

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Before Shri Shamim Yahya (AM) & MS. Suchitra Raghunath Kamble (JM)
ITA Nos.803 & 804/Mum/2021
(Assessment Years: 2014-15 & 15-16)

Peninsula Facility Management Services Ltd. Peninsula Spenta 2 nd Floor, Mathuradas Mills Compound Senapati Bapat Marg, Lower Parel Mumbai-400 013	Vs.	ACIT,CPC Post Bag NO.2, Electronic City Post Office Bangalore-560 100
PAN/GIR No. AAACJ5680L		
(Assessee)	:	(Revenue)
Assessee by	:	Shri Hardik Nirmal
Revenue by	:	Shri Ashish Kumar
Date of Hearing	:	14.12.2021
Date of Pronouncement	:	14.12.2021

ORDER

Per Shamim Yahya(A.M.):

These appeals by the Assessee are directed against the respective orders of the learned Commissioner of Income Tax (Appeals), Mumbai ('ld.CIT(A) for short) and pertain to the respective assessment years as above.

2. Since the issues are common and connected and the appeals were heard together, these have been consolidated and disposed of by this common order.

ITA No. 803/Mum/2021 for AY 2014-15

3. The grounds of appeal read as under:-

GROUND NO. I: INCORRECT COMPUTATION OF ALLOWABLE MAT CREDIT UNDER SECTION 115JAA OF THE ACT

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO of excluding the education cess and surcharge for

the purposes of computation of MAT Credit u/s 115JAA of the Act without appreciating the fact that provisions of section 115JAA r.w.s 2(43) and section 4 of the Act requires such credit to be given against total tax liability (inclusive of surcharge and education cess) under normal provisions of the Act.

2. The Appellant prays that the direction of the CIT(A) be reversed, and the addition made be deleted.

3. Without prejudice to the above, if the surcharge and education cess has been excluded, then for the purposes of MAT Credit as computed by the AO has to be first set off against tax payable.

GROUND NO. II: LEVY OF INTEREST U/S 234A, 234B AND 234C OF THE ACT WRONGLY COMPUTED

1. On facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO of computing additional interest under sections 234B and 234C of the Act.

2. The appellant prays that the AO be directed to recompute the interest.

4. An appeal was filed before Ld.CIT(A) against order passed under section 143(1) of the I.T.Act, 1961 for AY 2014-15 by the ACIT, CPC Bengaluru, vide communication Reference NO. CPC/C/1415/A6/1542732203 dated 10/03/2016.

5. The grounds raised by the assessee before the Ld.CIT(A) are as under:-

“GROUND NO I.- INCORRECT COMPUTATION OF ALLOWABLE MAT CREDIT UNDER SECTION 115JAA OF THE ACT

1. On the facts and circumstances of the case and in law, the AO erred in computing the MAT credit available to be set off under section 115JAA of the Act by excluding surcharge and education cess.

2. The AO failed to appreciate and ought to have held that:

• Tax includes surcharge and education cess.

• Under the provisions of section 115JAA of the Act, MAT Credit is defined as the difference between the following-

a. The tax paid for any assessment year under section 115J Band;

b. The amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act.

• In order to determine the aforesaid MAT Credit available for utilization, income-tax shall include both surcharge and education cess.

3. Without prejudice to above, if surcharge and cess has been excluded, then for the purpose of accuracy, MAT Credit as computed by the AO has to be first set off against tax payable without including surcharge and education cess.”

6. The submission of the assessee noted by Ld.CIT(A) are as under:-

“The AO vide its communication reference No.CPC/1415/A6/1542732203 dated March 10, 2016 issued an intimation u/s. 143(1) of the Act.

The available MAT credit has been granted in the following manner.

Particulars	Amount
Tax under section 115JB excluding surcharge and cess	29,30,031
Tax under other provisions of the Act in AY 2014-15 excluding surcharge and cess	39,32,283
Amount of tax credit available	10,02,252

The aforesaid credit of Rs. 10,02,252/- has been set off against the gross tax liability of Rs. 42,52,7647-

It is submitted that the aforesaid approach is incorrect insofar as there is inclusion for one part of the computation and exclusion in the other. Alternatively, it is submitted that MAT Credit shall be granted against the tax payable. Surcharge and cess shall be calculated only on the balance amount of the tax liability so computed.

The Appellant in this regard relies on the following judicial pronouncements and ratios laid down therein:

- Universal Medicare Private Limited vs. ACIT (LTU) in ITA No. 839/ MUM/ 2012
It was held that MAT Credit should first be reduced from the tax payable and thereafter on the residual amount, surcharge and cess be levied.
- The aforesaid decision alternatively provides that amount of MA T credit should also include surcharge and education cess for the purpose of allowing credit against tax liability inclusive of surcharge and education cess. It was further provided that MA T as well as normal tax before allowing MAT credit has to be taken on parity. The Parity can be achieved by both excluding surcharge and education cess or by including it.
- The Deputy Commissioner of Income-tax vs. M/s. Saint Gobain Gyproc India Limited (I.T.A No. 2122/Mds. /2015) wherein the aforesaid decision was considered and the appeal filed by the Revenue was accordingly dismissed.
- Commissioner of Income-tax vs. Vacment India (2015) 55 taxman.com 314 (Allahbad) wherein it was held that the tax payable is to be arrived at by deducting credit under section 115JAA from gross tax payable and on the balance amount, surcharge and cess shall be computed.
- Virtusa (India) (P.) Ltd. vs. Deputy Commissioner of Income-tax (2016) 67 taxman.com 65 (Hyderabad- Trib.) wherein it was held that where assessee had relied

on ITR-6 format to arrive at total liability as well as MAT credit calculations, the Assessing Officer could not overlook said format and proceed to calculate MAT credit to complete assessment under section 143(1) by applying different methods.

In view of above, the Appellant most humbly submits that appropriate MAT credit be granted and appropriate relief be provided.”

7. Despite noting the above Ld.CIT(A) did not bother to address the case laws mentioned. He held as under:-

“I have carefully gone through the facts of the case and also duly considered assessee's written submission in this regard. It is pertinent to note that for the purpose of calculating tax liability for the companies, the higher of the following will be taken;

- Tax liability computed by applying the normal provisions of Income Tax Act, 1961 and Companies Act, 2013, or i.e.
- Tax liability computed @ 15% + 4% higher education cess of the book profit.

If the later is higher, then it will be paid instead of former.

For this purpose, it is crucial to understand the calculation of book profits, on the basis of which MAT is calculated. Prior to calculation of book profit, a profit has to be chosen as per statement of profit and loss for the relevant F.Y. Such statement must be prepared as per schedule III of the Companies Act, 2013 and be declared in AGM.

In view of these legal facts, I have carefully gone through the intimation order u/s 143(1) of the IT. Act for the processed ITR-6. In A.Y. 2014-15 (e-filing Acknowledge no. 424478861271114). On careful perusal of page 3 of intimation sheet, it is seen that assessee had not computed surcharge and HEC (Higher Education Cess) on book profit, accordingly CPC while allowing MAT credit to assessee had computed HEC and surcharge on book profit. Because of this, there was a difference of Rs. 81,6837- in SI. No. 29 for credit u/s 115JAA, CPC has correctly allowed the MAT credit. Accordingly, assessee's appeal in Ground no. 1 fails.”

8. Against the above order, assessee is in appeal before us.

9. We have heard both the parties and perused the record. Ld. Counsel of the assessee submitted that the issue involved in this case is squarely covered in favour of the assessee by several case laws as under:-

1. SREI Infrastructure Finance Ltd. v. DCIT [(2017) 395 ITR 291 (Calcutta High Court)]
2. ACIT v. Orient Bell Ltd. [ITA No.7534 of 2017 (Delhi Tribunal)]
3. 63 Moon Technologies Ltd. v. DCIT [ITA No.7550 of 2013 (Mumbai Tribunal)]
4. Consolidated Securities Ltd. v. ACIT [(2018) 172 ITD 163 (Delhi Tribunal)]
5. Tata Motors Ltd. v. DCIT [ITA no.2397 of 2019 (Mumbai Tribunal)]

10. Upon careful consideration, we may gainfully refer to the following decision of ITAT in Tata Motors Ltd. in ITA No.2397/Mum/2019, dated 25.06.2021.

3. We have heard rival submissions, perused the orders of the authorities below. The only issue to be decided is as to MAT credit granted u/s. 115JAA of the Act should be inclusive of surcharge and cess. This issue is decided in favour of the assessee in the following decisions: -

- (i). Srei infrastructure [Finance Ltd., v. DCIT](#) [395 ITR 291 (Calcutta)]
- (ii). M/s. Scope International Pvt. Ltd., (TCA No. 588 of 2019) dated 16.08.2019.
- (iii). [Consolidated Securities Ltd., v. ACIT](#) [172 ITD 163]
- (iv). Virtusa (India) (P.) [Ltd., v. DCIT](#) [157 ITD 1160]
- (v). [Bhagwati Oxygen Ltd., v. ACIT](#) [167 ITD 645]
- (vi). [SI Group India Pvt. Ltd., v. DCIT](#) in ITA.No. 2348 & 2350/Mum/2017 dated 11.10.2018.
- (vii). M/s. Savita Oil Technologies Ltd., v. ACIT in ITA.No. 3066/Mum/2015 dated 07.02.2017.

