

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' NEW DELHI)

BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.2303/Del/2012
Assessment year : 2010-2011

M/s Richa Global Exports
Pvt. Ltd., A-41,
Mayapuri Indl Area,
New Delhi.

ACIT,
(CPC),
Vabgalore.

V.

(Appellant)

(Respondent)

PAN /GIR/No.AADCR-0255-L

Appellant by : Shri KVSR Krishna, Advocate.
Respondent by : Smt. Veena Joshi, DR.

ORDER

PER TS KAPOOR, AM:

This is an appeal filed by the assessee against the order of Ld CIT(A) dated 27.2.2012. The grounds raised by the assessee are as under:-

1. That on the facts and circumstances of the case, the Ld CIT(A) has grossly erred:
 - a) In allowing credit of MAT of the previous year u/s 115JAA at ₹.56,05,585/-. (Pl. see Sl. No.22 of Intimation) only as against the sum of ₹.63,51,128/- paid as per Schedule Part B of TTI of ITR 6 of previous year resulting in not allowing the credit of MAT u/s 115 JAA at ₹.5,60,559/- and ₹.1,84,984/- being the amount of surcharge and education

cess (Part B of TTI of ITR 6 of previous year) which were paid in the previous year and credit of the same has to be allowed along with the sum of ₹.56,05,585/- in this year for which records are available with the department.

- b) For the purpose of calculating interest u/s 234B & 234C ignoring from the computation the amount of surcharge and education cess etc. under MAT of the previous year paid at ₹.5,60,559/- and ₹.1,84,984/-.
- c) As a result in creating/charging extra demand of ₹.8,74,195/- (₹.8,62,225/- + ₹.11,970/-) while processing the return of income u/s 143(1) by doing/committing following mistakes:-

Sl.No.	Reporting Heads	As computed u/s 143(1).	Extra Amount charged
21	Tax payable for the year.	12939708	
22	Credit u/s 115JAA	5605585	
23	Adjusted tax liability	12939708	
24	Surcharge	1293971	560559
26	EC+ Secondary & Higher Edu. Cess.	427010	184984
32	234B	207972	91002
34	234C	259199	37650
			874195/-

2. That the Ld CIT(A) has erred in not accepting the assessee's submission that tax has been defined in sec. 2(43) where tax means income tax and the same should be read with further definition of income tax given in Explanation-2 of sec. 115JB in Chapter XIIB and as such committed a mistake in not allowing the relief for surcharge and education cess while computing the tax for the year under appeal.

3. Appellant craves to add, file, modify and other ground before or at the time of hearing of appeal.

2. The brief facts of the case are that the assessee filed return electronically and received intimation order u/s 143(1) dated 15.3.2001 from ACIT, CPC, Bangalore. The assessee observed from the intimation that in allowing credit of MAT of previous year u/s 115JAA against the claim of ₹.63,51,128/-, the claim was allowed only for an amount of ₹.56,05,585/-. Therefore, assessee noted that there was a short fall in the allowance of credit of MAT by ₹.7,45,543/- being the amount of surcharge and education cess amounting to ₹.5,60,559/- & ₹.1,84,984/- respectively. The assessee further observed that interest u/s 234B & 234C was calculated ignoring from the computation, the amount of surcharge and education cess which was paid during previous year along with MAT. Therefore, the assessee filed an appeal before Ld CIT(A) and prayed that due credit of MAT including surcharge & education tax should be considered u/s 115JAA and in support relied upon Explanation 2 of section 115JB which was inserted by Finance Act, 2008 with retrospective effect from 1.4.2001. A further prayer was made for calculation of interest u/s 234B & 234C after giving proper credit of MAT including surcharge and education tax.

3. The Ld AR further submitted before Ld CIT(A) that Chapter XIIB has four sections and definition of tax is given in one section i.e. 115JAA vide explanation (2) and therefore he argued that said explanation would apply to all the four sections which are covered under Chapter-XIIB and particularly to section 115JAA. In view of the above, the Ld AR submitted that benefit of surcharge and education paid in the last year be given as part of tax credit and the amount of surcharge and education cess should not be considered as a separate

levy. The Ld CIT(A) after considering the submissions made by the assessee did not agree with the assessee. The relevant portion of Ld CIT(A)'s order is reproduced below:-

“I have carefully considered the intimation u/s 143(1) and the submissions made by the appellant. The provisions of section 115JAA deals with allowability of tax credit in respect of tax paid on deemed income relating to certain companies. The section allows only credit of tax paid by the company in accordance with the provisions of section 115JAA. Tax has been defined in section 2(43) to be income tax chargeable under the provisions of the Act and surcharge and education cess have not been included in the definition of tax. Wherever the legislature wanted to widen the definition of tax it has done it specifically for example in explanation 2 to section 115JB, the income tax has been specifically defined to include surcharge as well as education cess. Thus credit of surcharge and education cess are not admissible for claim of credit as per provisions of the section 115JAA.”

4. Aggrieved the assessee filed appeal before this Tribunal.

5. At the outset, the Ld AR argued that Ld CIT(A) has referred to section 2(43) for meaning of tax paid which instead should have been read together with explanation 2 to section 115JB. The Ld AR further argued that definition of tax has been given in Explanation (2) to section 115JB according to which tax includes surcharge and education cess. He further argued that definition of tax u/s 115JB as per explanation 2 is applicable to all four sections of Chapter-XIIB. In this respect, the Ld AR filed a compendium on orders of IT/WT by Dr. Girish

Ahuja which at question No. 20.14 explain the calculation of MAT under different years which as per Ld AR included surcharge and education tax. He further argued that the Assessing Officer has taken a very narrow meaning of tax under MAT and in fact correct fact is that total outgo of tax including surcharge should be considered for giving credit u/s 115JAA. The Ld AR argued further that interest u/s 234B & 234C should be calculated after giving credit of MAT including surcharge and education tax.

Reliance was placed in the case of CIT v. Tulsyan NEC Ltd. at 330 ITR 226.

6. On the other hand, Ld DR argued that this intimation is not manual and is an automatic from CPC wherein the calculations are done automatically through software. She further argued that section 115JAA & section 115JB talks of only income tax and no where surcharge and education tax is included for the purpose of these sections. Therefore, she argued that Ld CIT(A) has rightly rejected the appeal of the assessee.

7. We have heard the rival submissions of both the parties and have gone through the material available on record. For understanding the amount of tax credit available u/s 115JAA first of all, it is necessary to understand the meaning of income tax as contemplated by section 115JB of the Act. Section 115JB reads as under:-

“Special provision for payment of tax by certain companies.

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as

computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2010, is less than fifteen per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of fifteen per cent.

(2) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956)}”

The above section clearly talks that such book profit shall be deemed to be total income of the assessee and tax payable by the assessee on such total income shall be the amount of income tax at specified rate of tax which was 15% for the relevant year under consideration. The section does not talk about the income tax as increased by surcharge & education tax. It talks about only income tax. Wherever statute has required income tax to include surcharge and education tax, it has specifically done it like in Explanation 2 to section 115JB. Similarly Form 29B which is filed along with return of income where MAT is applicable at point 14 it states that the amount of income tax payable by the company would be 15% of col. 12 i.e. book profits, it does not state surcharge or education cess. Therefore, it emerges that MAT payable u/s 115JB is only income tax and does not include surcharge or education cess. Therefore, if only income tax is paid under the provisions of section 115JB it is natural that tax credit u/s 115JAA will only be of income tax and not of surcharge and education cess. This point is further clarified by intimation u/s 143(1) sent to assessee wherein tax payable u/s 115JB has been calculated as only income tax

and no surcharge or education cess has been included in the amount of income tax.

8. The submission of Ld AR that tax includes surcharge and education cess as per explanation 2 of section 115JB is correct to the extent that explanation 2 was inserted to clarify the meaning of tax as contemplated in clause (a) of explanation (1) with respect to calculation of book profit which is read as under:-

“Explanation-1 for the purpose of this section book profit means the net profit as shown in the P&L Account for the relevant previous year prepared under sub section (2) as increased by :-

- a) the amount of income tax paid or payable and the provisions thereof:
- b) xxxxx
- c) xxxxx
- d) xxxxx
- e) xxxxx
- f) xxxxx

The above explanation 1 clarifies that explanation 2 to section 115JB was inserted to define the meaning of tax (which of course includes education tax and surcharge) for the purpose of calculating book profits liable to tax u/s 115JB and it cannot be extended to sections 115JB or section 115JAA of the Act.

In view of the above provisions, we are of the considered opinion that tax credit u/s 115JAA was rightly given and we do not find any reason to interfere in the order of Ld CIT(A).

9. The second ground of appeal of the assessee is regarding interest u/s 234B & 234C, it is a mandatory provision and is consequential in nature and in view of our adjudication on ground 1 above, the ground No.2 is also decided against the assessee. The case law relied upon by assessee relates to admissibility of credit of MAT tax before charging interest u/s 234B & 234C which in the present case has been done correctly. The only difference is that amount of surcharge and education tax has not been included in the amount of MAT credit which is also correct as per our discussion above relating to ground No.1.

10. In the result, the appeal filed by the assessee is dismissed.

11. Order pronounced in the open court on 31st day of August, 2012.

Sd/-

(I.C. SUDHIR)
JUDICIAL MEMBER

Sd/-

(T.S. KAPOOR)
ACCOUNTANT MEMBER

Dt.31.8.2012.
HMS

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

Date of hearing

17.7.2012

Date of Dictation	27.8.2012
Date of Typing	28.7.2012
Date of order signed by both the Members & pronouncement.	31.8.2012
Date of order uploaded on net & sent to the Bench concerned.	31.8.2012