

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A No.:390/CHNY/2021

निर्धारण वर्ष/ Assessment Year 2014 - 2015

M/s. South India Shelters Private  
Limited,  
No.14, Gulmohar Avenue,  
Velachery Main Road,  
Guindy, Chennai – 600 032.

Vs. The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 6 (2)  
No.121, M.G. Road,  
Nungambakkam,  
Chennai – 600 034.

**PAN : AAJCS 9077K**

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/Appellant by

: Mr. N. Quadir Hoseyn, Advocate &  
Mr. S.M. Khaja Muyeenuddin, C.A.

प्रत्यर्थीकीओरसे/Respondent by

: Mr. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 06.09.2022

घोषणा की तारीख/Date of Pronouncement

: 06.09.2022

**आदेश /ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the Assessee is arising out of the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi in Appeal No.CIT(A), Chennai – 15/10508/2016-17 (Manual Appeal Register Number: 306/2016-17); dated 19.08.2021. The assessment was completed by the Deputy Commissioner of

Income Tax, Corporate Circle – 6 (2), Chennai for the Assessment Year 2014 – 2015, u/s.143(3) of the Income Tax Act, 1961 (hereinafter “the Act”) vide order dated 28.12.2016.

2. The only issue in this appeal of the Assessee is as regards to the order of the Commissioner of Income Tax (Appeals) in confirming the action of the Assessing Officer in restricting the Minimum Alternate Tax [MAT] credit amount of tax paid u/s.115JB of the Act to the extent of only tax and not allowed the credit for the Surcharge and Education Cess paid. For this, the Assessee has raised various grounds which are argumentative and exhaustive and hence it is not needed to be reproduced.

3. We have heard the rival contentions and have gone through the facts and circumstances of the case. We noted that the issue is very simple, as to whether the Assessee is eligible for the allowance of credit of surcharge and education cess paid while allowing the MAT credit on tax paid u/s.115JB of the Act. We noted that this issue is

squarely covered by the decision of the Hon'ble Madras High Court in the case of the Principal Commissioner of Income Tax – 6, Chennai Vs. M/s. Scope International Private Limited, Chennai in Tax Case Appeal No.369 of 2019 dated 19.06.2019; wherein the Hon'ble Madras High Court has considered the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. K. Srinivasan reported in [1972] 83 ITR 346; and held that the surcharge and cess is to be allowed while taking into consideration the tax u/s.115JB of the Act. The Hon'ble High Court has considered this issue in paragraph Nos. 7 to 14, as under:

“7. In support of their contention, the Assessee place reliance upon the decision of the Hon'ble Supreme Court in the case of the Commissioner of Income Tax Vs. K. Srinivasan reported in [1972] 83 ITR 346. It was further contended that while giving effect to the carried forward MAT Credit in the tax calculation for the assessment year 2012 – 2013, the Assessing Officer had

correctly considered tax, surcharge and cess.

8. The CIT(A) after taking note of the submissions made by the Assessee, found the same to be prima facie acceptable and further found that the Assessing Officer did not consider the Appellant's submission. The Assessing Officer was directed to verify the Appellant's submission with reference to the assessment record. The Assessing Officer was further directed to allow the Appellant's claim for the MAT credit, if the Assessee's submission was factually correct. Accordingly, the appeal filed by the Assessee stood partly allowed.

9. The Revenue challenged the order passed by the Commissioner of Income Tax (Appeals) before the Tribunal and it was contended before the Tribunal that the Commissioner of Income Tax (Appeals) had no power to direct the Assessing Officer to verify. The Tribunal took note of the decision of the Hon'ble Supreme Court in the case of K. Srinivasan and held that in

exercise of its power, it is entitled to direct the Assessing Officer to verify the claim of the Assessee and thereafter allow the claim with regard to the MAT credit. Accordingly, the Tribunal declined to interfere with the order passed by the Commissioner of Income Tax (Appeals).

10. The Revenue is before us contending that the surcharge and cess should not be included and that the decision in the case of K. Srinivasan would not be applicable to the facts of this case. Thus, the argument advanced before us is that both the Commissioner of Income Tax (Appeals) as well as the Tribunal ought not to have followed the decision in the case of K. Srinivasan, which was rendered in the context of Section 2 of the Act, whereas Section 11JAA of the Act was inserted subsequently with retrospective effect from 01.04.1997.

11. Section 2(43) of the Act defines 'tax' in relation to the assessment year commencing on the 1<sup>st</sup> day of April, 1965 and any

subsequent assessment year to mean the income tax chargeable under the provisions of this Act and in relation to any other assessment year income tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date and in relation to the assessment year commencing on the 1<sup>st</sup> day of April, 2006 and any subsequent assessment year includes the fringe benefit tax payable under Section 115WA of the Act.

12. Explanation (2)(iii) and (iv) to Section 115JB of the Act states that for the purposes of Clause (a) of Explanation 1 to Section 115JB of the Act, the amount of Income Tax shall include surcharge as levied by the Central Acts from time to time and education cess of Income Tax, if any, as levied by the Central Acts from time to time. A useful reference may be made to Section 2 of the Finance Act and it would suffice to refer to Sub-Section (1) and Sub-Section (2), which state that subject to the provisions of Sub-Sections (2) and (3), Income Tax shall be charged at the rates

specified in Part I of the First Schedule and such tax shall be increased by a surcharge for purposes of the Union calculated in either case in the manner provided therein.

13. The Hon'ble Supreme Court in the case of K. Srinivasan, took note of the legislative history of the Finance Act as also the practice to indicate that the term, "income tax" as employed in Section 2 of the Finance Act, which includes surcharge as also the special and the additional surcharge whenever provided which are also surcharges within the meaning of Article 271 of The Constitution. It was pointed out that the word 'surcharge' has been used to either increase the rates of income tax and super-tax or to increase these taxes. It was also pointed out that according to Article 271, notwithstanding anything in Articles 269 and 270, the Parliament may, at any time, increase any of the duties or taxes referred to in those Articles by a surcharge for the purpose of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India. The

Hon'ble Supreme Court took note of the distinction made by the High Court in the case and held that the distinction made by the High Court that the surcharges are levied, only under the Finance Act and Income Tax under the Act may not hold good. The Hon'ble Supreme Court explained the term 'surcharge' to mean as the charge in addition to or subject to an additional or extra charge.

14. In our considered view, 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 11.07.2018, which fixed the monetary limit for filing appeals by the Department before the Tribunal, 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 no.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.”

As this issue is squarely covered in favour of the Assessee, we direct the Assessing Officer to allow the claim of surcharge and cess as tax and allow the credit accordingly.

4. In the result, the appeal of the Assessee in I.T.A No.:390/CHNY/2021 is allowed.

Order pronounced in the court on 6<sup>th</sup> September, 2022 at Chennai.

**Sd/-**

(मनोज कुमार अग्रवाल)  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य/ACCOUNTANT MEMBER

**Sd/-**

(महावीर सिंह )  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,  
दिनांक/Dated, the 6<sup>th</sup> September, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकरआयुक्त (अपील)/CIT(A)  
4. आयकरआयुक्त/CIT  
5. विभागीयप्रतिनिधि/DR  
6. गार्डफाईल/GF