

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO.2530/MUM/2022 (A.Y: 2015-16)

Universal Comfort Products Limited (Amalgamated with Voltas Limited w.e.f 01.04.2019) Voltas House A Block, 4 th Floor Dr. Babasaheb Ambedkar Road Chinchpokli East, Mumbai- 400033 PAN: AAACU4770G	v.	DCIT - Circle 8(3)(1) Post Bag No.2 Electronic City Post Office Bangalore- 560100
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Nitesh Joshi
Department Represented by	:	Shri. Pankaj Kumar
Date of Hearing	:	22.11.2022
Date of Pronouncement	:	08.02.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 21.09.2022 for the A.Y.2015-16.

2. Brief facts of the case are, assessee has filed its return of income on 09.11.2015 declaring total income of ₹.66,34,14,320/- after deduction under Chapter VI-A of the Income-tax Act, 1961 (in short "Act"). Subsequently Assessing Officer [CPC] passed the order u/s.143(1) of the Act after making addition/disallowance. In the above said order Assessing Officer has determined the deemed total income of ₹.94,14,00,66/- u/s.115JB of the Act and the total tax payable on income chargeable under normal provisions are worked out to ₹.22,54,94,528/- comprising as under: -

Income Tax.	₹.19,90,24,296/
Surcharge	₹.1,99,02,430/-
Education Cess	₹.65,67,802/-

Whereas total income tax payable u/s. 115JB of the Act work out to ₹.19,73,22,160/- comprising as under: -

Income Tax	₹.17,41,59,012/-
Surcharge	₹.1,74,15,901/-
Education Cess	₹.57,47,247/-

Against the above, assessee has claimed set off of MAT credit to the extent of differential tax liability payable under the normal provisions and MAT provisions amounting to ₹.2,81,72,368/- u/s. 115JAA of the Act and

determined the net tax liability. However, the net adjustment made by the CPC is as under: -

Particulars	As per Return of Income	As computed under Section 143(1)	Difference
Total Income chargeable to tax as per Normal provisions	66,34,14,320	66,34,14,320	-
Tax at Normal Rates	19,90,24,296	19,90,24,296	
Surcharge on above	1,99,02,430	1,99,02,430	-
Education cess on above	65,67,802	65,67,802	---
Total Tax payable as per Normal provisions	22,54,94,528	22,54,94,528	-
Deemed Total Income under Section 115JB	94,14,00,066	94,14,00,066	--
Tax payable on Deemed Total Income under Section 115JB	17,41,59,012	17,41,59,012	-
Surcharge on above	1,74,15,901	1,74,15,901	-
Education cess on above	57,47,247	57,47,247	-
Tax payable under Section 115JB	19,73,22,160	19,73,22,160	-
Gross Tax Liability (Higher of Normal or Section 115JB)	22,54,94,528	22,54,94,528	.
Credit under Section 115JAA of the Tax Paid in earlier years (excluding of Surcharge and E.Cess)	2,81,72,368	2,48,65,284	33,07,084
Tax payable after credit under Section 115JAA	19,73,22,160	20,06,29,244	33,07,084
Add: Interest payable under Section 234C	2,21,091	3,28,573	1,07,482

Particulars	As per Return of Income	As computed under Section 143(1)	Difference
Aggregate Income Tax Liability	19,75,43,251	20,09,57,817	34,14,566
Less: Total Taxes Paid	19,84,73,097	19,84,73,097	-
Refund as per ROI	9,29,850	-	(9,29,850)
Tax demand as per Intimation u/s 143(1)			24,84,720

3. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) dismissed the appeal filed by the assessee with the following observations: -

"7. I have carefully considered the facts of the case and gone through the submissions filed by the appellant during appellate proceedings. For understanding the amount of tax credit available under section 115JAA first of all, it is necessary to understand the meaning of income-tax as contemplated by section 115JB. Section 115JAA clearly stipulates 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 per cent for the relevant year under consideration. Section 115JAA does not talk about the income-tax as increased by surcharge and education cess. It talks about only income-tax. Wherever statute has sought income-tax to include surcharge and education cess, it has specifically done it as in the case of 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 per cent of col. 12, i.e. book profits; it does not state about surcharge or education cess. Therefore, it emerges that MAT payable under section 115JB is only income-tax and does not include surcharge or education cess. Therefore, where it is only income-tax that is paid under the provisions of section 115JB, it is natural that tax credit under section 115JAA will only be of income-tax and not of surcharge and education cess. The intimation under section 143(1) sent to assessee has clarified. this wherein tax payable under section 115JB has been calculated as only income-tax and no surcharge or education cess has been included in the of income-tax.

The submission of the assessee 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. The above Explanation 1 makes it I clear 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 under section 115JB and it cannot be extended to sections 115JB or section 115JAA. Reliance is placed upon decision in the case of Richa Global Exports (P.) Ltd. vs vs. Assistant Commissioner of Income-tax, (CPC) in 2012] 25 taxmann.com 1 (Delhi).

8. *I have carefully considered the intimation u/s 143(1) and the submissions made by the appellant. The provisions of section 115JAA deals with allowability of tax credit in respect of tax paid on deemed income relating to certain companies. The section allows only credit of tax paid by the company in accordance with the provisions of section 115JAA. Tax has been defined in section 2(43) to be income tax chargeable under the provisions of the Act and surcharge and education cess have not been included in the definition of tax. Wherever the legislature wanted to widen the definition of tax it has done it specifically for example in explanation 2 to section 115JB, the income tax has been specifically defined to include surcharge as well as education cess. The question of including surcharge and education cess arises only when the tax is calculated as per MAT provisions but when giving credit of MAT is to be considered under the normal provisions, then only the eligible amount of MAT is to be consumed from the available quantum of MAT carried forward for future adjustments. Hence, there is no instance of any programme hitch by the AO(CPC), Bangaluru as far as exclusion of surcharge and education cess is concerned for the purpose of credit u/s 115JAA of the tax paid in earlier years. Thus, credit of surcharge and education cess are not admissible for claim of credit as per provisions of the section 115JAA. Accordingly, Ground No. 1,2 and 3 of the appellant are dismissed."*

4. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -.

"1. *The Assessing Officer (AO) and the Commissioner of Income Tax (Appeals) [the CIT(A)] have erred, on facts and in law, in computing the eligible MAT credit under Section 115JAA of the Act*

at Rs.2.48,65,284 by not including Surcharge and Education cess while arriving at the amount of total tax payable under the normal provisions of the Act, and under Section 115JB of the Act.

2. *The Commissioner of Income Tax - (Appeals) has erred, on facts and in law, in not appreciating that the adjustment towards MAT credit made in the intimation under Section 143(1) of the Act is beyond the scope of the Act and thus, the same is bad in law.*

3. *The AO and the CIT(A) have erred in disregarding the judicial precedent in the case of K. Srinivasan vs CIT (1972) 83 ITR 346 (SC) which has held that the term 'tax' includes surcharge and education cess.*

4. *The CIT(A) has erred in not considering the latest jurisdictional orders of Hon'ble ITAT on the specific issue whether the MAT credit granted under Section 115JAA of the Act will be inclusive of Surcharge and Cess.*

5. *The Appellant Company therefore prays that the MAT credit under Section 115JJA of the Act as claimed by the Appellant Company may please be allowed and the AO be directed to delete the disallowance.*

[Refer page 3, SI No.30 of the Order under Section 143(1) passed by the AO and page 10 to 12, para 5 to 8 of the CIT(A)'s Order].

The Appellant Company craves leave to add, amend, alter, vary, substitute or add fresh grounds of appeal before or at the time of hearing of the appeal as they may be advised from time to time."

5. At the time of hearing, Ld. AR submitted that the issue is squarely covered by the decision of the Hon'ble Madras High Court, Hon'ble Calcutta High Court and ITAT Hyderabad bench.

6. On the other hand, Ld. DR relied on the order passed by the Ld.CIT(A).

7. Considered the rival submissions and material placed on record, we observe that the tax credit adjustment u/s. 115JB and 115JAA are squarely covered issues. The Hon'ble Madras High Court in the case of PR.CIT v. Scope International Pvt. Ltd., [2020] 429 ITR 500 (Madras), has given a clear finding as under: -

"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 (supra) and held that in exercise of his power, he is entitled to direct the Assessing Officer to verify the claim of the assessee and thereafter allow the claim with regard to 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 surcharge and cess should not be included and that the decision in the case of K. Srinivasan (supra) 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, (supra) which was rendered in the context of section 2 of the Act whereas section 115JAA of the Act was inserted subsequently with retrospective effect from April 1, 1997.

