

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.1643/Mum/2020
(Assessment Year :2015-16)**

M/s. Tata Motors Ltd., Bombay House, 24, Homi Mody Street Hutatma Chowk Mumbai – 400 001	Vs.	The Asst. CIT (LTU)-I 29 th Floor, Centre-I World Trade Centre Cuffe Parade Mumbai – 400 005
PAN/GIR No. AA ACT2727Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajan Vora
Revenue by	Shri Sanjeev Kashyap
Date of Hearing	04/09/2021
Date of Pronouncement	15/09/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1643/Mum/2020 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-Mumbai in appeal No. ITBA Appeal No. CIT(A)-1, Mumbai/10926/2018-19 dated 30/01/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.154 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 25/01/2019 by the Id. DCIT(LTU-2), Mumbai (hereinafter referred to as Id. AO).

2. The ground No.1 raised by the assessee is challenging validity of the Id. AO invoking jurisdiction u/s.154 of the Act. This ground was stated to be not pressed at the time of hearing and accordingly, the same is reckoned as statement made from the Bar and dismissed as not pressed.

3. The ground No.2 raised by the assessee is only with regard to computation of set off of MAT credit u/s.115JAA of the Act i.e. whether it should be excluding surcharge and cess or including surcharge and cess.

4. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged mainly in the business of design, manufacture and sale of vehicles and parts thereon. The return of income for the A.Y.2015-16 was filed by the assessee company on 25/11/2015 declaring loss of Rs.4507,15,19,875/- under normal provisions of the Act and book loss of Rs.3281,73,74,455/- u/s.115JB of the Act. Since, there was loss both under normal provisions of the Act as well as u/s.115JB, there was no occasion for the assessee to claim MAT credit u/s.115JAA of the Act. The Id. AO passed an order u/s.143(3) on 23/01/2019 determining total loss of Rs.41,81,8,25,612/- under normal provisions of the Act and assessed the income of the assessee from specified foreign company u/s.115BBD of the Act at Rs.1523,51,75,826/-. The Id. AO also computed book loss u/s.115JB of the Act at Rs.2956,86,17,512/-. After passing of assessment order u/s.143(3) of the Act dated 23/01/2019, the Id. AO suo-moto passed the rectification order u/s.154 of the Act r.w.s. 143(3) of the Act on 25/01/2019 wherein MAT credit u/s.115JAA of the Act was given by the Id. AO to the extent of tax payable excluding surcharge and education cess. The grievance of the assessee was that the Id. AO granted short MAT credit of Rs.30,39,41,737/- comprising of surcharge of

Rs.22,85,27,637/- and education cess of Rs.7,54,14,120/-. Total MAT credit granted by the Id. AO was Rs.228,52,76,374/- instead of 258,92,18,131/-. This action of the Id. AO was upheld by the Id. CIT(A).

5. Aggrieved, the assessee is in appeal before us.

6. This issue is no longer res-integra in view of the decision in assessee's own case by this Tribunal for A.Y.2014-15 in ITA No.2397/Mum/2019 dated 25/06/2021, wherein, it was categorically held that while computing MAT credit u/s.115JAA of the Act, the tax should be inclusive of surcharge and cess. Similar views were taken by the Hon'ble Calcutta High Court in the case of SREI Infrastructure Finance Ltd., vs. DCIT reported in 395 ITR 291(Cal) and the Hon'ble Madras High Court in the case of DCIT vs. Scope International Pvt. Ltd., in Tax Case Appeal No.588 of 2019 dated 16/8/2019. Respectfully following the aforesaid decisions, we allow the ground No.2 raised by the assessee on merits.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced on 15/09/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 15/09/2021
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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai