

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, AM & Shri Aby T.Varkey, JM

ITA No.942/Coch/2022: Asst.Year:2012-2013

Kerala Feeds Limited Kallettumkara, Iranjalakuda Thrissur – 680 683. [PAN: AAACK9796N] (Appellant)	vs.	Asstt. CIT, CPC, Bangalore (Respondent)
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Appellant by: Sri. Varghese C.V., CA/AR
Respondent by: Smt.J.M.Jamuna Devi, Sr. DR

Date of Hearing: 17.05.2023	Date of Pronouncement: 30.06.2023
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ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee, directed against the appellate order dated 25.8.2022 by the National Faceless Appeal Centre, Delhi (NFAC, or CIT(A)), dismissing the assessee's appeal contesting the processing of its return of income for assessment year (AY) 2012-2013 vide Intimation under section 143(1) of the Income-tax Act, 1961 ('the Act' hereinafter) dated 19.8.2014.

2.1 The short question in controversy in the instant case is the manner in which tax credit u/s.115JAA, of the tax paid u/s.115JB, or the analogous sec. 115-JA, is to be allowed, i.e., whether inclusive or exclusive of the surcharge (and education cess), for the years for which sec.115JAA, reading as under, becomes applicable:

Tax credit in respect of tax paid on deemed income relating to certain companies.

115JAA. (1) Where any amount of tax is paid under sub-section (1) of [section 115JA](#) by an assessee being a company for any assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

(1A) Where any amount of tax is paid under sub-section (1) of [section 115JB](#) by an assessee, being a company for the assessment year commencing on the 1st day of April, 2006 and any subsequent assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under sub-section (1) of [section 115JA](#) and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:

Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(2A) The tax credit to be allowed under sub-section (1A) shall be the difference of the tax paid for any assessment year under sub-section (1) of [section 115JB](#) and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:

Provided that no interest shall be payable on the tax credit allowed under sub-section (1A):

Provided further.....

(3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1).

(3A) The amount of tax credit determined under sub-section (2A) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the fifteenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1A).

(4) The tax credit shall be allowed set off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than [section 115JA](#) or [section 115JB](#), as the case may be.

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of sub-section (1) of [section 115JA](#) or [section 115JB](#), as the case may be for that assessment year.

(6) Where as a result of an order under sub-section (1) or sub-section (3) of [section 143](#), [section 144](#), [section 147](#), [section 154](#), [section 155](#), sub-section (4) of [section 245D](#), [section 250](#), [section 254](#), [section 260](#), [section 262](#), [section 263](#) or [section 264](#), the amount of tax payable under this Act is reduced or increased, as the case may be, the amount of tax credit allowed under this section shall also be increased or reduced accordingly.

(7) – (8)

It may be, before we proceed to discuss the matter, relevant to recount in brief the contextual background in which the issue arises. In computing the ‘total income’ u/s.2(45) under the Act, deductions, both investment and activity based, are admissible from the ‘gross total income’ [defined u/s.80B(5)] under Chapter VI-A of the Act, which led to the phenomena of zero-tax companies. That is, companies, which, though profitable, incurred no liability to tax under the Act. This in turn led to, w.e.f.01/4/1996, what came to be known as the Minimum Alternate Tax (MAT) u/c. XII-B, being u/s. 115-JA, and u/s. 115-JB thereafter. A minimum tax, based on

'book-profit', clearly defined, representing the profit as per the audited accounts, and *sans* any deduction, was adopted as the alternative tax base, either by deeming income with reference thereto (s. 115-JA/ upto 31/3/2000) or deeming tax payable with reference thereto (s.115-JB/ post 31/3/2000). However, as the tax incentives under Chapter VI-A would get phased out over time, the company's taxable income would once again stand to be determined with reference to the regular provisions of the Act. The tax paid earlier on book-profit under MAT was accordingly to be set off (s.115-JAA), so that a uniform basis for taxation obtains. This was also considered necessary as otherwise the benefit of deduction admissible under Chapter VI-A would stand in effect denied; the law taking away, what it gives with one hand, with the other. *There is however no reference to surcharge (and cess) in the tax credit provisions, and which may have been paid, along with the book profit tax.* This gives rise to the issue of the manner in which the tax credit is to be allowed.

2.2 Both the sides before us relied on contrary decisions, reading which it transpires that even the Hon'ble High Courts have differed in the matter. While in *Pr. CIT v. Scope International Pvt. Ltd.* [2020] 429 ITR 500 (Mad) and *SREI Infrastructure Finance Ltd. vs. Dy. CIT* [2017] 395 ITR 291 (Cal), the Hon'ble High Courts have opined in favour of tax credit being inclusive of surcharge (and education cess), the Hon'ble Allahabad High Court in *CIT v. Vacment India* [2014] 369 ITR 304 (All) holds otherwise. The decisions by the Tribunal also lie on either side, with no reference, as it appears, being made to a larger Bench, presumably on account of low tax-effect, viz. Rs.2,12,925 (Rs.28,25,500 – 26,12,575) in the instant case. An equitable solution would suggest allowance of credit in its respect inasmuch as surcharge/cess cannot be suffered twice. The argument shall, however, require a closer examination of the relevant provision/s of law as, besides witnessing difference of judicial view, it being a statutory right, arising by virtue of a provision/s of law, has to be allowed in terms thereof.

2.3 We may, in view of conflict of judicial opinion, begin by stating the first legal principles. Both the charge and collection of tax, which includes surcharge and cess, being statutory levies, has to be per the provisions of law, and not what may be considered appropriate under the circumstances. It is trite law that it is the correct legal position that is relevant, and not the view that the parties may take of their rights in the matter (*CIT v. C. Parakh & Co. (India) Ltd.* [1956] 29 ITR 661 (SC); *Kedarnath Jute Mfg. Co.Ltd. v. CIT* [1971] 82 ITR 363 (SC)). If a payment not due, or not following the due process of law, has been paid by the assessee, the Revenue is obliged, in terms of s. 237, to refund it, or else it would be confiscatory. There is merit in the argument that the surcharge and cess cannot be charged twice on the same tax, i.e., once in the year in which the tax is paid in the first instance, and then again in the year for which credit in its respect becomes allowable. We say so, we may clarify, not on consideration of equity, but on principle inasmuch as surcharge and cess are both levies on the amount of income-tax, implicit wherein is the notion or understanding that it has not been already subjected to surcharge. True, as explained in *CIT v. K.Srinivasan* [1972] 83 ITR 346 (SC), tax and surcharge/cess fall under the same legislative field, and thus have the same character, but, at the same time, the latter are levied on the income-tax, so that there is a basic difference between the two. As explained therein, the levy is for the purpose of the Union, not liable to be allocated to, or shared by, the Federation with the States, and for which the Union has the requisite power under Article 271 of CoI. The said decision, being by the Hon'ble Apex Court and, further, relied upon by the Hon'ble High Courts of Calcutta and Madras, it would, where applicable, settle the matter. However, its import, stated hereinbefore, does not throw any light on the issue at hand.

2.4 Without doubt, therefore, credit of tax u/s.115JAA shall, in terms of the section, arise only where it stands paid for the said year/s. The same should, by extension, apply for surcharge and education cess as well. It is, however, not clear from the material on record if the assessee had paid surcharge (and education

cess)for the year(s) in which tax had, in preference to the normal provisions of the Act, been paid by it on or with reference to the ‘book-profit’ as defined u/s. 115-JB. We question so for one more reason as well. It may not be necessary or follows in consequence that surcharge and cess is payable in respect to tax payable u/s. 115-JB, for which the relevant provisions would have to be seen. Both the charge and collection of tax, which, being a statutory levy, include surcharge/cess, has to be strictly as per the provisions of law. The question that would therefore have to be examined is whether the same are indeed payable on tax u/s. 115-JB, which does not advert thereto. If not payable, there is no question of any credit in its respect being allowed, even if paid mistakenly. The Revenue, in such a case, is obliged to refund the same u/s. 237, and its retention would be confiscatory in view of Article 265 of the CoI. We have till now spelt out the broad contours of the issue at hand.

2.5 The first issue that therefore confronts us if surcharge and education cess is indeed payable on the tax payable u/s. 115-JB for the relevant year. The charge of tax is as per section 4 of the Act, which reads as under:-

Charge of income-tax.

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

The rate/s of income-tax for a particular year is, thus, not prescribed by the Act itself, but by the relevant Central Act, being Finance Act, 2011 for financial year (FY) 2011-2012, i.e., AY 2012-2013. The rates of surcharge and cess, being only additional surcharge, are also prescribed by the annual Central Act prescribing the

tax rate/s for a year. On a challenge thereto, it was in *K.Srinivasan* (supra) explained that the same fall under the same legislative field as tax, i.e., Entry 82 in List 1 to the Seventh Schedule to the CoI, and thus have the same character as tax *per se*. This, since coopted on the statute per *Explanation 3* to s. 40(a)(ii), however, would not by itself resolve the issue at hand, which entails the manner in which credit, where due, is to be allowed, with there being, in principle, no doubt that, being a part of tax, cannot be levied again, which is the import and effect of credit in respect of tax paid, on which aspect we observe no variation of opinion. Also, it needs to be emphasized that though bearing the same character, surcharge and cess being levies on the income-tax, there is an essential difference between the two.

2.6 The question that however arises is where the tax rate is not specified by the relevant Finance Act, as *qua* tax payable u/s.115-JA, but by the Act itself, viz., ss.112, 112A, 113, 115JB, etc., would surcharge or cess apply? The issue, rather than being confined to sec.115JAA, spreads over a larger canvass, i.e., whether the surcharge and education cess would, where the assessee is liable to tax under any of the specified rates as per the special provisions of the Act, apply. *Qua* tax, without doubt, it is the special rate, as opposed to the general rate on the total income computed under the other provisions of the Act, that would hold. Sec. 4(1) itself makes the rates prescribed by the relevant Central Act as subject to the provisions of the Act. Interpreting the amendment to section 113 by way of *proviso* thereto by Finance Act, 2002, specifying the tax rate prescribed therein as being further subject to surcharge, the Apex Court in *CIT v. Vatika Township (P.) Ltd.* [2014] 367 ITR 466 (SC) held the said amendment to be prospective. It was on account of ambiguity in the provision, it explained, that the amendment by way of *proviso* had to be brought on the statute. The same, casting a burden on the assessee, had therefore to be read prospectively. A statutory obligation could not be cast retrospectively, and the benefit of ambiguity in law would go to the subject. There is, like-wise, no corresponding provision in s. 115-JB, or Chapter XII for that matter, providing for

surcharge (or cess) on the tax u/s. 115-JB or u/s. 115-JA, i.e., the two provisions where-under tax on book-profit, in contradistinction to the normal provisions of the Act, is payable where it is, on the basis of the tax rate specified in its respect, in excess of the latter. The matter would necessarily require being decided with reference to the relevant Finance Act, being Finance Act, 2011 in the instant case (refer [2011] 333 ITR (St.) 33). The same, vide clause 2(3), provides for levy of surcharge, for the purpose of the Union, on the tax chargeable determined as provided in the relevant Chapters, with reference to the rates therein, including the relevant sections, which includes sec.115JB. Clauses 2(11) and 2(12) provide, similarly, for charge of education cess (additional surcharge) and higher education cess on the tax specified in clauses 2(1) to 2(11), i.e., including clause 2(3).

2.7 It is, thus, clear that tax u/s.115JB is subject to surcharge and education cess for AY 2012-2013, the year under reference, concluding the first step, i.e., the applicability or otherwise of surcharge/cess on the tax payable u/s. 115-JB. The second step would be to ascertain if the tax paid u/s. 115-JB, credit in respect of which is to be allowed u/s. 115-JAA, is to be read as inclusive or exclusive of surcharge or cess. Without doubt, the same is exclusive thereof, as reading it as inclusive would render s. 2(3), as indeed ss. 2(11) and 2(12) of Finance Act, 2011 incomprehensible, if not also meaningless. As afore-stated, w.r.t. Art. 271 of the CoI, though bearing the same character, there is yet a basic difference between the two inasmuch as surcharge and cess are levies on tax. The matter stands also abundantly clarified by the Apex Court in *CIT v. Tulysan NEC Ltd.* [2011] 330 ITR 226 (SC) dilating on the provisions of s. 115-JAA, delineating the sum in respect of which credit is to be allowed at para 5 of its Judgment, reproduced as under:

‘5. The relevant provisions under section 115JAA of the Act, introduced by the Finance Act, 1997, with effect from April 1, 1997, i.e., applicable for the assessment years 1997-98 and onwards, governing the carry forward and set off of credit available in respect of tax paid under section 115JA, show that when tax is paid by the assessee under section 115JA, then the assessee becomes entitled to claim credit of such tax in the manner prescribed. Such a right

gets crystallized no sooner the tax is paid by the assessee under section 115JA, as per the return of income filed by that assessee for a previous year (say, year one). (See to section 115JAA(1)). *The said credit gets limited to the tax difference between tax payable on book profits and tax payable on income computed under the normal provisions of the Act* (see section 115JAA(2)) in year one. Such credit is, however, allowable for a period of five succeeding assessment years, immediately succeeding the assessment year in which the credit becomes available (say years 2 to 6) (See section 115JAA(3)). However, the MAT credit is available for set off against the tax payable in succeeding years *where the tax payable on income computed under the normal provisions of the Act exceeds the tax payable on book profits computed for that year* (See section 115JAA(4),(5)). At this stage, we would like to emphasize the word "allowed" in all the sub-sections of section 115JAA. The statute envisages under section 115JAA "credit in respect of tax so paid" because the entire tax is not an automatic credit *but* has to be calculated *in accordance with sub-section (2) of section 115JAA*. Sub-section (4) of section 115JAA allows "tax credit" in the year tax becomes payable. Thus, the amount of set off is *limited to the tax payable on the income computed under the normal provisions of the Act less the tax payable on book profits for that year*. (Refer section 115JAA(4) and section 115JAA(5)). The tax credit to be allowed is the function of the tax payable on book profits and the tax payable on income computed under the normal provisions of the Act, in year one. *As stated, the difference of the two is the amount of tax credit to be allowed*. The Assessing Officer may vary the amount of tax credit to be allowed pursuant to completion is fluid/inchoate and subject to final determination only on adjudication of assessment either under section 143(1) or under section 143(3). *The fact that the amount of tax credit to be allowed or to be set off is not frozen and is ambulatory, does not take away/destroy the right of the assessee to the amount of tax credit.* (emphasis, ours)

2.8 There is thus a complete harmony between the provisions of ss. 4(1), 115-JB and 115-JAA of the Act, on which aspect there is in fact no ambiguity or doubt, as further endorsed by the decisions by the Apex Court in *Vatika Township* (supra) and *Tulysan NEC Ltd.*(supra). And which is to say that the rate of tax specified in s. 115-JB is exclusive of surcharge and cess, and it is this tax credit in respect of which is envisaged u/s. 115-JAA, even as, again, without doubt, the said tax may have been subject to surcharge/cess where so specified under the relevant Finance Act and, accordingly, paid along with, discharging an assessee's liability u/s. 4(1) of the Act. Given this clear, basic position, we may now address the issue of the manner of allowing tax credit. As would be apparent, this position itself is the genesis of the controversy. This is as while surcharge (and cess) gets paid, along with the tax at the specified rate u/s. 115-JB (or for that matter u/s. 115-JA r/w s. 4(1) r/w the relevant Finance Act), the credit envisaged u/s. 115JAA is with reference to tax alone. That

is, the Act itself unequivocally suggests allowance of tax credit *sans* surcharge or cess levied and paid thereon. There has been no uniform pattern in the tax return forms as well, which have varied from allowing credit at the stage of tax, to that at the stage of tax inclusive of surcharge. The same, i.e., the prescribed form, in any case, as explained in *Tulysan NEC Ltd.* (supra) (at pg. 238), cannot be determinative of the matter. This is understandable inasmuch as, as afore-noted, levy and collection of tax has to be strictly in terms of the relevant provisions of the Act, with, rather, any ambiguity therein being liable to be read in favour of the tax payer.

