

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.24/RJT/2022
Assessment Year: 2014-15**

The Dy. Commissioner of Income Tax, Circle – 1(1), Rajkot.	Vs.	M/s. Jyoti CNC Automation Limited, Kalawad Road, Metoda, Rajkot – 360 021. [PAN – AABCJ 1947 R]
(Appellant)		(Respondent)
Assessee by	Shri D.M. Rindani & Ms. Devina Patel, ARs	
Revenue by	Ms. Jaya Chaudhary, CIR – DR	
Date of Hearing	26.09.2023	
Date of Pronouncement	29.11.2023	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Revenue against order dated 21.12.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2014-15.

2. The Revenue has raised the following grounds of appeal :-

- “1. *On the facts and circumstances of the case and law, the Ld. CIT(A) has erred in allowing the assessee’s appeal*
2. *The Id. CIT(A) has erred in holding that surcharge and education cess constitute part of the tax payment as Section 115JB r.w.s. 115JAA clearly mentioned that tax credit of income tax only will be given and does include surcharge and education cess.*
3. *The Ld. CIT(A) has erred in allowing the appeal ignoring the facts that the assessee company never claimed surcharge and education cess as part of tax in earlier years.*

4. *The Ld. CIT(A) has erred in allowing the appeal of the assessee holding that the issue is debatable and not free from doubts and therefore cannot be rectified u/s.154 of the Act.*
5. *On the facts of the case and in law, the Ld. CIT(A) ought to have upheld the rectification order of the A.O.*
6. *It is prayed that the order of the CIT(A) may be set-a-side and that of the A.O. be restored to the above extent.*

3. The assessee had filed its return of income for A.Y. 2014-15 on 29.11.2014 declaring income of Rs.32,10,77,905/- under the normal provisions of the Income Tax Act, 1961 and Book profit of Rs.49,40,64,786/- under Section 115JB of the Act. In the return of income, the assessee showed brought forward MAT credit of earlier years aggregating to Rs.5,09,25,592/-, the break-up being brought forward MAT credits Rs.8,83,534/- (A.Y. 2008-09), Rs.41,51,780/- (A.Y. 2009-10), Rs.36,39,402/- (A.Y. 2010-11) and Rs.4,22,50,876/- (A.Y. 2011-12). Out of the aggregate MAT credit of Rs.5,09,25,592/-, the assessee claimed adjustment of Rs.55,75,928/- against the current year's net regular tax liability and the balance MAT credit of Rs.4,53,49,664/- was sought to be carried forward. The case was selected for scrutiny and an assessment order u/s.143(3) was made on 05.05.2016 without making any variation of income computed either under the normal provisions or under special provisions u/s. 115JB of the Act. Consequent upon the assessment, the net regular tax liability including surcharge & education cess in respect of total income under the normal provisions was determined at Rs.10,91,34,380/- against which the assessee was allowed to set-off MAT credit of Rs.55,75,928/- out of the credits brought forward from the A.Ys. 2008-09 (Rs.8,83,534/-), 2009-10 (Rs.41,51,780/-), 2010-11 (Rs.36,39,402/-) and 2011-12 (Rs.4,22,50,876/-). In other words, all claims were allowed by the Assessing Officer as per the return of income. Thereafter, the Assessing Officer initiated a rectification proceedings by the issue of notice u/s.154 on 23.02.2018 intimating the assessee and proposing rectification of excess MAT credit allowed to be carried forward in the instant assessment for A.Y. 2014-15.

4. Being aggrieved by the order of under Section 154 of the Income Tax Act, 1961, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in holding that surcharge and education cess constitute part of the tax payment as Section 115JB read with Section 115JAA clearly mentioned that tax credit of Income Tax only will be given and does not include surcharge and education cess. The Ld. DR further submitted that the Assessing Officer in the original Assessment Order has not included surcharge and education cess and, therefore, rectification order passed under Section 154 of the Act was justifiable. In fact, the issue is not debatable and a rectification under Section 154 of the Act is a valid rectification as the assessee company never claimed surcharge and education cess as part of tax in earlier years. The Ld. DR relied upon the decision of the Tribunal in the case of Kerala Feeds Limited vs. ACIT, ITA No.942/Coch/2022 for Assessment Year 2012-13, order dated 30.06.2023 (Cochin Bench). The Ld. DR also relied upon the decision of Hon'ble Apex Court in case of CIT vs. Tulsyan NEC Limited (2011) 196 Taxman 181 (SC) where the Hon'ble Apex Court has given method as to how the credit has to be allowed. The Ld. DR further submitted that what is set off has to be informed by the assessee as per the data but in the present case the assessee has not done the same. Thus, the Ld. DR relied upon the rectification order and submitted that the CIT(A) was not right in rejecting the contents of the Assessment Order in respect of rectification order.

6. The Ld. AR submitted that the provisions of Section 115JAA(1) of the Act providing for credit of tax paid under Section 115JB(1) was inserted by Finance Act 2005 applicable w.e.f. 01.04.2006 i.e. A.Y. 2006-07. The details of Income Tax shows that the surcharge and cess has been excluded while paying the taxes under Section 115JB(1) of the Act from A.Y. 2006-07 to 2014-15 and its utility during the said period against the tax payable computed under the normal provisions of the Income Tax Act. Ld. AR further submitted that Section 115JB also provides that the tax include surcharge and cess and, therefore, credit and set off of MAT credit should be allowed inclusive of surcharge and cess. The Ld. AR relied upon the decision of Hon'ble High Court of Gujarat in the case of CIT vs. K. Srinivasan, 83 ITR 346. The Ld. AR further submitted that the decision of Hon'ble Apex Court in the case of Tulsyan (supra) will not be applicable in the present case. The Ld. AR further submitted that rectification cannot be done in respect of prior period and there is no error in computation as one year was not included in education cess and surcharge.

The Ld. AR relied upon the decision of Hon'ble Apex Court in the case of Balaram, ITO vs. Volkart Bros., 82 ITR 50.

7. We have heard both the parties and perused all the relevant material available on record. After going through the decision of Hon'ble Apex Court in the case of Tulsyan (supra) as well as decision which was heavily relied in the case of Kerala Feeds Limited (supra), it is found that in the present assessee's case the Revenue has continuously while computing 115JB included surcharge and education cess but in the subsequent year the same has been excluded. In fact, the finding given by the CIT(A) that while excluding surcharge and education cess in the computation of MAT to be carried forward to the subsequent years will not be the subject matter of rectification under the provisions of Section 115. Besides this, on merit, the usual tax included surcharge and education cess and, therefore, the treatment given by the Assessing Officer that of component of surcharge and cess which are included in carry forward credit should be considered for set off against normal tax liability appears to be not justifiable. Thus, appeal of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 29th November, 2023.

Sd/-
(WASEEM AHMED)
Accountant Member
Ahmedabad, the 29th day of November, 2023
*PBN/**

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot