



**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH  
KOLKATA**

**BEFORE SHRI ABY T VARKEY, JM  
&**

**SHRI M.BALAGANESH, AM**

**ITA No.898/Kol/2017  
(Assessment Year :2011-12)**

DCIT, Circle-1(1), Kolkata P-7, Chowringhee Square R.No.20, 7 <sup>th</sup> Floor, Kolkata – 700 069	Vs.	M/s. Kilburn Engineering Ltd., 4, Mangoe Lane, Surendra Mohan Ghosh Sarani Kolkata – 700 001
<b>PAN/GIR No.AABCK3421H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Shankar Halder
Assessee by	Shri Ansul Agrawal
<b>Date of Hearing</b>	<b>04/04/2019</b>
<b>Date of Pronouncement</b>	<b>26/04/2019</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.898/Kol/2017 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-17, Kolkata in appeal No.238/CIT(A)-17/Kol/15-16 dated 28/10/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 25/03/2014 by the Id. Dy. Commissioner of Income Tax, Circle -6, Kolkata (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in allowing the set off of MAT credit of

Rs.11,65,63,798/- u/s.115JAA of the Act brought forward from earlier years against tax on total income including surcharge and educational cess in the peculiar facts and circumstances of the case.

3. We have heard rival submissions. We find that the Id. CIT(A) had granted relief to the assessee by observing as under:-

*“Ground No. 4; Addition of surcharge and education cess to tax liability under normal provisions before allowing Minimum Alternate Tax Credit of Rs. 16563798/- u/s. 115JAA of the Act:*

*The assessee in his submissions has stated as under:*

*“As per provisions of Income tax Act and Income Tax Return Surcharge and cess to be calculated only after MAT credit. MAT Credit allowed to the assessee only Tax part and not surcharge and cess.*

*" The Income tax Return as provided by income tax department itself calculates tax liability apply Surcharge and cess on difference between income tax under normal provisions and 115JB (Refer Part B-TTI of IT R-6 filed for f Year 2011-12). Thus the Appellant submits that the AO has erred in computing tax liability as per provisions of the Act..*

Decision: The issue is covered by the decision of the Hon'ble High Court of Allahabad in the case of Commissioner of Income-tax v. Vacment India 12015] 55 taxmanu.com 314 wherein it has been held as under:

*"3. In the present case, the assessee filed an appeal before the Commissioner (Appeals) against an order that was passed under section 143 (I) read with section 154 of the Act by the ACIT-Centralized & Processing Centre (CPC), Bangalore, by which a demand of Rs. 10,92,766.00 was raised on the assessee. The following grounds of appeal were raised before the Commissioner (Appeals):*

*" I. Because the rectification application filed under section 154 of the I.T Act before CPC,Bangalore has been wrongly and illegally rejected.*

*2.Because surcharge and education cess on the tax payable has been calculated before allowing credit of tax paid in the earlier years under section 115JAA which is apparently wrong and hence, ACIT (CPC) has erred on facts and as well as on law in rejecting the application filed under section 154 of the IT. Act.*

3. *Because without prejudice to the abovementioned grounds, if the credit of tax paid under section 115JAA is to be allowed after charging surcharge and education cess, then the credit which has been allowed' of the taxes paid in the earlier year should also be inclusive of surcharge and education cess."*

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 OK form (Part B-TTI) are as follows:*

3	Gross tax payable (enter higher of 2c and I)	3
4	Credit under section 115JAA of tax paid in earlier years (if 2c is more than (1)(7 of schedule MATC)	4
5	Tax payable after credit under section 115JAA [(3-4)]	5
6	Surcharge on 5	6
7	Education cess, including secondary and higher education cess on (5+6)	7
8	Gross tax liability (5+6+7)	8

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 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 entry 4). The surcharge is computed on the amount reflected in entry 5."*

*Respectfully following the above decision of the Hon'ble High Court of Allahabad, I hereby direct the AO to make the tax calculation in the*

*manner above as directed by the Hon'ble court. This ground of appeal of the assessee is hereby allowed for statistical purposes."*

4. Aggrieved, revenue is in appeal before us.
5. We have heard rival submissions. We find that the Id. CIT(A) had granted relief to the assessee by placing reliance on the decision of the Hon'ble Allahabad High Court supra which has been reproduced hereinabove. The main question raised before the Hon'ble High Court by the revenue was as under:-

*"Whether the Hon'ble ITAT has erred in law as well as in the facts and circumstances of the case in allowing the calculation of tax in violation of the provisions of the relevant Finance Act which prescribe calculation of tax as inclusive of cess and surcharge."*

- 5.1. This question has been duly answered by the Hon'ble High Court above which had been duly followed by the Id. CIT(A) and accordingly, the Id. AO was directed to recompute the tax credit u/s.115JAA of the Act by the Id. CIT(A). We find no infirmity in the said action of the Id. CIT(A). Accordingly, the ground raised by the revenue is dismissed.

**6. In the result, appeal of the revenue is dismissed.**

Order pronounced in the open court on this 26/04/2019

**Sd/-**  
**(ABY T VARKEY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 26/04/2019  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)

**ITAT, Kolkata**