We shall, in view of this apparent conflict, examine the issue from the standpoint of the first legal principles. As afore-stated, surcharge and cess cannot be suffered twice, i.e., once at the time tax is paid in the first instance and, again, at the time credit in its respect is to be given. Surcharge is w.r.t. tax, and it is the same tax, paid in an earlier year, credit in respect of which is being allowed in a subsequent year/s, so as to provide a uniform basis of tax determination across years. *If, therefore, surcharge and cess stand suffered, the same cannot be charged again.* In fact, allowance of credit at inclusive of surcharge and cess, which would therefore be against tax inclusive of surcharge and cess, is liable to create distortions on account of variations in their rates across years, vitiating the charge, which has to be clear and unambiguous. We may demonstrate this by way of examples. In all of them, set out below, taking illustrative figures, the gross tax payable (GT) and the tax credit (TC), i.e., for the year of tax-credit, are taken at Rs.200 and Rs. 100 respectively; the difference between the two being the net amount payable (NP). The surcharge (cess) rates applicable to GT and TC are for the year/s of tax-credit and the year for which the liability to pay tax u/s. 115-JA/115-JB arises respectively:

(Amt in Rs.)

Case 1	Particulars	GT (1)	TC (2)	NP (1- 2)
	Tax	200	100	100
	Surcharge / Cess (say)	10 (@ 5%)	3 (@3%)	7
	Total	210	103	107

Allowing credit inclusive of surcharge results in a net liability of Rs.107, comprising Rs.100 as tax and Rs.7 as surcharge. The same clearly cannot be inasmuch as it does not correspond to the rate of surcharge either of the year of credit or even of the year of payment of tax on book-profit. A reverse case, i.e., swapping the surcharge rates for the two years, would be equally unacceptable for the same reason/s, as under:

Case 2	Particulars	GT	TC	NP
	Tax	200	100	100
	Surcharge /Cess	6 (@ 3%)	5 (@ 5%)	5
	Total	206	105	101

It is easy to see that the net surcharge could, depending on the variation in its rate over said two years, as well as the quantum of GT and TC, i.e., on which the same is to be applied, could be in the negative, clearly an unfeasibility. We have deliberately kept a difference in the rates of surcharge (and education cess) between the two years so as to highlight the issue, as the same would get blurred or even obliterated where the said rate is the same across different years, and which would rather make it a non-issue in case it is so, which depiction (Case 3A) would incidentally also project the merit of the tax credit being at net of surcharge (Case 3B), as under:

Case 3A	Particulars	GT	TC	NP
	Tax	200	100	100
	Surcharge / Cess @ 5%	10	5	5
	Total	210	105	105
Case 3B	Particulars	GT	Credit	NP
	Tax	200	100	100
	Surcharge / Cess	--	--	5
	Total			105

Keeping in focus our guiding principle, i.e., the manner of allowing tax credit whereby tax, or the same tax, does not suffer surcharge and education cess twice, it is clearly the third case (Case 3B) where the credit of tax is allowed against tax liability only, i.e., without including surcharge or cess, that surcharge (and cess) stand to be levied only on the net amount of tax payable for a subsequent year, i.e.,

net of tax credit u/s. 115-JAA and, further, at the rate applicable for the year of TC. An allied principle is that liability toward surcharge and cess shall not arise merely because it was not payable earlier, or was payable at a lower rate. That is, the manner of allowing tax credit should factor in the fact that the surcharge and cess for the two years, i.e., of payment of tax in the first instance, and of its credit, is skewed either way, inasmuch as that could translate into transferring the surcharge and cess of one year onto another, as Case 1 & 2 exhibit, quite clearly an impermissibility. Whatever may be the behavior of the surcharge and cess rates over the two years, there is, per the said manner of allowing credit, it may be appreciated, no breach of the principle of non-double levy and, besides, is consistent with s. 115JAA.

In Sum

3.1 Taxing statutes are to be strictly construed (*CI(I) v. Dilip & Co.*, CA No. 3327 of 2007, dated 10/7/2018; *Topman Exports v. CIT* [2012] 342 ITR 49 (SC); *Ajmera Housing Corporation v. CIT*; [2010] 326 ITR 642 (SC)). That apart, the provisions allowing tax credit stand explained by the Hon'ble Apex Court in *Tulsyan NEC Ltd.* (supra) strictly in terms of the relevant provisions of s.115JAA. This perhaps explains the conflict of judicial opinion; the decisions by the Hon'ble High Courts, as indeed by the Tribunal, being on either side. Under the circumstances, we proceeded on first principles, i.e., that the surcharge and cess, both levies on tax, could not be levied on the tax paid earlier, the credit in respect of which is being allowed, i.e., on the tax becoming payable under the regular provisions of the Act. There is, further, no question of set off of the surcharge/cess, as in the case of tax, in the absence of specific provisions in its respect. Accordingly, the tax credit is to be allowed against the tax *per se*, paid earlier. *Surcharge and cess would therefore, if at all, become payable only on the balance tax.* No amount of tax would accordingly suffer surcharge/cess twice. We see this as a common ground in all the decisions, even though they may have decided the question, as set up before them, differently.

And it is this that results in the proposition of allowing tax credit as exclusive of surcharge/cess being pleaded for and on behalf of the Revenue, as was the case in *Vacment India* (supra), while being so for and on behalf of the assessee in *SREI Infrastructure Finance Ltd.* (supra). The former in fact is the only decision which seeks to answer the question with reference to the computation formula as stated in the return of income, a parallel of which has been adopted in the instant order, so as to exemplify and illustrate its effect. In fact, proceeding in the manner in which we have, i.e., allowing set off of tax strictly against the tax *per se*, is not only consistent with the relevant provision of the Act (sec.115JAA), as indeed the decision in *Tulsyan NEC Ltd.* (supra), it also renders irrelevant the payment of surcharge/cess on the tax paid earlier. That is, it would be of no consequence inasmuch as the same stands suffered in relation to the tax paid for an earlier year, in which the same was attracted and, besides, there would be no occasion for the same being paid again. This, incidentally, also provides an answer to the complete non-reference to surcharge and cess, i.e., even by way of *proviso* or *Explanation*, in the provision allowing tax credit. Succinctly stated, surcharge and cess, irrespective of whether the same stand paid along with tax on 'book-profit' and, further, irrespective of the variation in its rate subsequently, would stand to be paid only for the year for which the tax is payable under the regular provisions of the Act, i.e., at an amount net of tax credit, and at the rate applicable for that year.

3.2 We may at this stage advert to the figures of the instant case. The same was eschewed earlier, as the parties were unable to explain the working leading to the impugned difference. Both the assessee and the Revenue had applied the same rate of surcharge and education cess, i.e., at 5% and 3.15% (of tax), respectively and, further, both in respect of tax credit u/s. 115 JAA (Rs.2,32,94,303) and the income computed under the regular provisions of the Act (Rs.2,59,06,878), on both of which figures there is again no dispute or variance, making the case as made out, i.e., tax credit at inclusive or exclusive of surcharge/cess, as inexplicable. This is as it would

in either case lead to the same result, rendering the stated issue as academic and no consequence, while there was indeed a difference of Rs.2,12,925. It is this non-clarity that led us to the define the issue, as stated, broadly, discussing it from various angles, and resolving the matter of allowance of tax credit u/s. 115JAA on first principles, consistent with the relevant provisions of law, which stand further explained by the Hon'ble Apex Court.

The parties have since supplied the details, with a copy (on record)to the other side. As it transpires, the Revenue (CPC) has admittedly applied surcharge and education cess at Rs.21,11,411 on a tax credit u/s. 115JAA of Rs.232.94 lakhs, i.e., at 9.062%, or at a higher than applicable rate of 8.15%, resulting in an additional charge of Rs.2,12,925. As it appears, the levy of surcharge/cess while allowing tax credit, has not been on the amount of credit, but on Rs. 259.07 lacs, the tax payable under the regular provisions of the Act. Not only, thus, the issue cannot be said to be, as projected, one of tax credit at inclusive or exclusive of surcharge, the Revenue's stand is inexplicable as the levy has to necessarily be at that obtaining for the current year, i.e., 8.15% or, as apparent, on a sum other than for which credit is being allowed. This also clarifies, if it was required to, that where the same rate is adopted, the manner of allowing credit with reference to surcharge and cess incident thereon, becomes academic and of no consequence, a non-issue, as exhibited at para 2.8of this order (Case 3A & 3B). A perfect example of much ado about nothing. The impugned demand is accordingly directed for deletion.

We decide accordingly.

4. In the result, the assessee's appeal is allowed.

Order pronounced on June 30, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Aby T.Varkey)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: June 30, 2023
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(Appeals), NFAC, Delhi
4. The Pr. CIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar
ITAT, Cochin