

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2593/Del/2023  
(Assessment Year: 2015-16)**

Dabur India Ltd, 8/3, Asaf Ali Road, New Delhi (Appellant) <b>PAN:AAACD0474C</b>	Vs. DCIT, Circle-7(1), New Delhi (Respondent)
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Assessee by :	Shri M. P. Rastogi, Adv Shri Shivam Malik, Adv
Revenue by:	Shri Vivek Kumar Upadhyay, Sr. DR
Date of Hearing	10/04/2024
Date of pronouncement	16/04/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.2593/Del/2023 for AY 2015-16, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1055254081(1) dated 19.08.2023 against the order of assessment passed u/s 154 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 13.03.2019 by the Assessing Officer, ACIT, Circle-17(1), Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

*"1. That the AO and CIT (Appeals) both ought not to have restricted the claim of MAT credit to the extent of Rs. 12,61,33,173/- against the claim of Rs. 14,29,09,497/- (Rs.12,61,33,173/- + Rs.1,26,13,317 + Rs.41,62,395/-) which includes the surcharge and education cess.*

*2. That the AO and CIT(Appeals) have erred on facts and under the law, while interpreting the provision of Section 115-JAA of IT Act meant for allowing MAT credit paid in earlier year, that the tax does not include surcharge and education cess and consequently the disallowance of surcharge and education cess Rs.*

*1,26,13,317/- and Rs.41,62,395/- respectively, which formed part of the tax paid under the MAT provisions in earlier years, are arbitrary, unjust and bad in law."*

3. We have heard the rival submissions and perused the materials available on record. The short issue that arises for our consideration in this appeal is for the purpose of granting MAT Credit Entitlement u/s 115JAA of the Act, whether the tax credit portion could include surcharge and education cess or not. The figures with regard to the tax portion, surcharge portion and education cess portion are not in dispute before us. The issue is no longer res integra in view of the decision of Co-ordinate Bench of Kolkata Tribunal authored by one of the members herein in the case of Bhagwati Oxygen Ltd vs ACIT reported in 167 ITD 645 dated 15.11.2017 wherein it was held that the payment of entire taxes including surcharge and education cess would be eligible for MAT Credit u/s 115JAA of the Act. The relevant observation of the Kolkata Tribunal in this regard is reproduced hereunder:-

*"8. We have heard the rival submissions. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. We find that the issue under dispute has been addressed against the assessee by the decision of Delhi Tribunal in the case of Richa Global Exports (P.) Ltd. v. Asstt. CIT [2012] 25 taxmann.com 1/54 SOT 185. We find that the issue under dispute is covered in favour of the assessee by the Co-ordinate Bench of Hyderabad Tribunal relied upon by the Ld. AR (supra). We find that Hyderabad Tribunal after considering the decision of Delhi Tribunal (supra) and after considering the decision of the Apex Court in the case of K. Srinivasan (supra) had held that tax includes surcharge and cess and accordingly the entire component of taxes including surcharge and cess shall have to be reckoned for calculating the MAT credit u/s 115JAA of the Act. We also find that the Hon'ble Apex Court had in the case referred to supra, had held that meaning of word 'surcharge' is nothing but an 'additional tax'. In our considered opinion, this understanding of surcharge and cess being included as part of the tax gets further sanctified by the amendment which has been brought in Section 234B of the Act in Explanation 1 Clause 5 while defining the expression 'assessed tax'. For the sake of convenience, the said explanation 1 to Section 234B is reproduced hereunder:*

*"In this Section, "assessed tax" means the tax on the total income determined under sub-section (1) of Section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of—*

(i)	<i>Any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;</i>
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(ii)	<i>Any relief of tax allowed under section 90 on account of tax paid in a country outside India;</i>
(iii)	<i>Any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;</i>
(iv)	<i>Any deduction, from the Indian income tax payable, allowed under section 91, on account of tax paid in a country outside India; and</i>
(v)	<i>Any tax credit allowed to be set off in accordance with the provisions of section 115JAA [or section 115JD]."</i>

*From the aforesaid provisions it could be inferred that the legislature wanted to treat the payment of entire taxes (including surcharge and cess) eligible for MAT credit u/s 115JAA while calculating the interest on 'assessed tax' u/s 234B of the Act, meaning thereby, the assessed tax shall be determined after reducing the entire MAT credit u/s 115JAA of the Act for the purpose of calculating interest u/s 234B of the Act. We find that this is clinching evidence of the intention of the legislature not to deprive any credit of any payment of surcharge and cess made by the assessee either in the MAT or under the normal provisions of the Act. It is not in dispute that the surcharge and cess portion was not paid by the assessee along with the tax portion. The bifurcation of the total payment of taxes by way of tax, surcharge and cess is only for the administrative convenience of the Union of India in order to know the purpose for which the said portion of amounts are to be utilized for their intended purposes. Hence the bifurcation is only for utilization aspect and does not change the character of payment in the form of taxes from the angle of the assessee. As far as assessee is concerned, it had simply discharged the statutory dues comprising of tax, surcharge and cess to the Union of India and hence if paid in excess, would be eligible for either refund or adjustment as contemplated u/s 115JAA of the Act. If the version of the Id CITA is to be accepted, then it would result in an situation wherein if the assessee is entitled for refund, he would not be entitled for refund on the surcharge and cess portion. This cannot be the intention of the legislature and it is already well settled that the tax is to be collected only to the extent as authorized by law in terms of Article 265 of the Constitution and the department cannot be unjustly enriched with the surcharge and cess portion of the amounts actually paid by the assessee. With these observations, we hold that the reliance placed by the Ld. AR on the decision of Hyderabad Tribunal is well founded and squarely applies to resolve the dispute under appeal before us. Accordingly, the grounds raised by the assessee are allowed.*

**9.** *In the result, the appeal of the assessee is allowed.*

4. Similar view was expressed by the Hon'ble Calcutta High Court in the case of Srei Infrastructure Finance Ltd vs DCIT reported in 244 Taxman 197 (Cal).

5. Respectfully following the judicial precedents relied upon hereinabove, the grounds raised by the assessee are allowed. The Id. AO is directed to recomputed the MAT credit u/s 115JAA of the Act by including surcharge and cess portion along with the tax component.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16/04/2024.

-Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 16/04/2024  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi