

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 7534/DEL/2017 (A.Y 2016-17)

(THROUGH VIDEO CONFERENCING)

ACIT Circle-19(1) Room No. 199C, 1 st Floor, C. R. Building, New Delhi (APPELLANT)	Vs	Orient Bell Ltd. Iris House, Business Centre, Nangal Raya, New Delhi AAACO0305P (RESPONDENT)
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Appellant by	Sh. Gaurav Pundir, Sr. DR
Respondent by	Sh. R. K. Kapoor, CA

Date of Hearing	26.07.2021
Date of Pronouncement	25.08.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 22/09/2017 passed by CIT(A)-38, Delhi for assessment year 2016-17.

2. The grounds of appeal are as under:-

“On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in allowing MAT credit on the difference between gross tax liability as per normal provisions and MAT provisions viz Rs 3,93,29,587/- as claimed by assessee in ITR instead of base tax as per normal income and book profit u/s 115JB viz. Rs 3,40,92,915/- ignoring the direct decision of ITAT Delhi in the case of M/s Richa Global Exports Pvt Ltd, ITA No 2303/Del/2012 wherein it has been held that explanation 2 to section 115JB was inserted to define the

meaning of tax for the purpose of calculating book profit liable to tax u/s 115JB and it cannot be extended to section 115JAA or section 115JB of the Act.

3. The assessee is engaged in the business of manufacturing, trading and selling of reputed brand of ceramic and floor tiles. The assessee filed its return of income (ROI) on 10.10.2016 declaring income of Rs. 19,82,36,800/-. The ROI was processed and assessee received an intimation u/s 143(1) dated 27.12.2016 stating demand of Rs. 60,77,110/-, which was due to the difference in MAT credit allowed to the assessee as against what was claimed by the assessee in return of income. The MAT credit claimed by the assessee was Rs. 3,93,29,587/- which is the difference between the gross tax liability as per normal provisions and MAT provisions. The assessee claimed the MAT credit as per the formula embedded in the statutory income tax return form. Whereas the MAT credit allowed to the assessee as per order u/s 143(1) is Rs. 3,40,92,915/- which is the difference between the base tax as per normal and MAT provisions, due to which the tax payable along with interest has been determined for Rs. 60,77,110/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in allowing MAT credit on difference between gross tax liability as per normal provisions viz Rs. 3,93,29,587/- as claimed by the assessee in income tax return instead of base tax as per normal income and book profit u/s 115JB viz Rs. 3,40,92,915/- ignoring the direct decision of ITAT Delhi in the case of Richa Global Export Pvt. Ltd. ITA No. 2303/Del/2012 where in it has been held that Explanation 2 to Section 115JB was inserted to define the meaning of tax for the purpose of calculating book profit liable to tax u/s 115JB and it cannot be extended to Section 115JAA or Section 115JB of the Act. Thus, the Ld. DR relied upon the

assessment order.

6. The Ld. AR submitted that the only issue involved in this appeal is as to whether while allowing the tax credit under the MAT provisions, it is only Income Tax or it is Income Tax + Surcharge + Education Cess which are required to be taken into consideration. The facts in brief are that while processing the Income Tax Return by the CPC, Bengaluru u/s 143(1) of the Income Tax Act, tax credit for MAT provisions u/s 115JAA were allowed only towards the Income Tax Act excluding the amount of Surcharge and Education Cess and raised demands on assessee. Against such demand, the assessee filed an appeal before the CIT(A), who had allowed relief to the assessee and has held that while allowing the MAT credit, it is gross Income Tax including Surcharge and Education Cess which is required to be considered. The CIT(A) has, while allowing relief relied upon the following judgments:

1. Srei Infrastructure Finance Ltd. vs. DCIT 72 Taxman 239 (Calcutta), which in turn relied up CIT vs. Tulsyan Nec Ltd. 330 ITR 226 Taxman (Supreme Court)
2. AMQ Agro India Pvt. Ltd. vs. Assistant Commissioner of Income Tax- CPC, Bangalore TIOL 723 ITAT (Delhi) - copy enclosed at (PB 1-4)..

The CIT(A) has also relied upon the statutory ITR Form No. 6 which also when appropriately and correctly filled up, calculates the MAT credit on gross basis including Surcharge and Education Cess and leaves no ambiguity on the issue. The Ld. AR further submitted that the order of the CIT(A) on this issue has to be upheld on account of following reasons:-

1. ITR Form No. 6 of filling up the ITR which is relevant for filing an ITR of the corporate assessee has been devised and approved by the CBDT. While calculating the MAT credit u/s 115JAA by filling up the appropriate figures in the said Form, it ' automatically takes into consideration the amount of

surcharge and education cess while allowing MAT credit. Therefore, any other view on the matter would not be in accordance with law, it is respectfully submitted. In fact Hyderabad Bench of ITAT in the case of Virtusa (India) Pvt. Ltd. in its judgment dated 04.03.2016 in ITA No. 146/Elyd/2015 had also similarly held that while allowing MAT credit u/s 115JAA, the amount of surcharge and education cess is required to be considered which is also as per ITR Form No. 6 and credit is required to be allowed for the gross tax amount.

2. The Delhi ITAT in the case of AMQ Agro India (P) Ltd. v. ACIT in its judgment dated 29.04.2016 in ITA No. 666/Del/2014 has similarly held and has concluded that while allowing MAT credit u/s 115JAA, surcharge and education cess are also required to be considered.

3. All such judgments have referred to and relied upon the judgment of Hon'ble Supreme Court in the case of K. Srinivasan v. CIT (83 ITR 346) which clarifies that the word "income tax" includes the amount of surcharge and cess wherever it is applicable.

The Department in its Grounds of Appeal has referred judgment of the Delhi ITAT in the case of Richa Global Exports (P) Ltd. v. ACIT in ITA no. 2303/Del/2012. The Ld. AR submitted that the said judgment was rendered in 2012 and judgment of Hon'ble Supreme Court in the case of K. Srinivasan (supra) which has been referred to and relied upon by the later judgments of the ITATs including Delhi ITAT, had not been cited or referred to or discussed in the said order of the Delhi ITAT in the case of Richa Global Exports (P) Ltd. (supra). Hence, judgment of the Delhi Tribunal in Richa Global Exports (P) Ltd. (supra) is per incuriam and does not interpret the law in correct perspective. The Ld. AR further submitted that otherwise also, the later judgments on this issue by Hon'ble Delhi ITAT is in favor of assessee and also the judgment of Hon'ble Hyderabad ITAT should be considered and relied upon. In fact the judgment of Richa Global Exports (P) Ltd. (supra) was also referred to and

relied upon by the Ld. DR in the case of Virtusa (India) Pvt. Ltd. (supra). The Hyderabad ITAT has discussed this judgment in Para 9.5 of its order as under:-

“9.5 Let us also analyse the case law of Richa Global Exports Pvt. Ltd. which was applied by CIT(A), the Delhi ITAT opined that section 115JAA applied only to income tax, not of income tax as increased by surcharge and education cess. We are of the view that the Apex Court decision in the case of K. Srinivasan (supra) may not have been brought to the knowledge of the ITAT Delhi. Moreover, the explanation 2 of section 115JB is applicable to calculate tax liability u/s 115JB and the same explanation should also be applied for giving credit u/s 115JAA. The tax liabilities calculated u/s 115JB by applying the explanation 2, the tax liability so computed are remitted by the assessee and then the same was carried forward for future MAT credit. In our view, while calculating the MAT credit u/s 115JAA, the same explanation ‘2’ in section 115JB must be applied.”

Similarly the CIT(A) has also relied upon the judgment of Hon’ble Calcutta High Court in the case of Srei Infrastructure Finance Ltd. (supra), which in turn referred to and relied upon a judgment of Hon’ble Supreme Court in the case of CIT v. Tulsyan Nec Ltd. (supra). The Ld. AR further pointed out that the judgment of CIT v. Tulsyan Nec Ltd. (supra) was also referred to and relied upon by the AR in the case of Richa Global Exports (P) Ltd. (supra). However, The Delhi ITAT in the case of Richa Global Exports (P) Ltd. (supra) didn’t comment or distinguish that judgment before arriving at the conclusion. Moreover, the only High Court judgment on this issue available is of Hon’ble Calcutta High Court in the case of Srei Infrastructure Finance Ltd. (supra). , This judgment is required to be followed as there is no contrary judgment so far as per the Ld. AR. The dates on which various judgments were rendered is as under:-

S. No.	Case and Authority Name	Date
1.	Richa Global Exports (P) Ltd. - Delhi ITAT	31.08.2012
2.	AMQ Agro India (P) Ltd. Delhi ITAT	29.04.2016
3.	Virtusa (India) Pvt. Ltd. Hyderabad ITAT	04.03.2016
4.	Srei Infrastructure Finance Ltd. Calcutta High Court.	12.08.2016

Under the circumstances, the Ld. AR prayed that the later judgments of the Delhi ITAT or the judgment of the Hyderabad ITAT and the judgment of Hon'ble Calcutta high Court which have been rendered after the judgment of Richa Global Exports (P) Ltd, (supra.) be followed and relief, as claimed by the assessee and allowed by the CIT(A), be upheld by dismissing the departmental appeal.

7. Without prejudice, the Ld. AR submitted that it is a settled proposition of law that where two views or two possible interpretations of an issue is available, then a view favorable to the assessee is required to be adopted and followed. One of the prominent judgments on this proposition is available in the case of Manish Maheshwari v/s ACIT (289 ITR 341), where it has been held that where two views are possible, a view in favor of the taxpayer should be followed. Thus, even if it is held that view expressed by the ITAT in Richa Global Exports (P) Ltd. (supra) is a correct view, then also the alternate favorable view of Hon'ble ITAT in Virtusa (India) Pvt. Ltd. (supra) case, the Delhi ITAT's view in AMQ Agro India (P) Ltd. (supra) case and Hon'ble Calcutta's High Court view in Srei Infrastructure Finance Ltd. (supra) may be adopted and relief to the assessee be allowed. The Ld. AR further submitted that recently Hon'ble Madras High Court in case of PCIT vs. Scope International Pvt. Ltd 429 ITR 500 (Mad) (2019) and CIT vs. Saint Globain Glass India 429 ITR 505 (2020) dismissed the department appeal and held that MAT credit u/s 115JAA includes surcharge and education cess. The Hon'ble Madras High Court relied on the decision of the Hon'ble Supreme

Court in case of CIT vs. K. Srinivasan (supra). Relevant extract of Saint Globain India (supra) reproduced below:

"Para 14- In our considered view, the decision of the Hon'ble Supreme Court in the case of K. Srinivasan will apply with full force to the assessee's case. Furthermore, if we refer to the circular of the Central Board of Direct Taxes in Circular No. 3 of 2018 dated 11.7.2018, which fixed the monetary limit for filing appeals by the Department before the Tribunals, High Courts and Supreme Court, one gets a fair idea as to what was the understanding of the term 'tax' by the Board. If we have a look at paragraph 4 of the said circular, the Board states that for the purposes of the said Circular, tax effect shall be tax including applicable surcharge and cess. "

8. We have heard both the parties and perused the material available on record. At the time of hearing the Ld. DR submitted that the book profit u/s 115JB deem to be an income, but this argument does not sustain as the difference between gross tax liability as per normal provision of MAT provision viz. Rs. 3,93,29,587/- as claimed in the ITR. But the CPC has allowed MAT credit upto difference between the base tax as per normal income and book profit u/s 115JB, instead of difference between gross tax liability as per the normal provisions and MAT provisions. This issue is covered by the decision of the Hon'ble Calcutta High Court in case of SREI Infrastructure Finance Ltd. Vs. DCIT (2016) 72 Taxman.com 239 thereby confirming the set off of MAT Credit u/s 115JAA brought forward from earlier years against tax on total income including surcharge and education cess instead of adjusting the same from tax on total income before searching surcharge and education cess. The Hon'ble Calcutta High Court relied upon the decision of the Hon'ble Apex Court in case of CIT Vs. Tulsyan Nec Ltd. 336 ITR 226. Thus, there is no need to interfere with the findings of the CIT(A). Hence, the appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on this 25th Day of August, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 25/08/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI