# IN THE INCOME TAX APPELLATE TRIBUNAL
# DELHI BENCHES : C : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA No.3739/Del/2015
Assessment Year : 2011-12

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|---|---|---|
| Consolidated Securities Ltd.,<br>8/19, Third Floor,<br>WEA Pusa Lane, Karol Bagh,<br>New Delhi. | Vs. | ACIT,<br>Central Circle-3,<br>ARA Centre,<br>Jhandewalan, Extn.,<br>New Delhi. |
| PAN: AAACC0122C | | |
| (Appellant) | | (Respondent) |

Assessee By : Shri K.C. Singhal, Advocate
Department By : Shri Arun Kumar Yadav, Sr. DR

Date of Hearing : 25.07.2018
Date of Pronouncement : 26.07.2018

ORDER

PER R.S. SYAL, VP:

This appeal filed by the assessee arises out of the order passed by the CIT(A) on 02.03.2015 in relation to the assessment year 2011-12.

2. The only effective ground raised in this appeal reads as under:-

> "That on the facts and circumstances of the case as well as in law, the ld.CIT(A) was not justified in upholding the order u/s 154 of the Income Tax Act 1961 since MAT credit allowed by revenue, while processing the return u/s 143(1), is not in accordance with law. Even if tax component only is to be allowed as MAT credit, it should have been allowed against the tax component only determined as per normal procedure and then ought to have computed the surcharge and cess as well as interest on the balance amount."

3. Briefly stated, the facts of the case are that the assessee filed its return declaring total income of Rs.11,26,58,993/-. In the calculation of amount of tax, the assessee reduced MAT credit of Rs.1,05,78,311/- available u/s 115JAA from the amount of tax for the year under consideration, determined at Rs.2,96,04,901/-. Thereafter, the assessee loaded the remaining amount of tax of Rs.1,90,26,590/- with surcharge and education cess. The Assessing Officer processed the return u/s 143(1) of the Income-tax Act, 1961 (hereinafter also called `the Act'). He also computed total income and tax on such total income at Rs.11.62 crore and Rs.2.96 crore respectively, being the same amounts as were determined/worked out by the assessee. The dispute concerns only on the stage of reduction of MAT credit claimed by the assessee at Rs.1.05 crore as against the Assessing Officer allowing such credit of Rs.95,53,680/- immediately after the calculation of tax payable for

the year at Rs.2.96 crore in the computation made u/s 143(1) of the Act, that is before the levy of surcharge and education cess etc. The ld. AR submitted that though the Assessing Officer reduced Rs.95.53 lakh from tax payable at Rs.2.96 crore in the Intimation u/s 143(1) of the Act, but, such credit was not actually allowed in the computation of total tax for the purposes of surcharge and education cess etc. along with interest u/ss 234A/B/C of the Act. The short point raised in this appeal is to decide the stage at which the tax credit should be allowed.

4. We have heard both the sides and perused the relevant material on record. Section 115JAA of the Act deals with tax credit in respect of tax paid on deemed income relating to certain companies. Sub-section (1A) of this section provides that where any amount of tax is paid u/s 115JB(1), then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section. Sub-section (2A) further mandates that: "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 its total income computed in accordance with the other provision of the Act." To put it simply, the

prescription of section 115JAA(2A) is that if the amount of tax under the regular provisions is, say, Rs.110/- (tax of Rs.100 and surcharge and cess etc. at Rs.10) and u/s 115JB(1) it is Rs.121/- (tax of Rs.110 and surcharge and cess etc. at Rs.11), the assessee is entitled to tax credit of Rs.11/- (Rs.121/- minus Rs.110/-) in subsequent years. The amount of tax credit of Rs.11 has two components, viz., tax of Rs.10 and surcharge etc. of Rs.1. The parallel of the tax credit of Rs.11 in the hypothetical situation is Rs.1.05 crore in the instant case, which as per the assessee has tax component of Rs.95.83 lac and surcharge and cess etc. at Rs.10.25 lac. The ld. AR could not place on record the veracity of such two figures and on a pointed query frankly agreed that the same can be examined by the AO.

5. We revert to the main question as to the stage at which deduction should be allowed for the tax credit. The ld. AR submitted that the tax component of Rs.95.83 lac should have been allowed deduction from the amount of tax computed on total income at Rs.2.96 crore immediately before the levy of surcharge and education cess etc. and the amount of Rs.10.25 lac, being the component of surcharge and education cess etc. in the overall tax

credit, should be reduced from the amount of surcharge and cess payable for the year under consideration.

6. Section 4 of the Act is a charging provision. Sub-section (1) of section 4 provides that : `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'. Rates of tax and also the surcharge and cess etc. are provided in the respective Finance Acts. Such rates vary from the year to year or from class of assesses even for the same year. When we talk of tax on total income for a year (other than interest payable under the provisions Act), it refers not only to the amount of income-tax but also the surcharge and education cess etc. as is applicable on it. Distinct from interest payable under the Act, tax includes both the components, namely, tax on one hand and surcharge etc. on the other. One cannot see surcharge etc. as distinct from the amount of income tax, which is an integral component and constitutes part and parcel of the amount of tax. In the same manner, when we talk of allowing credit for tax available u/s 115JAA in subsequent years,

which also includes the amount of surcharge etc., the same ought to be allowed in total from the amount of tax computed after loading it with the amount of surcharge or education cess. If we split the amount of tax credit into two artificial limbs, that is, tax and surcharge etc., there can be a possibility of an assessee even losing the benefit of the full amount of surcharge etc. as the amount of surcharge etc. keeps on varying from year to year. To illustrate, if the rate of surcharge etc. in the year of earning tax credit is say, 10%, but when the turn comes of claiming credit, there is no surcharge payable for that year or the rate is say, 5%, there is a possibility of the assessee losing the benefit of tax credit to some extent, if artificial division is made between the amount of tax and surcharge etc. components. Be that as it may, since surcharge etc. is part and parcel of tax, both have to be considered as one unit. It is, therefore, held that the benefit of MAT tax credit, which includes the amount of surcharge etc. also, has to be allowed immediately after loading the amount surcharge and education cess etc. on the amount of tax for the later year.

7. However, the charging of interest u/ss 234B and 234C etc. is to be done on the net amount of tax determined after reducing the amount of MAT tax

credit from the amount of tax payable for the year in the same way as advance tax and TDS are reduced. A clue for this can be obtained from the language of section 140A of the Act dealing with `Self assessment'. Sub-section (1) of section 140A provides as under :

> **Self-assessment.**
> **140A.** (1) Where any tax is payable on the basis of any return required to be furnished under section 115WD or section 115WH or section 139 or section 142 or section 148 or section 153A or, as the case may be, section 158BC, after taking into account,—
>
> (i) *the amount of tax, if any, already paid under any provision of this Act;*
> *(ii) any tax deducted or collected at source*;
> (*iii*) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;
> (iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and
> (*v*) *any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD,*
>
> the assessee shall be liable to pay such tax together with interest *and fee* payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

8. A careful circumspection of the above provision deciphers certain things. First is that the amount of advance tax and TDS etc. rank *pari passu* with the amount of MAT tax credit available u/s 115JAA. Secondly, the amount of tax payable for the year is determined after reducing the amount of advance tax, TDS and MAT credit. Thirdly, the resultant amount arrived at

after making such deductions is the amount of tax, which the assessee is liable to pay. Fourthly, the amount of interest payable under any provision of this Act is calculated on the resultant amount. This shows that the amount of interest under the Act is liable to be paid on the amount of tax payable determined after deducting, *inter alia,* the amount of MAT tax credit.

9. We, therefore, hold that the amount of the MAT tax credit, inclusive of surcharge and education cess etc., if any, should be reduced from the amount of tax determined on the total income after adding surcharge and education cess, etc. Only the resultant amount payable will suffer interest under the relevant provisions of the Act. Since the amount of MAT tax credit is uncertain, we set aside the impugned order and remit the matter to the file of the AO for ascertaining the correct amount of MAT tax credit available with the assessee inclusive of surcharge and education cess etc., if any, and then allow tax credit as indicated above. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in this regard.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 26th July, 2018.

| Sd/- | Sd/- |
|---|---|
| [N.K. CHOUDHARY] | [R.S. SYAL] |
| JUDICIAL MEMBER | VICE PRESIDENT |

Dated, 26th July, 2018.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.