

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.302/Del/2022
[Assessment Year: 2011-12]**

M/s Crystal Crop Protection Limited, B-95, Wazirpur Industrial Area, Delhi-110052	Vs	DCIT, Circle-4(2), ITO, New Delhi-110002
PAN-AABCJ3574E		
Assessee		Revenue

Assessee by	Sh. S.S. Nagar, CA
Revenue by	Sh. Dayainder Singh Sidhu, CIT(DR)

Date of Hearing	12.06.2024
Date of Pronouncement	29.08.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi, dated 14.12.2021 pertaining to Assessment Year 2011-12.

2. The grounds of appeal raised by the assessee reads as under:-

“1. That on the facts and in the circumstances of the case, the disallowance, imposition of tax and interest with reference thereto, the quantification of taxable income and the tax liability, has been grossly unjustified, erroneous and unsustainable and necessary direction be given to the Ld. AO to give appropriate relief in accordance with law.

2. That on the facts and in the circumstances of the case the Ld. AO erred in giving credit of MAT by first adding education cess and surcharge to gross tax and then adjusting MAT credit therefrom instead of first adjusting such credit from gross tax exclusive of

surcharge and education cess and then adding education cess and surcharge thereto.

3. That on the facts and the circumstances of the case the Ld. AO erred in granting short interest u/s 244A.”

3. Brief facts of the case:- The assessee company is inter alia engaged in the business of manufacturing and trading of pesticides, insecticides, etc. The list of dates arising to the issue in the present appeal is as under:-

Sl. No.	Dates	Description
1	30.09.2011	Original return of income filed declaring total income of Rs.129,93,65,800/- computed under the normal provisions of the Act and Rs.138,36,55,191/- u/s 115JB of the Act.
2	30.09.2011	Revised return of income filed declaring total income of Rs.129,93,65,800/- computed under the normal provisions of the Act and Rs.138,36,55,191/- u/s 115JB of the Act.
3	24.03.2014	Assessment u/s 143(3) made, wherein, disallowance u/s 14A read with Rule-8D was made
4	29.12.2015	CIT(A) dismissed the appeal of the assessee against the aforesaid order u/s 143(3).
5	02.12.2019	The ITAT passed an order in favour of the assessee in respect of the appeal filed by the assessee against the order of the ld. CIT(A) dated 20.12.2015.
6	04.08.2020	An order u/s 254 was passed determining refund of Rs.2,89,14,430/-. In this order, the MAT credit of Rs.8,60,09,567/- was adjusted from the total tax liability of Rs.40,36,45,338/- including surcharge (Rs.2,73,41,071/-) and education cess (Rs.1,17,56,660/-)

4. Against the above tax adjustment of the MAT credit against the total tax liability of the assessee as detailed at Sr. No.6 as above, the

assessee submits that the MAT credit of Rs.8,60,09,567/- should have been adjusted first from the tax exclusive of surcharge and education Cess and then surcharge and education Cess should have been calculated. With this plea the assessee filed an appeal before the Ld. CIT(A), who dismissed the appeal of the assessee vide order dated 14.12.2021.

4.1. The Ld. CIT(A) did not agree with the case laws relied upon by the assessee, wherein, it was held that MAT credit u/s 115JA should be first reduced from the tax payable and thereafter on the residual amount, the surcharge and education cess should be levied. The Ld. CIT(A) dealt with the provisions u/s 115JAA and relied upon the decision of Hon'ble Apex Court in the case of CIT vs K. Srinivasan (83 ITR 346)(SC), which held that the term 'tax' includes surcharge. The Ld. CIT(A) also did not accept the plea of the assessee regarding the part -B of the ITR-6 being revised from Assessment Year 2012-13, wherein, credit u/s 115JAA was placed after the gross tax liability including tax, surcharge and education cess, whereas, in the part-B of ITR-6 in AY 2011-12, the sequence of credit u/s 115JAA was just below gross tax payable and thereafter the charge of surcharge and education cess followed on the ground that there was no change in the provisions of Section 115JAA of the Act with respect to MAT Credit. The Ld. CIT(A) also relied upon the following case laws to hold that the MAT Credit has to be allowed after charging of surcharge and education cess and not against the tax liability before the levy of surcharge and education Cess as contended by the assessee. The case laws relied by the Ld. CIT(A) are as under:-

1. CIT vs K. Srinivasan [83 ITR 346](SC)

2. Srei Infrastructure Finance Ltd. vs DCIT [395 ITR 291][Calcutta]
 3. M/s Scope International Pvt. Ltd. [TCA No.588 of 2019][Madras]
 4. Virtus (India) (P.) Ltd. vs DCIT [157 ITD 1160] [Hyd Trib.]
 5. Bhagwati Oxygen Ltd. vs ACIT [167 ITD 645] [Kolkata Trib.]
 6. M/s Savita Oil Technologies Ltd. vs ACIT [ITA No.3066/Mum/2015] dated 07.02.2017
5. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.
6. The Id. AR submitted the same arguments as made before the Id. CIT(A) and filed a written submission as under:-.

KEY SUBMISSIONS/PRECEDENCE					
<u>Our Plea Before Hon'ble ITAT</u>					
<u>Factual Submission</u>					
In the preceding AY's the appellant paid tax u/s 115JB of the Act and carried forward the MAT Credit excluding education cess and surcharge.					
Particulars	Tax Payable under normal provisions of the Act (excluding surcharge and education cess)	Tax payable u/s 115JB of the Act (excluding surcharge and education cess)	MAT Credit for current year	Cumulative MAT Available	Kindly refer Page No. of PB
Opening Balance	-	-	-	1,39,87,881/-	Page no. 6 of PB
A.Y. 2008-09	1,63,293/-	75,38,034/-	73,74,741/-	2,13,62,622/-	Page no. 5 & 6 of PB
A.Y. 2009-10	-	2,80,36,326/-	2,80,36,326/-	4,93,98,948/-	Page no. 8 & 9 of PB
A.Y. 2010-11	1,25,12,847/-	4,91,23,466/-	3,66,10,619/-	8,60,09,567/- Total MAT credit for AY 2011-12	Page no. 11 & 12 of PB
Later in subsequent years, when the appellant paid tax under normal provisions of the Act it set off MAT credit available from the tax payable excluding education cess and surcharge and then calculate surcharge and education cess on such net tax payable.					
In Part A of the ITR-6, the assessee is 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. <u>None of the columns in the Part 'B' are manually entered, these are auto fills,</u> and the data					

are extracted from Part "A". It is pertinent to analyze the total tax liability calculations designed by the CBDT for the AY 2011-12. For relevant part of ITR kindly refer page no. 13 to 15 of PB.

Hon'ble Allahabad High court in the case of CIT vs. Vacment India (55 taxmann.com 314). Kindly refer page no. 16 to 17 of PB.

Hon'ble Jurisdictional ITAT in the case of M/s PCI Ltd. vs. DCIT (ITA No. 1289 / Del / 2015). Kindly refer page no. 18 to 28 of PB.

Hon'ble Jurisdictional ITAT in the case of Consolidated Securities Ltd. vs. ACIT (ITA No. 3739 / Del / 2015). Kindly refer page no. 29 to 32 of PB.

Hon'ble jurisdictional ITAT in the case of Richa Global Exports vs. ACIT (ITA No. 2303 / Del / 2012). Kindly refer page no. 33 to 37 of PB.

Hon'ble Mumbai ITAT in the case of Wyeth Limited vs. ACIT (ITA No. 6682 / Mum / 2011). Kindly refer page no. 38 to 42 of PB.

Hon'ble Chennai ITAT in the case of DCIT vs. M/s. Saint Gobain Gyproc India Limited. (ITA No. 2122 / Mds / 2015).

Hon'ble Mumbai ITAT in the case of Universal Medicare P. Limited vs. ACIT (ITA No. 839/ Mum/2012). Kindly refer page no. 43 to 45 of PB.

Hon'ble Hyderabad ITAT in the case of ACIT vs. Divi's Laboratories Limited (ITA No. 596/ Hyd/2017). Kindly refer page no. 46 to 52 of PB.

Hon'ble Mumbai ITAT in the case of M/s Tata Motors Ltd. vs. DCIT (ITA No. 2397 / Mum / 2019). Kindly refer page no. 53 to 60 of PB.

Prayer

As the appellant has carry forward the amount of MAT Credit available (excluding surcharge and education cess) the set-off of MAT Credit in the subsequent years shall also be made from the gross tax liability (excluding surcharge and education cess). Therefore, it is prayed before your Hon'our to kindly issue instructions to Ld. AO to give effect of MAT Credit u/s 115JAA of the Act before levying surcharge and Cess on tax on appellant's total income.

7. We have heard both the parties and perused the material available on record. The submissions of the assessee, the provisions of law and the judicial pronouncements on the issue have been examined and considered. In the present case, the appellant has MAT credit of Rs. 8,60,09,567/- during the year. The MAT credit of the assessee was adjusted from the total tax liability of Rs.40,36,45,338/- inclusive of surcharge of Rs.2,73,41,071/- and Cess of Rs.1,17,56,660/-, whereas, the assessee submits that the MAT credit of Rs.8,60,09,567/- should have been adjusted with the net tax liability of Rs.36,45,47,607 exclusive of surcharge and Education Cess first, then the surcharge and Education Cess payable should have been calculated. In this regard, he has relied

upon the decision of the Hon'ble Allahabad High Court in the case of CIT vs Vacment India (supra), which squarely covers the case in favour of the assessee. The order of the Hon'ble Court is reproduced as under:-

1. *The appeal by the Revenue under Section 260A of the Income Tax Act, 1961 arises from an order of the Income Tax Appellate Tribunal dated 22 May 2014. The assessment year to which the appeal relates is AY 2011-12.*

2. *The Revenue has formulated the following question of law in support of the appeal:*

"Whether the Hon'ble ITAT has erred in law as well as in the facts and circumstances of the case in allowing the calculation of tax in violation of the provisions of the relevant Finance Act which prescribe calculation of tax as inclusive of cess and surcharge."

3. *In the present case, the assessee filed an appeal before the Commissioner (Appeals) against an order that was passed under Section 143 (1) read with Section 154 of the Act by the ACIT-Centralized Processing Centre (CPC), Bangalore, by which a demand of Rs.10,92,766.00 was raised on the assessee. The following grounds of appeal were raised before the Commissioner (Appeals).*

"1. Because the rectification application filed under Section 154 of the I.T. Act before CPC, Bangalore has been wrongly and illegally rejected.

2. Because surcharge and education cess on the tax payable has been calculated before allowing credit of tax paid in the earlier years under Section 115JAA which is apparently wrong and hence, ACIT (CPC) has erred on facts and as well as on law in rejecting the application filed under Section 154 of the I.T. Act.

3. Because without prejudice to the above mentioned grounds, if the credit of tax paid under Section 115JAA is to be allowed after charging surcharge and education cess, then the credit which has been allowed of the taxes paid in the earlier year should also be inclusive of surcharge and education cess."

4. *The Commissioner (Appeals) allowed the appeal filed by the assessee by an order dated 18 October 2013 and directed the Assessing Officer to compute the gross tax liability on the assessee in accordance with the method of computation provided in ITR-6 for the assessment year 2011-12. The Tribunal has dismissed*

the appeal filed by the Revenue by its order dated 22 May 2014.

5. The only question which is raised pertains to the computation of tax in accordance with the modalities which are prescribed in the relevant form, ITR-6. Insofar as is material, the relevant entries in the form (Part B-TTI) are as follows

3	Gross tax payable (enter higher of 2c and 1)	3
4	Credit under section 115JAA of tax paid in earlier years (if 2c is more than 1)(7 of Schedule MATC)	4
5	Tax payable after credit under section 115JAA [(3-4)]	5
6	Surcharge on 5	6
7	Education cess, including secondary and higher education cess on (5+6)	7
8	Gross tax liability	8

6. The aforesaid entries leave no manner of ambiguity in regard to the method of computation of tax liability. Entry 3 requires computation of the gross tax payable. Under entry 4, credit is required to be given under Section 115JAA of the Act of the tax paid in earlier years. Entry 5 requires a computation of the tax payable after credit under Section 115JAA of the Act. The matter is placed beyond doubt by the parenthesis, which indicates that tax payable under entry 5 is to be arrived at by deducting the credit under Section 115JAA of the Act (under entry 3) from the gross tax payable (under entry 4). The surcharge is computed on the amount reflected in entry 5.

7. The Tribunal has noted that from the next assessment year, AY 2012-13, the position was materially altered, but in the present case, since the dispute related to AY 2011-12, the method of computation, as directed by the Commissioner (Appeals), was plainly in accordance with the methodology as provided in ITR-6. The Tribunal in confirming the order of the Commissioner (Appeals) has, hence, not committed any error. The appeal will not give rise to any substantial question of law and is, accordingly, dismissed.

8. There shall be no order as to costs."

7.1. Further, on perusal of the decisions relied upon by the Ld. CIT(A) in dismissing the appeal of the assessee, it is seen that the same held that when the tax is paid u/s 115JB along with surcharge and cess, then entire

amount would be considered for 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. In this case, as evident from the chart submitted by the assessee, the assessee has calculated tax payable u/s 115JB as well as the MAT credit available for the current year as well as the cumulative MAT available amounting to Rs.8,60,09,567/- without considering surcharge and education cess as the case may be during the said years. Therefore, the decision of the Ld. CIT(A) in dismissing the appeal of the assessee and thereby upholding the action of the AO for including surcharge and education cess on tax payable before allowing MAT credit without giving the parity benefit to the assessee to include similar surcharge and education cess paid on the MAT credit in the respective assessment years before making such an adjustment cannot be sustained.

7.2. Further, the decision of Hon'ble Allahabad High Court in the case of Vacment India (supra) squarely covers the case in favour of the assessee. Respectfully following the same in the given facts of the case, we, therefore, direct the AO to adjust first MAT credit of Rs.8,60,09,567/- from the tax payable exclusive of surcharge and education cess and thereafter, surcharge and education cess should be calculated as claimed by the assessee. Ground Nos. 1 & 2 of the appeal are allowed.

8. Ground No.3 of the appeal is against short grant of interest u/s 244A of the Act. The AO is directed to verify the claim of the assessee and allow interest u/s 244A of the Act as per law.

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

Order pronounced in the open court on 29th August, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 29.08.2024.

SJK

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,