11. Section 2(43) of the Act defines "tax" in relation to the assessment year commencing on the 1st 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 the 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 1st 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 on

Income-tax, if any, as levied by the Central Acts from time to time. An 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 1 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 (supra) 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, 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 (supra) 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 July 11, 2018 ([2018] 405 ITR (St.) 29). 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, the 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."

8. Further, ITAT Hyderabad Bench in the case of M/s. Virtusa (India) Pvt. Ltd., v. DCIT in ITA.No. 146/HYD/2015 dated 04.03.2016 has decided the issue in favour of the assessee, as under: -

"9.3 On careful reading, the sub-section 2A, the tax credit to be allowed shall be the difference of tax paid for any AY under sub-section (1) of 115JB and the amount of tax payable on his total income computed in accordance with the other provisions of this Act. The important word used is tax paid and as per the Hon'ble Apex Court decision in the case of K. Srinivasan (supra), the term 'tax' includes surcharge.

9.4 It is also important to evaluate sub-section (5) of section 115JAA. "Set off" in respect of brought forward tax credit shall be allowed for any AY to the extent of difference between tax on his total income and the tax which would have been payable u/s 115JB, as the case may be for that AY. On careful reading, the term used are tax not income tax or any other term. Needless to say the term tax includes surcharge.

9.5 The sub-section (5) of section 115JAA are applied as it is in the ITR '6'. The ITR-6 form is designed and approved by the apex body CBDT and this form is universally used by all the company assesseees. In Part A of the ITR-6, the assesseees are required to fill the balance sheet and P&L A/c. From the data of Part A, all the related calculations are carried out in other parts of the ITR-6 i.e. Part – B and other related schedules. None of the columns in the Part 'B' are manually entered, these are auto fills, and the datas are

extracted from Part "A". It is pertinent to analyse the total tax liability calculations designed by the CBDT for the AY 2012-13. They are as below:-

.....

9.6 The tax liabilities for normal provisions as well as MAT are calculated with surcharge and cess. The MAT credit in row "7" are calculated automatically using the prescribed algorithm, this is nothing but balancing figure i.e., the difference between tax liability as per normal provisions and MAT provisions. Both the above tax liabilities are calculated with surcharge and cess. These are the standard format, which are expected to be followed by all the assessees and also important to note that the above format of ITR 6 was amended w.e.f. AY 2012-13 by CBDT. Moreover, this is more relevant for the department also. These formats are regulated by CBDT. Assessing Officer cannot overlook these formats and (interpret it in his own method of calculating tax credit while making assessment u/s 143(1) of the Act.) proceed to calculate the MAT credit to compute assessment u/s 143(1) applying different methods when the proper and correct method as proposed by CBDT in ITR-6. The Assessing Officer is expected to follow the ITR-6 format to complete the assessment u/s 143(1) or 143(3) of the Act.

9.7 Let us also analyse the case law of Richa Global Exports Pvt. Ltd. which was applied by CIT(A), the Delhi ITAT opined that section 115JAA applied only to income tax, not of income tax as increased by surcharge and education cess. We are of the view that the Apex court decision in the case of K. Srinivasan (supra) may not have been brought to the knowledge of the ITAT, Delhi. Moreover, the explanation 2 of section 115JB is applicable to calculate tax liability u/s 115JB and the same explanation should also be applied for giving credit u/s 115JAA. The tax liabilities calculated u/s 115JB by applying the explanation 2, the tax liability so computed are remitted by the assessee and then the same was carried forward for future MAT credit. In our view, while calculating the MAT credit u/s 115JAA, the same explanation '2' in section 115JB must be applied.

9.8 The earlier judgments in the cases of Universal Medicare, Valmet India and Wyeth Limited are decided relying on the ITR – 6 as applicable in those AYs. Similarly, we also apply the ITR 6 format

as applicable to AY 2012-13 as stated above. Assessee has relied on the ITR – 6 format to arrive at the total liability as well as the MAT credit calculations and paid tax accordingly. In our view, the assessee had followed the procedure properly and the Assessing Officer had made the calculations applying his own interpretation or relied on the programme, we are not sure whether it is programme hitch or the interpretation of Assessing Officer was not in line with the calculations proposed in ITR-6. Therefore, we delete the addition made.”

9. Respectfully following the above said decision, we are inclined to allow the grounds raised by the assessee.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 08th February, 2023

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 08/02/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum