

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA No. 596/Hyd/2017
Assessment Year: 2011-12

Asst. Commissioner of Income-tax, Circle – 17(1), Hyderabad. vs. Divi's Laboratories Ltd., Hyderabad.

PAN – AAACD 6745 J

Appellant

Respondent

Revenue by: Sri J. Siri Kumar
Assessee by: Sri S. Rama Rao

Date of hearing: 21/11/2017
Date of pronouncement: 29/11/2017

ORDER

PER S. RIFAUH RAHMAN, AM:

This appeal is filed by the Revenue against the order of CIT(A) - 5, Hyderabad dated 30/01/2016 relates to the AY 2012-13 wherein the revenue has raised the following grounds of appeal:

"1. The Id. CIT(A) erred in holding that the surcharge and education cess is to be calculated after deducting the MAT credit u/s 115JAA from the tax on assessed income.

2. Ld. CIT(A) erred in ignoring the law that for the purpose of tax credit u/s 115JAA of the IT Act, tax does not include surcharge and education cess."

2. Assessee is a company, engaged in the business of Manufacturing of active Pharma Ingredients & Intermediates, filed its original return of income for the AY 2011-12 on 24/11/2011 declaring an income of Rs. 129,04,21,440/-, which was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and a notice u/s 143(2)

was issued dt. 07/09/2012. After due procedure, the AO passed the order u/s 143(3) r.w.s. 92CA(4) of the Act assessed the income of the assessee at Rs. 1,29,66,84,479/- as against the returned income at Rs. 1,29,04,21,440/-.

3. The issue before us is, while computing the total assessed income, tax and interest, AO has calculated the tax due after charging surcharge and education cess, then, allowed the tax credit available u/s 115JAA. Aggrieved, assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee submitted that the AO erred in calculating surcharge and cess on the tax on assessed income before deducting MAT credit. It was argued that surcharge and education cess is to be computed after deducting MAT credit u/s 115JAA from tax liability i.e. tax payable is to be arrived at by deducting credit u/s 115JAA from gross tax payable and on this amount of tax payable surcharge and education cess are to be computed. The assessee in this connection relied on the decision of Hon'ble High Court of Allahabad in the case of CIT Vs. Vacment India, [2015] 55 Taxmann.com 314 (All.)

5. The CIT(A) after considering the submissions of the assessee as well as referring to the provisions of section 115JB and following the decisions of the Tribunal including the ITAT, Hyderabad in the case of Virtusa (India) Pvt. Ltd. in ITA No. 146/Hyd/2015, (where both the Members are party), directed the AO to follow the observations of the Jurisdictional ITAT and decide the issue.

6. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

7. Considered the rival submissions and perused the material facts on record. The issue is squarely covered in favour of the assessee by the decision of the coordinate bench of Hyderabad (supra) wherein the Bench has held as under:

“9. Considered the submissions of both the counsels and material facts on the record. The provisions of section 115JB in brief are: every assessment year, two parallel computations are contemplated. One computation of total income in accordance with the normal provisions of the I.T. Act and another is the computation of book profit as stipulated u/s 115JB. If the income tax payable on the total income is less than 18.5% of the book profit computed u/s 115JB, then the book profit so computed shall be deemed to be the total income, then the book profit so computed shall be deemed to be the total income and the company shall pay tax @ 18.5% thereon. The amount so paid as the MAT shall be available to the credit of the company to be set off as contemplated u/s 115JAA within a period of 10 AYs. Surcharge at 5% shall be levied if book profit exceeds 1 crore. Education cess @ 3% shall be added on the aggregate of income tax and surcharge. At the same time, section 115JAA provides that where any amount of tax is paid under section 115JB(l) by a company for any assessment year, credit in respect of the taxes so paid for such assessment year shall be allowed on the difference of the tax paid under section 115JB and the amount of tax payable by the company on its total income computed in accordance with the other provisions of the Act. In other words, MAT credit shall be computed as under:

MAT credit available = Tax paid u/s 115JB - Tax payable on the total income under normal provisions of the Act.

9.1 The amount of tax credit so determined shall be allowed to be carried forward and set off in a year when the tax becomes payable on the total income computed under the regular provisions. However, no carry forward shall be allowed beyond the tenth assessment year immediately succeeding the assessment year in which the tax credit becomes allowable. The set off in respect of the brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on the total income and the tax which would have

been payable under section 115JB for that assessment year.

9.2 In other words, MAT credit will be allowed only in that previous year in which tax payable on the total income as per normal provisions of the income tax Act is more than tax payable under section 115JB and it shall be allowed to the extent of the following:

Tax payable on total income under the normal provisions of the Act – tax payable under section 115JB = MAT credit to be allowed.

9.3 On careful reading, the sub-section 2A, the tax credit to be allowed shall be the difference of tax paid for any AY under sub-section (1) of 115JB and the amount of tax payable on his total income computed in accordance with the other provisions of this Act. The important word used is tax paid and as per the Hon'ble Apex Court decision in the case of K. Srinivasan (supra), the term 'tax' includes surcharge.

9.4 It is also important to evaluate sub-section (5) of section 115JAA. "Set off" in respect of brought forward tax credit shall be allowed for any AY to the extent of difference between tax on his total income and the tax which would have been payable u/s 115JB, as the case may be for that AY. On careful reading, the term used are tax not income tax or any other term. Needless to say the term tax includes surcharge.

9.5 The sub-section (5) of section 115JAA are applied as it is in the ITR '6'. The ITR-6 form is designed and approved by the apex body CBDT and this form is universally used by all the company assesseees. In Part A of the ITR-6, the assesseees are 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. None of the columns in the Part 'B' are manually entered, these are auto fills, and the datas are extracted from Part "A". It is pertinent to analyse the total tax liability calculations designed by the CBDT for the AY 2012-13. They are as below:

Part B - TTI		Computation of tax liability on total income					
COMPUTATION OF TAX LIABILITY	1	1a	Tax Payable on deemed total Income under section 115JB (7 of Schedule MAT)		1a	0	
		1b	Surcharge on (a) above		1b	0	
		1c	Education Cess on (1a+1b) above		1c	0	
		1d	Total Tax Payable u/s 115JB (1a+1b+1c)MAT)		1d	0	
	2	Tax payable on total income					
		a	Tax at normal rates	2a	0		
		b	Tax at special rates (11 of Schedule-SI)	2b	0		
		c	Tax Payable on Total Income (2a + 2b)		2c	0	
	3	Surcharge on 2c				3	0
	4	Education Cess, including secondary and higher education cess on (2c + 3)				4	0
	5	Gross tax liability (2c+3+4)				5	0
	6	Gross tax payable (higher of 5 and 1d)				6	0
	7	Credit under section 115JAA of tax paid in earlier years (if 5 is more than 1d) (5 of Schedule MATC)				7	0
	8	Tax payable after credit under section 115JAA [(6 – 7)]				8	0
	9	Tax relief					
	a	Section 90/90A(1B1 of Schedule TR)	9a	0			
	b	Section 91(1B2 of Schedule TR)	9b	0			
	c	Total (9a + 9b)		9c	0		
10	Net tax liability (8 – 9c)				10	0	
11	Interest payable						
	a	For default in furnishing the return (section 234A)	11a	0			
	b	For default in payment of advance tax (section 234B)	11b	0			
	c	For deferment of advance tax (section 234C)	11c	0			
	d	Total Interest Payable (11a+11b+11c)		11d	0		
12	Aggregate liability (10 + 11d)				12	0	
13	Taxes Paid						
	a	Advance Tax (from Schedule-IT)	13a	0			
	b	TDS (column 7 of Schedule-TDS)	13b	0			
	c	TCS (column 5 of Schedule-TCS)	13c	0			
	d	Self Assessment Tax (from Schedule-IT)	13d	0			
	e	Total Taxes Paid (13a+13b+13c + 13d)		13e	0		
14	Amount payable (Enter if 12 is greater than 13e, else enter 0)				14	0	
15	Refund (If 13e is greater than 12, also give the bank account details in Schedule-BA)				15	0	

9.6 The tax liabilities for normal provisions as well as MAT are calculated with surcharge and cess. The MAT credit in row "7" are calculated automatically using the prescribed algorithm, this is nothing but balancing figure i.e., the difference between tax liability as per normal provisions and MAT provisions. Both the above tax liabilities are calculated with surcharge and cess. These are the standard format, which are expected to be followed by all the assessees and also important to note

that the above format of ITR 6 was amended w.e.f. AY 2012-13 by CBDT. Moreover, this is more relevant for the department also. These formats are regulated by CBDT. Assessing Officer cannot overlook these formats and (interpret it in his own method of calculating tax credit while making assessment u/s 143(1) of the Act.) proceed to calculate the MAT credit to compute assessment u/s 143(1) applying different methods when the proper and correct method as proposed by CBDT in ITR-6. The Assessing Officer is expected to follow the ITR-6 format to complete the assessment u/s 143(1) or 143(3) of the Act.

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.

9.6 The earlier judgments in the cases of Universal Medicare, Valmet India and Wyeth Limited are decided relying on the ITR – 6 as applicable in those AYs. Similarly, we also apply the ITR 6 format as applicable to AY 2012-13 as stated above. Assessee has relied on the ITR – 6 format to arrive at the total liability as well as the MAT credit calculations and paid tax accordingly. In our view, the assessee had followed the procedure properly and the Assessing Officer had made the calculations applying his own interpretation or relied on the programme, we are not sure whether it is programme hitch or the interpretation of Assessing Officer was not in line with the calculations proposed in ITR-6. Therefore, we delete the addition made.”

As the issue under consideration is materially identical to that of the said case, we uphold the order of the CIT(A) as the

order of the CIT(A) is in consonance with the order of the ITAT (supra) and dismiss the grounds raised by the revenue.

8. In the result, appeal of the revenue is dismissed.

Pronounced in the open court on 29th November, 2017

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 29th November, 2017

kv

Copy forwarded to:

1. ACIT, Circle – 17(1), 9th Floor, Signature Towers, Kondapur, Hyderabad.
2. M/s Divi's Laboratories Ltd., 7-1-77/E/1/303, Ameerpet, Hyderabad.
3. CIT(A) - 5, Hyderabad
4. Pr. CIT - 5, Hyderabad
5. The DR, ITAT, Hyderabad