

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 3277/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

ACIT Central Circle -3(1), Chennai.	बनाम/ Vs.	M/s. BGR Energy Systems Ltd. Corporate Office, Guna Complex 433, Anna Salai, Teynampet, Chennai – 600 018.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AABCG-2202-J		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri M. Rajan Ld. CIT-DR
प्रत्यर्थी की ओरसे/ Respondent by	:	Ms. T. Sandhya Arti (CA) – Ld AR

सुनवाई की तारीख/ Date of Hearing	:	24-01-2022
घोषणा की तारीख / Date of Pronouncement	:	24-01-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 28.08.2019 in the matter of intimation issued by Centralized Processing Center (CPC), Bangalore u/s. 143(1) on 05.08.2016. The grounds raised by the Revenue read as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. Whether on the facts and in the circumstances of the case, the Id. CIT(A) was correct in holding that surcharge and education cess are to be included in MAT Credit u/s 115JAA of the Act?

3. Reliance is placed on the decision of the Hon'ble Tribunal of Delhi Bench in the case of M/s Richa Global Exports (P) Ltd vs ACIT CPC (25 Taxmann.com 1 (Del)).

2. Having heard rival submissions as well after going through various judicial pronouncements as placed before us, our adjudication would be as under.

3. The material on record would show that in an intimation issued to the assessee u/s. 143(1) of the Act on 05.08.2016, MAT credit claimed by the assessee u/s 115JAA for Rs.1,74,73,31,726/- was restricted to Rs.1,54,22,16,881/-. The said difference of Rs.20,51,14,845/- arose in view of the fact that credit for education cess and surcharge was excluded from MAT credit. Aggrieved, the assessee preferred appeal before Ld. CIT(A).

4. The Ld. CIT(A), after considering the ratio of various decisions including decision of Hon'ble Apex Court in **CIT V/s K. Srinivasan (1972 83 ITR 346)** wherein it was held that the term 'tax' would include surcharge, special surcharge and additional surcharge, decided the issue in assessee's favor. The ratio of decision of Hon'ble Calcutta High Court in **Srei Infrastructure Finance Ltd V/s DCIT (395 ITR 291)** and various other decisions of various benches of Tribunal was also considered while deciding the issue. Aggrieved, the revenue is in further appeal before us.

5. We find that besides various judicial decisions as relied upon by Ld. CIT(A) while adjudicating the appeal, this issue is now settled in assessee's favor by Hon'ble High Court of Madras in the case of **Pr.CIT V/s Scope International Pvt. Ltd (TCA No. 369 of 2019 dated**

19.06.2019) wherein Hon'ble Court, referring to the decision of the Hon'ble Supreme Court in the case of K. Srinivasan (supra), held as under: -

14. In our considered opinion, the decision of the Hon'ble Supreme Court in the case of K.Srinivasan will apply with full force to the assessee's case. Furthermore, if we refer to the circular of the Central Board of Direct Taxes in Circular No.3 of 2018 dated 11.7.2018, which fixed the monetary limit for filing appeals by the Department before the Tribunals, High Courts and Supreme Court, one gets a fair idea as to what was the understanding of the term 'tax' by the Board. If we have a look at paragraph 4 of the said circular, the Board states that for the purposes of the said Circular, tax effect shall be tax including applicable surcharge and cess.

15. Though the case on hand is not hit by the monetary limit according to Mr. T.R.Senthilkumar, learned Senior Standing Counsel, yet, on a perusal of the said circular, it is evidently clear that consistently, the understanding of the Board was that tax includes applicable surcharge and cess.

16. For the above reasons, we are of the view that the Revenue has not made out any case to interfere with the order passed by the Tribunal. As pointed out earlier, in the assessee's own case, for the assessment year 2012-13, relief has been granted to the assessee and there is nothing on record to show that the said order is either reversed or reopened. Hence, the substantial questions of law raised are answered against the Revenue.

The aforesaid decision has subsequently been followed by Hon'ble Court in the case of **CIT V/s M/s Sant Gobain Glass India Limited (TCA No.716 of 2018 dated 13.10.2020)**. Since this issue has been settled in assessee's favor by jurisdictional High Court, we find no reason to interfere in the impugned order.

6. The appeal stand dismissed.

Order pronounced on 24th January, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 24-01-2022

JPV

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF