

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2792/Mum/2024
(Assessment Year: 2016-17)**

DCIT, Circle-5(1)(1) Room No. 568, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Dahej Harbour and Infrastructure Pvt. Ltd. 6 th Floor, Birla Centurion, Pandurang Budhkar Marg, Worli, Mumbai-400030. PAN : AAACD7230J
Assessee)	:	Respondent)

Assessee/Appellant by : Shri Shailesh Bandi, CA
Revenue/Respondent by : Shri Nayanjyoti Nath, Sr. DR

Date of Hearing : 25.07.2024
Date of Pronouncement : 30.07.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)'] dated 19.03.2024 for Assessment Year (AY) 2016-17. The Revenue raised the following grounds of appeals:

“(i) "Whether on the facts and circumstances of the case and in law, the Ld. Addl./JCIT(A) has erred in deciding that the MAT credit inclusive of surcharge and cess is to be allowed to be set off under section 115JAA(5) of the IT Act ignoring that the section 115JAA of Income Tax Act, 1961 provides for tax credit to be allowed to the extent of the difference of the tax paid for any assessment

year under section 115JB and the amount of 'tax payable' by the assessee on his total income which doesn't include surcharge and cess?"

(ii) "Whether on the facts and circumstances of the case and in law, the Ld. Addl./JCIT(A) has erred in deciding that the MAT credit inclusive of surcharge and cess is to be allowed to be set off under section 115JAA(5) of the I.T. Act without appreciating the ratio laid down by the Pune Bench of ITAT in the case of Harbinger Systems (P.) Ltd. Vs. Deputy Commissioner of Income-tax, Circle 1 (2), Pune [2017] and the Delhi Bench of Tribunal in the case of Richa Global Exports (P.) Ltd. v. Asstt. CIT (2012), wherein it was held that MAT credit payable under section 115JB is only income-tax and does not include surcharge or education cess?"

(iii) The appellant prays that the order of the Addl./Jt.CIT(A)-3, Chennai on the grounds be set aside and confirm the order of the AO.

(iv) The appellant craves leave to add, amend or alter all or any of the grounds of appeal."

2. The assessee is a company engaged in the business of development, maintenance and operation of Jetty (Port) at Dahej, Gujarat. The assessee filed the return of income for AY 2016-17 on 14.10.2016 declaring a total income of Rs. 65,32,72,620/- under the normal provisions of the Act and income of Rs. 63,19,37,409/- under the provisions of section 115JB of the Act. Since the tax payable under the normal provisions of the Act was higher than the tax payable under Minimum Alternate Tax (MAT) provisions the assessee paid tax as per the normal provision claiming credit under the provisions of section 115JAA of the Act (MAT Credit) amounting to Rs. 9,12,11,984/-. Subsequently, the return was processed under section 143(1) of the Act by CPC, Bangalore wherein the credit under the provisions of section 115JAA was reduced to Rs. 7,90,67,953/-. Aggrieved assessee filed further appeal before the CIT(A). The assessee submitted

before the CIT(A) that the MAT Credit has to be allowed after adding surcharge and cess to the normal tax and MAT. The assessee further submitted that the Hon'ble Supreme Court in the case of CIT Vs. K. Srinivasan (1972) 83 ITR 346 (SC) where it has been held that the term "tax" includes surcharge and additional surcharge. Accordingly, the assessee submitted that the MAT Credit i.e. allowed to be carried forward should include surcharge and cess. The CIT(A) allowed the claim in favour of the assessee by holding that

“Ground No. 1:- The appellant contested that the AO(CPC) did not consider surcharge and cess while computing MAT credit for computing total income under 115 JB. The appellant contested that they have claimed the MAT credit set off in accordance with the provisions of 115JAA(5) of the I.T Act as per the ITR computation schedule.

It is observed from the ITR schedule, the MAT credit is to be allowed after considering the surcharge and cess only. Besides, the Jurisdictional Hon'ble ITAT Mumbai in the case of M/s Tata Motors Ltd Vs DCIT (LTU)-3 vide ITA No. 2397/Mum/2019 dated 25.6.2021 wherein it is directed the revenue to allow set off of MAT credit inclusive of surcharge and cess and re-compute the tax payable by the Appellant for the year under consideration. Respectfully, following the above jurisdictional ITAT decision, the Jurisdictional Assessing Officer (JAO) is directed to allow the MAT after including the surcharge and cess. Accordingly, the appeal on this issue is allowed in favour of appellant.”

3. The ld. DR submitted that the MAT Credit should be allowed only for the tax paid under the normal provisions of the Act which should not include the surcharge and cess and accordingly, the ld DR supported the order of the AO.

4. We heard the parties and perused the materials on record. We notice that the co-ordinate bench in the case of Tata Motors Ltd Vs. DCIT (supra) has considered a similar issue and held that –

“3. We have heard rival submissions, perused the orders of the authorities below. The only issue to be decided is as to MAT credit granted u/s. 115JAA of the Act should be inclusive of surcharge and cess. This issue is decided in favour of the assessee in the following decisions: -

- (i). Srei infrastructure [Finance Ltd., v. DCIT](#) [395 ITR 291 (Calcutta)]
- (ii). M/s. Scope International Pvt. Ltd., (TCA No. 588 of 2019) dated 16.08.2019.
- (iii). [Consolidated Securities Ltd., v. ACIT](#) [172 ITD 163]
- (iv). Virtusa (India) (P.) [Ltd., v. DCIT](#) [157 ITD 1160]
- (v). [Bhagwati Oxygen Ltd., v. ACIT](#) [167 ITD 645]
- (vi). [SI Group India Pvt. Ltd., v. DCIT](#) in ITA.No. 2348 & 2350/Mum/2017 dated 11.10.2018.
- (vii). M/s. Savita Oil Technologies Ltd., v. ACIT in ITA.No. 3066/Mum/2015 dated 07.02.2017.

4. In the case of Srei infrastructure [Finance Ltd., v. DCIT](#) (supra) the Hon'ble Calcutta High Court held that MAT credit u/s. 115JAA of the Act brought forward from earlier years is to be set off against tax on total income including surcharge and education cess instead of adjusting the same from tax on total income before charging such surcharge and cess.

5. In the case of M/s. Scope International Pvt. Ltd., (supra) the Hon'ble Madras High Court considering the decision of the Hon'ble Supreme Court in the case of [CIT v. K. Srinivasan](#) [83 ITR 346] held that MAT credit has to be given including the amount of surcharge and education cess.

6. The Hyderabad Bench of the Tribunal in the case of Virtusa (India) (P.) [Ltd., v. DCIT](#) (supra) taking note of the decision of the Hon'ble Apex Court in the case of [CIT v. K. Srinivasan](#) (supra) wherein the Hon'ble Apex Court held that the word "Income-tax" would include surcharge and additional surcharge". The Tribunal held that the eligible MAT credit available to set off for the company during the captioned assessment year needs to be arrived at by comparing difference between the tax liability (inclusive of surcharge and cess) computed under normal provisions of the Act and the tax liability (inclusive of surcharge and cess) computed under the provisions of section 115JB of the Act.

7. In the case of [Bhagwati Oxygen Ltd., v. ACIT](#) (supra) the Kolkata bench of the Tribunal held as under: -

"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 Pvt. Ltd. reported in 25 taxmann. com 1 (Del). 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 [CIT vs. K. Srinivasan](#) reported in 83 ITR 346 (SC) 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'."

8. *In the case of [M/s. Savita Oil Technologies Ltd., v. ACIT](#) (supra) the Bombay Bench of the Tribunal held as under:*

"4. We have gone through the facts of this case. We have been called upon to decide in this case the correct manner of computing tax liability and also amount of credit available u/s 115JA keeping in view levy of surcharge and education cess in the process. We have examined the entire scheme of the Act containing provisions with regard to payment of MAT u/s 115JB as well as availability of credit available u/s 115JAA. It is noted that it was held by the Hon'ble Allahabad High Court in the case of [CIT vs Vacment India](#), (supra) that methodology of computation of tax liability and granting credit of MAT should be similar to the methodology provided in the prescribed form of filing of income-tax return i.e. ITR-6. But subsequently, Hon'ble Calcutta High Court in the case of M/s Srei Infrastructure Finance Ltd, supra examined this issue in detail and held that computation of tax liability and setting off of tax credit available should be done in accordance with law and not on the basis of 'inappropriate' form prescribed under the rules inadvertently. It is noted that Hon'ble Calcutta High Court has held that for the purpose of section 115JB, surcharge and cess are part of income-tax payable in accordance with provisions of section 115JB. Therefore, when the tax is paid u/s 115JB along with surcharge and cess, then entire amount would be considered for carry forward of the credit available u/s 115JAA and accordingly the entire amount would be available for the benefit of set off

in the subsequent years from the amount of gross tax payable by the assessee. During the course of hearing before us, Ld. Counsel submitted before us three types of work sheets wherein tax payable after setting off amount of credit available u/s 115JAA was worked out in three different methods. We find that the following working shows the appropriate method of computing tax liability and setting off amount of credit available u/s 115JAA:-

COMPUTATION OF TAX LIABILITY ON TOTAL INCOME AS PER INCOMETAX ACT, 1961

1		Total Income			Rs.	1,093,157,260
2		Tax Payable on total income				
	a	Tax at normal rates	Rs.	327,839,585		
	b	Tax at special raes		-		
	c	Tax payable on total income			Rs.	327,839,585
3		Surcharge on 2c			Rs.	32,783,959
4		Education cess on (2c+3)			Rs.	10,818,706
5		Credit under section HSJAA of tax paid in earlier years				
	a	Income-tax	Rs.	29,976,115		
	b	Surcharge	Rs.	2,597,612		
	c	Education Cess on (5a+ 5b)	Rs.	857,212	Rs.	29,430,939
		Tax payable after credit under section 115JAA			Rs.	342,011,311

During the course of hearing, the Ld. DR also fairly submitted that it would be a correct method of computing tax liability and credit available u/s 115JAA. It is noted from the above working that first of all tax amount has been computed on the total income of the assessee. Thereafter surcharge and education cess has been worked out upon the tax liability. Then, from the gross amount so arrived at, the amount of credit available u/s 115JB on account of income-tax, surcharge and education cess (all combined together) have been deducted and accordingly, net tax payable after setting off credit available u/s 115JB has been worked out. In our view, this is the correct method of computing tax liability as well as credit available u/s 115JAA. Accordingly, we direct the AO to verify the facts as

have been given in the aforesaid working and compute the tax liability accordingly and allow the necessary relief to the assessee."

9. *We further observe that the decision of Coordinate Bench of the Tribunal in the case of [SI Group India Pvt. Ltd., v. DCIT](#) (supra) is emanating from the order passed by the Assessing Officer u/s. 154/143(1) of the Act.*

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 recompute the tax payable by the assessee for the year under consideration.*

11. *In the result, appeal of the assessee is allowed as indicated above. Order pronounced on 25.06.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board."*

5. We notice that the revenue has not brought anything on record for us to take a different view on this matter. Since the facts in assessee's case being identical, respectfully following the above decision of the coordinate bench we direct the Assessing Officer to include surcharge and education cess for the purpose of giving MAT credit under section 115JAA. It is ordered accordingly.

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

Order pronounced in the open court on 30-07-2024.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai