

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.5487/Del/2014
Assessment Year: 2009-10**

Punjab & Sind Bank,
HO, Accounts & Audit Deptt.
21, Rajendra Place,
New Delhi.
PAN: AAACP1206G

vs DCIT, Circle-14(1),
New Delhi

Appellant

Respondent

Assessee by Shri Vivek Gupta, CA

Revenue by Smt. Sulekha Verma, CIT(DR)

Date of Hearing 2.4.2019

Date of Pronouncement 4.4.2019

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 17.7.2014 in Appeal No. 62/13-14 passed by the learned Commissioner of Income Tax (Appeals)-XVII ("Ld. CIT(A)"), Punjab and Sindh bank ("the assessee") preferred this appeal.

2. Brief facts of the case are that the assessee is a wholly-owned Government of India undertaking. They have filed their return of income for Assessment year 2009-10 on 29.9.2009 declaring an income of Rs.4,71,02,81,338/-and book profit under section 115 JB of the

Income-tax Act, 1961 (“the Act”) of Rs.720,01,42,080/-under normal provisions and Mat provisions of the Income Tax Act, 1961 (for short “the Act”) respectively. They have revised the return of income on 14.3.2011 at an income of Rs.465,02,81,338/-. By order dated 12.12.2011 under section 143(3) of the Act, the income of the assessee was assessed at Rs. 614,64,48,492/-under normal provisions of the Act. Assessee preferred an appeal against the assessment order dated 12.12.2011 and the Ld. CIT(A) by order dated 14.3.2013 partly allowed the appeal. Learned assessing officer has given the appeal effects of the said order of the first appellate authority and has assessed a revised income at Rs.465,29,54,338/-under normal provisions of the Act and revised the book profit at Rs.720,12,26,437/-under section 115 JB of the Act. Grievance of the assessee was that while giving the appeal effect learned Assessing officer did not correctly computed the tax liability, refund and interest thereon.

3. Assessee, therefore, filed application under section 154 of the Act for rectification of the mistakes but by order dated 20.3.2013 assessed the same at Rs.465,29,54,338/-under normal provisions of the Act and giving Mat credit. Assessee, therefore, filed an appeal before the Ld. CIT(A) questioning the application of surcharge and education cess on income tax liability without first reducing the Mat credit of Rs.58,60,15,269/-(basic tax amount without application of surcharge and education cess thereon), charging interest under section 234C of the Act of Rs.1,15,78,130/- instead of Rs.63,79,867/-as per revised return of income, not given the interest of Rs.3,16,74,928/-under

section 244A on refund granted of Rs.26,39,57,730/- on 22.3.2011 and also interest on the interest of Rs.3,16,74,928/- and not allowing the credit of TDS of Rs.13,78,84,672/- instead of Rs.16,78,70,343/-.

4. Ld. CIT(A) by way of impugned order held that there is no error committed by the learned Assessing Officer and the learned Assessing Officer acted as per the provisions of the Act and the Mat credit has to be given after charging surcharge and education cess. Ld. CIT(A), however, held that there was an error in ITR-6 but ultimately it is the provisions of the Act which must prevail. On this premise, he refused to reduce the Mat credit before application of surcharge and education cess.

5. In respect of interest under section 234C, Ld. CIT(A) held that levy of this interest is mandatory and consequential. Insofar as the claim of interest of Rs.3,16,74,928/- under section 244A, Ld. CIT(A) directed the learned Assessing Officer to recalculate the interest under section 244A as per law and to grant interest to the assessee. On the aspect of the interest under section 244A on Rs.3,16,74,928/- which is the interest under section 244A, while following the decision of the Hon'ble Apex Court in the case of CIT vs. Gujarat Fluoro Chemicals, 358 ITR 291, Ld. CIT(A) held that the claim for interest on interest cannot be acceded to. Lastly in respect of the short credit of TDS of Rs.13,78,84,672/- instead of Rs.16,78,70,343/-, Ld. CIT(A) directed the learned Assessing Officer to verify from the case record and give credit of TDS accordingly. Challenging this order, assessee is now in this appeal before us.

6. On a reading of grounds, we found that four issues are involved in this appeal now. First is in respect of reducing the income tax liability by mat credit first and then to apply the surcharge and education cess covered by grounds No. 2; Second issue is in respect of interest under section 244A on Rs.26,39,57,730/- to the tune of Rs.3,16,74,928/- covered by ground No. 4; third issue of further interest on this interest of Rs.3,16,74,928/- to be granted is covered by ground No. 5; and the last one is in respect of allowance of credit of the balance TDS amount of Rs.2,99,85,671/- out of the total TDS of Rs.16,78,70,343/- claimed by the assessee covered by ground No. 6. Grounds Nos. 1 and 7 are general in nature and do not require any adjudication. Now we shall deal with these four issues one after the other.

7. Now coming to the first issue, Ld. AR submitted that the assessee submitted the return in terms of ITR 6 as was in force on the date of filing of the return according to which the income tax liability has to be first^t reduced by the Mat credit and then the surcharge and education cess have to be applied. He placed reliance on the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Vacment India (2014) 369 ITR 304 (Allahabad High Court).

8. As evident from the impugned order, on this aspect, learned Ld. CIT(A) held that the action of the learned Assessing Officer in first applying the surcharge and education cess and then reducing the same by mat credit is in accordance with the provisions of law. Ld. DR justified this observation of the Ld. CIT(A) while drawing our attention to the provisions of the Act in Section 115 JAA(2) of the Act, wherein it

is stated that the tax credit to be allowed under subsection (1) shall be the difference of the tax paid for any assessment year under subsection (1) of section 115 JAA and the amount of tax payable by the assessee on a total income computed in accordance with the other provisions of the Act. She therefore argued that what is relevant for the issue is that first the learned Assessing Officer is expected to determine the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of the Act and then identify the tax paid for the assessment year. She, therefore, while referring to the provisions under section 115 JAA (2) submits that the action of the learned assessing officer as well as the findings of the Ld. CIT(A) on this aspect are perfectly legal and they do not warrant any interference by this Tribunal.

9. On a reading of section 115 JAA (2) we find that the law says that the tax credit to be allowed under subsection (1) shall be the difference of the tax paid for any assessment year under subsection (1) of section 115 JAA and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of the Act. However, this aspect is no longer res Integra and the Hon'ble Allahabad High Court in the case of Vacment India (supra) dealt with this issue.

10. In CIT vs. Vacment India(2014) 369 ITR 304 (All), the Hon'ble High Court of Allahabad while considering the question made the following observations, which are relevant for our present purpose of deciding this issue,-

“4. The Commissioner (Appeals) allowed the appeal filed by the assessee by an order dated 18 October 2013 and directed the Assessing Officer to compute the gross tax liability on the assessee in accordance with the method of computation provided in ITR-6 for the assessment year 2011-12. The Tribunal has dismissed the appeal filed by the Revenue by its order dated 22 May 2014.

5. The only question which is raised pertains to the computation of tax in accordance with the modalities which are prescribed in the relevant form, ITR-6. Insofar as is material, the relevant entries in the form (Part B-TTI) are as follows:

- 3. Gross tax payable (enter higher of 2c and 1)*
- 4. Credit u/s 115JAA of tax paid in earlier years (if 2c is more than 1 (7 of Schedule MATC))*
- 5. Tax payable after credit u/s 115JAA (3-4)*
- 6. Surcharge on 5*
- 7. Education Cess, including secondary and higher education cess (5+6)*
- 8. Gross Tax liability (5+6+7)*

6. The aforesaid entries leave no manner of ambiguity in regard to the method of computation of tax liability. Entry 3 requires computation of the gross tax payable. Under entry 4, credit is required to be given under Section 115JAA of the Act of the tax paid in earlier years. Entry 5 requires a computation of the tax payable after credit under Section 115JAA of the Act. The matter is placed beyond doubt by the parenthesis, which indicates that tax payable under entry 5 is to be arrived at by deducting the credit under Section 115JAA of the Act (under entry 3) from the gross tax payable (under entry 4). The surcharge is computed on the amount reflected in entry 5.

7. The Tribunal has noted that from the next assessment year, AY 2012-13, the position was materially altered, but in the present case, since the dispute related to AY 2011-12, the method of computation, as directed by the Commissioner (Appeals), was plainly in accordance with the methodology as provided in ITR-6. The Tribunal in confirming the order of the

Commissioner (Appeals) has, hence, not committed any error.....”

11. In view of this decision of the Hon'ble Allahabad High Court, while respectfully following the same, we are of the considered opinion that facts are squarely covered by the said decision and the issue goes in favour of the assessee. We, therefore, accepting the contention of the assessee direct the learned Assessing Officer to first reduce the taxability by the mat credit and then apply the surcharge and education cess to reach the taxability of the assessee. As such, Ground No. 2 is accordingly allowed and ground No. 3 becomes infructuous.

12. Now coming to the second issue of allowing the interest under section 244A on the refund amount of Rs.26,39,57,730/-, Ld. CIT(A) directed the learned Assessing Officer to recalculate the interest under section 244A as per law and grant interest to the assessee. When the Ld. CIT(A) granted relief, assessee cannot be aggrieved of. We do not find any merit in this ground and ground No. 4 is accordingly dismissed.

13. Now coming to ground No. 5 in respect of granting interest on the amount of interest under section 244A is concerned, on a careful perusal of the matter we are of the considered opinion that the decision of the Hon'ble Apex Court in the case of Sandvik Asia Ltd has no application to the facts of this case and, on the other hand, Ld. CIT(A) rightly followed the decision of the Hon'ble Apex Court in the case of Gujarat Fluoro Chemicals (supra). Assessee cannot claim interest on interest and is only in exceptional cases of inordinate delay, the compensation contemplated in the case of Sandvik Asia Ltd (supra)

comes to operation. In view of the binding decision of the Hon'ble Apex Court in the case of Gujarat Fluoro chemicals (supra), we do not find any merits in this ground and the same is dismissed.

14. Insofar as ground numbers no.6, i.e. allowing the credit of the balance TDS amount out of the total TDS amount of Rs.16,78,70,343/-is concerned, impugned order speaks that the Ld. CIT(A) directed the learned Assessing officer to verify from the case record and give credit of TDS accordingly. We are unable to make out any grievance of the assessee on this aspect. As a matter of fact, Ld. CIT(A) granted relief. This ground is devoid of merits and is dismissed.

15. In the result, appeal of the assessee is allowed in part.

Order pronounced in the Open Court on 4th April, 2019.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 4th April, 2019/VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated on	2.4.2019
Draft placed before author	3.4.2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	