

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं  
माननीय श्री जी. मंजूनाथा, लेखा सदस्य के समक्ष  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2680/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2009-10

The Asst. Commissioner-  
of Income Tax,  
Non-Corporate Circle-8,  
Room No.507, 5<sup>th</sup> Floor,  
Annexe Building,  
No.121, M.G.Road,  
Chennai-600 034.

v. M/s.Chemplast Sanmar Ltd.,  
(Erstwhile Sanmar Specialty-  
Chemicals Ltd.),  
No.9, Cathedral Road,  
Chennai-600 086.  
[PAN: AABCS 0201 P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by : Mr.P. Sajit Kumar, JCIT  
Assessee by : Mr.Saroj Kumar Parida, Adv.  
सुनवाई की तारीख/Date of Hearing : 08.02.2022  
घोषणा की तारीख /Date of Pronouncement : 23.02.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-15, Chennai, dated 28.06.2019 and pertains to AY 2009-10.

2. We find that appeal filed by Revenue is barred by limitation for which necessary petition for condonation of delay explaining reasons for delay has been filed, for which, the Id.Counsel for the assessee did not raise any objection. Having heard both sides and considered petition filed by the Revenue for condonation of delay, we are of the considered view that

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reasons given by Revenue for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of above appeal is condoned and appeal filed by the Revenue is admitted for adjudication.

**3. The Revenue has raised the following grounds of appeal:**

*1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.*

*2. The Ld. CIT(A) has erred in holding that deduction u/s 10B of the Act be allowed on income not relatable to the eligible business vis. Income from scrap and other miscellaneous income, such decision being against the provisions of the section u/s.10B of the Act.*

*3. The Ld. CIT(A) ought to have appreciated that Explanation 2 of Section 115JB of the Act defines the meaning of tax (which includes surcharge and education cess) for the purpose of calculating book profits liable to tax u/s.115JB of the Act and that meaning cannot be extended to section 115JA of the Act for the purpose of calculating MAT Credit.*

*4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing officer be restored.*

**4. The brief facts of the case are that the assessee company is engaged in the business of manufacture and sale of specialty chemicals and bio-technology products filed its return of income for the AY 2009-10 on 29.09.2009 declaring loss of Rs.57,03,967/-. The assessment has been, originally completed u/s.143(3) of the Act on 23.12.2011 and determined the total income at Rs.32,23,023/-. The case has been subsequently, reopened u/s.147 of the Act and the assessment has been completed u/s.143(3) r.w.s.147 of the Act on 31.03.2015 and determined total income at Rs.1,74,20,784/- by reducing excess deduction allowed u/s.10B of the Act to the extent of Rs.1,41,97,761/-. The assessee carried the matter in**

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appeal before the First Appellate Authority. The Ld.CIT(A), for the reason stated in his Appellate Order dated 28.06.2019 allowed the appeal filed by the assessee and deleted the additions made by the AO towards disallowance of deduction claimed u/s.10B of the Act and also re-computed book profit u/s.115JB of the Act for allowing MAT credit excluding surcharge and education cess. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us.

**5.** The Ld.DR for the Revenue referring to grounds of appeal filed by the AO submitted that the issue involved in the appeal including computation of eligible profit for the purpose of claiming deduction u/s.10B of the Act and also allowing MAT credit for computing book profit by excluding surcharge and education cess, appears to be covered in favour of the assessee by the decision of the ITAT, in assessee's own case for the AYs 2009-10 & 2011-12 and hence, argued that he relied upon the grounds of appeal raised by the AO.

**6.** The Ld.AR for the assessee, on the other hand, submitted that the first issue challenged by the Revenue is clearly covered in favour of the assessee by the decision of the ITAT, Chennai, in the assessee's own case for the AYs 2009-10 & 2011-12 in ITA Nos.1523 & 1524/Mds/2015, wherein, the Tribunal by following the decision of ITAT Special Bench, in the case of ITO v. Sak Soft Ltd., reported in 121 TTJ 865 deleted the additions made by the AO towards disallowance of deduction claimed

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u/s.10B of the Act in respect of exclusion of expenses incurred in foreign currency for export turnover as well as total turnover.

**7.** Having heard both the sides and consider the material on record, we find that an identical issue has been considered by the Tribunal in the assessee's own case for earlier years in ITA Nos.1523 & 1524/Mds/2015, wherein, after considering relevant facts, the Tribunal by following the Special Bench decision in the case of ITO v. Sak Soft (supra) directed the AO to reduce expenses reduced from export turnover from total turnover for the purpose of computing eligible profit for the purpose of deduction u/s.10B of the Act. The relevant findings of the Tribunal are as under:

*6. The next issue in the appeal of the Revenue for the assessment year 2009-10 is that Commissioner of Income Tax (Appeals) erred in directing the Assessing Officer to recompute the deduction under section 10B of the Act by excluding freight and clearing expenses and business development fee from export turnover and total turnover.*

*7. Counsel for the assessee submits that this issue is decided by the Special Bench of this Tribunal in the case of ITO Vs. Sak Soft Ltd. (121 TTJ 865) which decision has been followed by the Commissioner of Income Tax (Appeals), therefore he pleads for sustaining the order of the Commissioner of Income Tax (Appeals).*

*8. Departmental Representative supports the order of the Assessing Officer.*

*9. Heard both sides. Perused orders of lower authorities and the decision relied on. The Assessing Officer during the assessment proceedings excluded freight and clearing expenses and business development fee from export turnover while computing deduction under section 10B of the Act. On appeal, Commissioner of Income Tax (Appeals) following the Special Bench decision in the case of ITO Vs. Sak Soft Ltd. (313 ITR (AT) 353) directed the Assessing Officer to reduce the said amounts from the total turnover also for the purpose of computation of deduction under section 10A of the Act. We find no infirmity in the direction of the Commissioner of Income Tax (Appeals) as the same is inconformity with the decision of the Special Bench in the case of Sak Soft Ltd.(supra). Thus, this ground of appeal of the Revenue is dismissed.*

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**8.** In this view of the matter and consistent with view taken by the Coordinate Bench, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the Revenue.

**9.** The next issue that came up for our consideration from Revenue appeal is MAT credit allowed while computing tax under the provisions of Sec.115JB of the Act. The AO has excluded surcharge and education cess from the tax while allowing MAT credit in respect of tax payable under the provisions of Sec.115JB of the Act. The Ld.AR for the assessee as well as the Ld.DR fairly agreed that this issue is also covered in favour of the assessee by the decision of the ITAT, Chennai in the case of DCIT v. M/s.Saint Gobain Gyproc India Ltd., in ITA No.2122/Mds/2015 for the AY 2013-14.

**10.** Having heard both sides, we find that the Tribunal has considered an identical issue and after considering the decision of the ITAT Mumbai Bench in the case of M/s.Wyeth Ltd. v. ACIT in ITA No.6682/Mum/2011 dated 09.01.2015 has directed the AO to allow the MAT credit inclusive of surcharge and education cess. The relevant findings of the Tribunal are as under:

*6. Contra, the Id. Authorised Representative submitted that the provisions of Sec.115JB under the Act were MAT credit was considered set off against tax liability under normal provisions also includes element of surcharge and education cess. The Assessing Officer has no power to make segregation and allow tax credit. The Commissioner of Income Tax (Appeals) has considered the grounds, written submissions and judicial decisions and relied on the findings of the Mumbai Bench of the Tribunal and granted relief and prayed for dismissal of Revenue appeal.*

*7. We heard the rival contentions of both the parties perused the material on record and also judicial decision cited. The assessee company has claimed Mat credit set off against income tax on normal provisions which is allowable and such MAT credit can be carried*

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forward also. Under the provisions of Sec. 115JB tax components also includes surcharge and education cess. The Id. Authorised Representative reiterated his submissions made before the appellate proceedings were relief was granted. Before us, the Id. Departmental Representative relied on the findings of the Assessing Officer and argued to set aside the appeal. In reply, the Id. Authorised Representative relied on the decision of ITAT, Mumbai Bench Wyeth Limited vs. ACIT in ITA No.6682/Mum/2011, Dated 09.01.2015 which has endorsed the provisions of allowing MAT credit observed at page 4 in para 5 as under: -

‘5. Thus it is clear that the Hon’ble High Court has taken into account the order of entries in the form ITR-6 for the A.Y. 2011-12 in the said case and held that as per form ITR-6, the MAT credit has to be given against the gross tax payable exclusive of surcharge /cess and only after the MAT credit tax liability, the surcharge and cess has to be calculated for the purpose of working out the grand tax liability. We also find merit and substance in the alternative contention of the assessee that if the MAT credit is taken into account without including the surcharge and education cess then the surcharge and education cess on the tax liability has to be calculated only after allowing the MAT credit. Alternatively, the amount of MAT credit should also include surcharge and education cess for the purpose of allowing the credit against the tax liability inclusive of surcharge and education cess. Therefore, the MAT as well as normal tax before allowing the MAT credit has to be taken on parity either exclusion of surcharge and education cess or inclusive of surcharge and education cess or inclusive of surcharge and education cess. Accordingly, we set aside the orders of authorities below and direct the Assessing Officer to allow the MAT credit against the tax liability payable before surcharge and education cess or alternatively, the amount of MAT credit should also be inclusive of surcharge and education cess and then allow the credit against the tax payable inclusive of surcharge and education cess’.

We respectfully following the above decision, upheld the order of the Commissioner of Income Tax (Appeals) and dismiss the Revenue appeal.

**11.** In this view of the matter and by following the decision of the Coordinate Bench of ITAT, Chennai in the case of M/s.Saint Gobain Gyproc India Ltd., we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to allow the MAT credit inclusive of surcharge and education cess and hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the Revenue.

**12.** In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 23<sup>rd</sup> day of February, 2022, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/ACCOUNTANT MEMBER

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चेन्नई/Chennai,  
दिनांक/Dated: 23<sup>rd</sup> February, 2022.  
**TLN, Sr.PS**

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