

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 288/Del/2022  
Asstt. Year: 2015-16

CJ Darcl Logistics Limited, Darcl House, Plot No. 55P, Sector 44, Institutional Area, Gurgaon, Haryana 122 003 PAN AAACD2086J	Vs.	Circle 7(1) Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Anubhav Rastogi, Advocate
Department by :	Shri Vipul Kashyap, Sr. DR
Date of Hearing	18.01.2023
Date of pronouncement	27 01.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

1. The appeal by the assessee is directed against the order dated 13.12.2021 of the Ld. Commissioner of Income Tax Appeals, National Faceless Appeal Centre ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2015-16.

2. The assessee has taken the following grounds of appeal:

**"1. Ground 1: Computation of MAT credit under section 115JAA of the Act excluding surcharge and cess, resulting short grant of MAT credit of INR 36,42,128**

1.1 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the adjustments made by the CPC in the intimation under section 143(1) of the Act i.e., set off of MAT credit u/s 115JAA of the Act excluding surcharge and cess resulting in short grant of MAT credit of INR 36,42,128.*

1.2 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in not adjudicating the correctness of the method of allowing the MAT credit u/s 115JAA of the Act including Surcharge and Cess. The Ld. CIT(A) ought to have allowed the MAT credit u/s 115JAA including surcharge and Cess.”*

1.3 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the recent judicial pronouncements of the jurisdictional ITAT on the specific issue under consideration. While doing so, the Ld. CIT(A) failed to appreciate that the MAT credit allowable under section 115JAA of the Act includes surcharge and cess, which are part and parcel of “tax”, which contradicts the well-established principles laid down by various judicial precedents.*

**2. Consequential Interest u/s 234B and 234C of INR 9,89,440**

2.1. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the consequential interest levied under section 234B and 234C of the Act thereby resulting in an erroneous demand of INR 46,31,570.*

*That the above grounds of appeal are mutually exclusive and without prejudice to each other.”*

3. The facts in brief are that the assessee company is primarily engaged in the business freight, forwarding, project logistics, in-plant transportation, rail transportation etc. It filed its return for AY 2015-16 on 30.11.2015 declaring income of Rs. 34,22,35,520/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (**the “Act”**) in which the credit in respect of brought forward MAT claimed under section 115JAA of the Act was restricted to Rs. 2,73,84,419/- as against Rs. 3,10,26,547/- (after considering surcharge and education cess) claimed by the assessee in its return of income.

4. On appeal the Ld. CIT(A) held that tax credit under section 115JAA was rightly given by observing as under:-

**“5. Decision: I have** considered the submissions. The only dispute is regarding considering surcharge and education cess also along with the tax while granting credit for minimum alternate tax of earlier years. For understanding the amount of tax credit available u/s 115JAA first of all, it is

necessary to understand the meaning of income tax as contemplated by section 115JB of the Act. Section 115JB reads as under:-

*“ Special provision for payment of tax by certain companies.*

*115JB (1) Notwithstanding anything contained in any other provision of the Act where in the case of an assessee, being a company the income tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2010, is less than fifteen per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of fifteen per cent.*

*(2) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956)”*

*The above section clearly talks that such book profit shall be deemed to be total income of the assessee and tax payable by the assessee on such total income shall be the amount of income tax at specified rate of tax which was 15% for the relevant year under consideration. The section does not talk about the income tax as increased by surcharge & education tax. It talks about only income tax. Wherever statute has required income tax to include surcharge and education tax, it has specifically done it like in Explanation 2 to section 115JB. Similarly Form 29B which is filed along with return of income where MAT is applicable at point 14 it states that the amount of income tax payable by the company would be 15% of col. 12 i.e. book profits, it does not state surcharge or education cess. Therefore, it emerges that MAT payable u/s 115JB is only income tax and does not include surcharge or education cess. Therefore, if only income tax is paid under the provisions of section 115JB it is natural that tax credit u/s 115JAA will only be of income tax and not of surcharge and education cess This point is further clarified by intimation u/s 143(1) sent to assessee wherein tax payable u/s 115JB has been calculated as only income tax and no surcharge or education cess has been included in the amount of income tax.*

*The submission of Ld AR that tax includes surcharge and education cess as per Explanation 2 of section 115JB is correct to the extent that Explanation 2 was inserted to clarify the meaning of tax as contemplated in clause (a) of Explanation (1) with respect to calculation of book profit which is read as under.-*

*“Explanation-1 for the purpose of this section book profit means the net profit as shown in the P&L Account for the relevant previous year prepared under sub-section (2) as increased by :-*

*(a) the amount of income tax paid or payable and the provisions thereof:*

	<i>(b), (c), (d), (e), (f)**</i>	**	**
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*The above explanation 1 clarifies that Explanation 2 to section 115JB was inserted to define the meaning of tax (which of course includes education tax and surcharge) for the purpose of calculating book profits liable to tax u/s 115JB and it cannot be extended to other subsections of 115JB or section 115JAA of the Act.*

*In view of the above provisions, it is held that tax credit u/s 115JAA was rightly given. Hon'ble ITAT Delhi in in the case of Richa Global Exports (P.) Ltd. [2012] 25 taxmann.com 1/54 SOT 185 (Delhi - Trib.) gave similar finding.*

*The other ground of appeal of the assessee is regarding interest u/s 234B & 234C, it is a mandatory provision and is consequential in nature and in view of our adjudication on ground 1 above, the ground No.2 is also decided against the assessee The case law relied upon by assessee relates to admissibility of credit of MAT tax before charging interest u/s 234B & 234C which in the present case has been done correctly. The only difference is that amount of surcharge and education tax has not been included in the amount of MAT credit which is also correct as per discussion above relating to ground No.1.”*

5. Aggrieved, the assessee has come up in appeal before the Tribunal and Ground No. 1 relates thereto.

6. The Ld. AR submitted that the issue of inclusion of surcharge and education cess for calculation of MAT credit is covered by plethora of judicial precedent in favour of the assessee. He referred to and relied upon the two decisions of the co-ordinate bench of Mumbai Tribunal in M/s. Tata Motors Ltd. vs. DCIT (LTU-2) Mumbai in ITA No. 2397/Mum/2019 for AY 2014-15 and decision of Ahmedabad bench of the Tribunal in Sayaji Industries Ltd. vs. DCIT Circle 4 Ahmedabad in ITA No. 2137/Ahd/2018 for AY 2015-16.

7. The Ld. DR supported the order of the lower authorities and requested that the matter may be sent back to the Ld. Assessing Officer (“AO”) to allow MAT credit in accordance with the decisions (supra) relied upon the Ld. AR.

8. We have considered the submission of the parties and perused the records. It is observed that the Ld. CIT(A) negated the claim of the assessee in view of the decision of the Delhi Tribunal in Richa Global Exports (P) Ltd. (2012) 25 Taxmann.com 1. It may be stated that the decision (supra) is not detrimental to the claim of the assessee for the reasons recorded by Mumbai Bench of the Tribunal in Para 10 of its decision in M/s. Tata Motors Ltd. (supra) with which we agree. For ready reference para 10 thereof is reproduced below:-

*“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 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 set off of MAT credit inclusive of surcharge and education cess and recomputed the tax payable by the assessee for the year under consideration.”*

9. On the facts and in the circumstances of the assessee's case we deem it fit to remit the matter back to the Ld. AO to recompute MAT credit in consonance with the decision in M/s. Tata Motors Ltd. and Sayaji Industries

Ltd. (supra) after allowing opportunity of hearing to the assessee. We order accordingly.

10. Ground No. 2 regarding levy of interest under section 234B and 234C of the Act is consequential.

11. In the result, the appeal is treated as allowed for statistical purposes.

**Order pronounced in the open court on 27<sup>th</sup> January, 2023.**

sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**  
Dated: 27/01/2023

sd/-  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

**Veena**

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2. Respondent
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4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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