4. In the case of Srei infrastructure [Finance Ltd., v. DCIT](#) (supra) the Hon'ble Calcutta High Court held that MAT credit u/s. 115JAA of the Act brought forward from earlier years is to be set off against tax on total income including surcharge and education cess instead of adjusting the same from tax on total income before charging such surcharge and cess.

5. In the case of M/s. Scope International Pvt. Ltd., (supra) the Hon'ble Madras High Court considering the decision of the Hon'ble Supreme Court in the case of [CIT v. K. Srinivasan](#) [83 ITR 346] held that MAT credit has to be given including the amount of surcharge and education cess.

6. The Hyderabad Bench of the Tribunal in the case of Virtusa (India) (P.) [Ltd., v. DCIT](#) (supra) taking note of the decision of the Hon'ble Apex Court in the case of [CIT v. K. Srinivasan](#) (supra) wherein the Hon'ble Apex Court held that the word "Income-tax" would include surcharge and additional surcharge". The Tribunal held that the eligible MAT credit available to set off for the company during the captioned assessment year needs to be arrived at by comparing difference between the tax liability (inclusive of surcharge and cess) computed under normal provisions of the

Act and the tax liability (inclusive of surcharge and cess) computed under the provisions of section 115JB of the Act.

7. In the case of [Bhagwati Oxygen Ltd., v. ACIT](#) (supra) the Kolkata bench of the Tribunal held as under: -

"8. We have heard the rival submissions. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. We find that the issue under dispute has been addressed against the assessee by the decision of Delhi Tribunal in the case of Richa Global Exports Pvt. Ltd. reported in 25 taxmann. com 1 (Del). We find that the issue under dispute is covered in favour of the assessee by the Co-ordinate Bench of Hyderabad Tribunal relied upon by the Ld. AR (supra). We find that Hyderabad Tribunal after considering the decision of Delhi Tribunal (supra) and after considering the decision of the Apex Court in the case of [CIT vs. K. Srinivasan](#) reported in 83 ITR 346 (SC) had held that tax includes surcharge and cess and accordingly the entire component of taxes including surcharge and cess shall have to be reckoned for calculating the MAT credit u/s 115JAA of the Act. We also find that the Hon'ble Apex Court had in the case referred to supra, had held that meaning of word 'surcharge' is nothing but an 'additional tax'. In our considered opinion, this understanding of surcharge and cess being included as part of the tax gets further sanctified by the amendment which has been brought in Section 234B of the Act in Explanation 1 Clause 5 while defining the expression 'assessed tax'."

8. In the case of [M/s. Savita Oil Technologies Ltd., v. ACIT](#) (supra) the Bombay Bench of the Tribunal held as under:

"4. We have gone through the facts of this case. We have been called upon to decide in this case the correct manner of computing tax liability and also amount of credit available u/s 115JA keeping in view levy of surcharge and education cess in the process. We have examined the entire scheme of the Act containing provisions with regard to payment of MAT u/s 115JB as well as availability of credit available u/s 115JAA. It is noted that it was held by the Hon'ble Allahabad High Court in the case of [CIT vs Vacment India](#), (supra) that methodology of computation of tax liability and granting credit of MAT should be similar to the methodology provided in the prescribed form of filing of income-tax return i.e. ITR-6. But subsequently, Hon'ble Calcutta High Court in the case of M/s Srei Infrastructure Finance Ltd, supra examined this issue in detail and ITA NO. 2397/MUM/2019 (A.Y: 2014-15) M/s. Tata Motors Ltd., held that computation of tax liability and setting off of tax credit available should be done in accordance with law and not on the basis of 'inappropriate' form prescribed under the rules inadvertently. It is noted that Hon'ble Calcutta High Court has held that for the purpose of section 115JB, surcharge and cess are part of income-tax payable in accordance with provisions of section 115JB. Therefore, when the tax is paid u/s 115JB along with surcharge and cess, then entire amount would be considered for carry forward of the credit available u/s 115JAA and accordingly the entire amount would be available for the benefit of set off in the subsequent years from the amount of gross tax payable by the assessee. During the course of hearing before us, Ld. Counsel submitted before us three types of work

sheets wherein tax payable after setting off amount of credit available u/s 115JAA was worked out in three different methods. We find that the following working shows the appropriate method of computing tax liability and setting off amount of credit available u/s 115JAA:-

COMPUTATION OF TAX LIABILITY ON TOTAL INCOME AS PER INCOMETAX ACT, 1961

1		Total Income			Rs.	1,093,157,260
2		Tax Payable on total income				
	a	Tax at normal rates	Rs.	327,839,585		
	b	Tax at special rates		-		
	c	Tax payable on total income			Rs.	327,839,585
3		Surcharge on 2c			Rs.	32,783,959
4		Education cess on (2c+3)			Rs.	10,818,706
5		Credit under section HSJAAoftax paid in earlier years				
	a	Income-tax	Rs.	25,976,115		
	3	Surcharge	Rs.	2,597,612		
	c	Education Cess on (5a + 5b)	Rs.	857,212	Rs.	29,430,939
		Tax payable after credit under section 115JAA			Rs.	342,011,311

During the course of hearing, the Ld. DR also fairly submitted that it would be a correct method of computing tax liability and credit available u/s 115JAA. It is noted from the above working that first of ITA NO. 2397/MUM/2019 (A.Y: 2014-15) M/s. Tata Motors Ltd., all tax amount has been computed on the total income of the assessee. Thereafter surcharge and education cess has been worked out upon the tax liability. Then, from the gross amount so arrived at, the amount of credit available u/s 115JB on account of income-tax, surcharge and education cess (all combined

together) have been deducted and accordingly, net tax payable after setting off credit available u/s 115JB has been worked out. In our view, this is the correct method of computing tax liability as well as credit available u/s 115JAA. Accordingly, we direct the AO to verify the facts as have been given in the aforesaid working and compute the tax liability accordingly and allow the necessary relief to the assessee."

9. We further observe that the decision of Coordinate Bench of the Tribunal in the case of [SI Group India Pvt. Ltd., v. DCIT](#) (supra) is emanating from the order passed by the Assessing Officer u/s. 154/143(1) of the Act.

10. On a perusal of the order of the Ld.CIT(A) we noticed that Ld.CIT(A) denied claim of the assessee for the reason that there is a contrary view taken by the Delhi Tribunal in the case of Richa Global [54 SOT 185] and therefore the issue is debatable. We observed that this decision of the Delhi Bench of the Tribunal was rendered for A.Y. 2010-11. However, in the case on hand the assessment year involved is A.Y. 2014-15 and this decision of the Delhi Bench of the Tribunal is not applicable to the facts of the assessee's case for the reason that the Format of ITR-6 prior to A.Y. 2012-13 was designed in such a manner that the tax liabilities in ITA NO. 2397/MUM/2019 (A.Y: 2014-15) M/s. Tata Motors Ltd., Part B-TTI (i.e. Total taxable income) both under normal provisions and under MAT provisions was computed without surcharge and cess and on the net amount (i.e. after grant of MAT credit) surcharge and cess was levied. We noticed that the Format ITR-6 was amended from A.Y. 2012-13 wherein the tax liability in Part-B -TTI both under normal provisions and under MAT provisions computed including surcharge and cess. MAT credit is computed automatically using the prescribed algorithm which is nothing but the balancing figure i.e. difference between tax liability and MAT liability including surcharge and cess. Therefore, post A.Y. 2012-13 as the format of ITR-6 is so designed to compute MAT credit automatically using the prescribed algorithm i.e. difference between tax liability and MAT liability including surcharge and cess is a balancing figure. In our view there cannot be any debate as to the exclusion of surcharge and cess. Therefore, the observation of the Ld.CIT(A) that the issue is debatable one is not sustainable. Further, we observe that majority of the decisions including the decisions of the Hon'ble Calcutta High Court and Hon'ble Madras High Court are in favour of the assessee and therefore it cannot be said that it is a debatable issue. In the circumstances, respectfully following the above said decisions allowing the grounds of appeal of the assessee, we direct the Assessing Officer to allow ITA NO. 2397/MUM/2019 (A.Y: 2014-15) M/s. Tata Motors Ltd., set off of MAT credit inclusive of surcharge and education cess and recompute the tax payable by the assessee for the year under consideration."

11. We note that the above case law fully applies here. We further note that the present case of the assessee is even on a better footing. The Ld.CIT(A) has dismissed the assessee's appeal without referring to any case law. The case law referred on the subject in favour of the assessee were duly referred before Ld.CIT(A) which are

ignored. Hence, this bring us to a legal issue as to whether this adjustment u/s. 143(1) by the CPC, Bengaluru is legally sustainable.

12. As apparent from the case law mentioned above, this issue is not amenable to any prima-facie adjustment as provided in section 143(1). Though, assessee has not raised this aspect, before Ld.CIT(A), there is no estoppel as to law. Hence, we hold that this adjustment was not liable to be made u/s. 143(1). Hence, the order is quashed on that account. On merits also, the issues stands covered.

13. In the result, assessee's appeal allowed.

ITA NO.804/Mum/2021 for AY 2015-16

14. Grounds raised are similar to the grounds for AY 2014-15. Hence, aforesaid adjudication applies mutatis mutandis for this AY. Hence, this appeal also stands allowed.

15. In the result, these appeals by assessee are allowed.

Order pronounced in the open court on 14 .12.2021

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated :. 14.12.2021

Thirumalesh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT- concerned
5. DR, ITAT, Mumbai

6. Guard File

BY ORDER,
(Dy./Asstt.Registrar)
ITAT, Mumbai