etc. on the other. One cannot see surcharge etc. as distinct from the amount of income tax, which is an integral component and constitutes part and parcel of the amount of tax. In the same manner, when we talk of allowing credit for tax available u/s 115JAA in subsequent years, which also includes the amount of surcharge etc., the same ought to be allowed in total from the amount of tax computed after loading it with the amount of surcharge or education cess. If we split the amount of tax credit into two artificial limbs, that is, tax and surcharge etc., there can be a possibility of an assessee even losing the benefit of the full amount of surcharge etc. as the amount of surcharge etc. keeps on varying from year to year. To illustrate, if the rate of surcharge etc. in the year of earning tax credit is say, 10%, but when the turn comes of claiming credit, there is no surcharge payable for that year or the rate is say, 5%, there is a possibility of the assessee losing the benefit of tax credit to some extent, if artificial division is made between the amount of tax and surcharge etc. components. Be that as it may, since surcharge etc. is part and parcel of tax, both have to be considered as one unit. It is, therefore, held that the benefit of MAT tax credit, which includes the amount of surcharge etc. also, has to be allowed immediately after loading the amount surcharge and education cess etc. on the amount of tax for the later year.

7. However, the charging of interest u/ss 234B and 234C etc. is to be done on the net amount of tax determined after reducing the amount of MAT tax credit from the amount of tax payable for the

year in the same way as advance tax and TDS are reduced. A clue for this can be obtained from the language of section 140A of the Act dealing with "Self assessment'. Subsection (1) of section 140A provides as under :

> ***Self-assessment.***
> ***140A.*** *(1) Where any tax is payable on the basis of any return required to be furnished under section 115WD or section 115WH or section 139 or section 142 or section 148 or section 153A or, as the case may be, section 158BC, after taking into account,—*
> *(i) the amount of tax, if any, already paid under any provision of this Act;*
> *(ii) any tax deducted or collected at source;*
> *(iii) any relief of tax or deduction of tax claimed under section 90 or section*
> *91 on account of tax paid in a country outside India;*
> *(iv) any relief of tax claimed under section 90A on account of tax paid in*
> *any specified territory outside India referred to in that section; and*
> *(v) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD,*
>
> *the assessee shall be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.*

8. A careful circumspection of the above provision deciphers certain things. First is that the amount of advance tax and TDS etc. rank pari passu with the amount of MAT tax credit available u/s 115JAA. Secondly, the amount of tax payable for the year is determined after reducing the amount of advance tax, TDS and MAT credit. Thirdly, the resultant amount arrived at after making such deductions is the amount of tax, which the assessee is liable to pay. Fourthly, the amount of interest payable under any provision of this Act is calculated on the resultant amount. This shows that the amount of interest under the Act is liable to be paid on the amount of tax payable determined after deducting, inter alia, the amount of MAT tax credit.

9. We, therefore, hold that the amount of the MAT tax credit, inclusive of surcharge and education cess etc., if any, should be reduced from the amount of tax determined on the total income after adding surcharge and education cess, etc. Only the resultant amount payable will suffer interest under the relevant provisions of the Act. Since the amount of MAT tax credit is uncertain, we set aside the

impugned order and remit the matter to the file of the AO for ascertaining the correct amount of MAT tax credit available with the assessee inclusive of surcharge and education cess etc., if any, and then allow tax credit as indicated above. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in this regard."

The co-ordinate bench thus took a view that for the purposes of tax credit under s.115JAA of the Act, tax would include surcharge and education cess. In parity, we hold identically. Thus, we find no infirmity in the conclusion drawn by the CIT(A).

11. In the result, ground no.3 of the Revenue's appeal is dismissed.

12. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 21/08/2018

Sd/-	Sd/-
(MAHAVIR PRASAD)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 21/08/2018

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, अहमदाबाद ।