

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

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

ITA No. 146/Hyd/2015
Assessment Year: 2012-13

M/s Virtusa (India) Pvt. Ltd. (now merged with Virtusa Consulting Services Pvt. Ltd., Hyderabad) vs. DCIT, Circle – 17(2), Hyderabad

PAN – AACC 6797
Appellant

Respondent

Assessee by: Sri A.V. Raghuram &
Sri Ravi Bharadwaj
Revenue by: Sri Y. Ratnakar

Date of hearing: 18/02/2016
Date of pronouncement: 04/03/2016

ORDER

PER S. RIFAUH RAHMAN, AM:

This appeal is filed by the assessee against the order of CIT(A)IV, Hyderabad dated 07/11/2014 relates to the AY 2012-13.

2. Briefly the facts of the case are, the assessee filed its return of income on 30/11/2012 admitting total income of Rs. 42,87,89,690 under the normal provisions of the Income-tax Act, 1961 (in short 'Act'). The return of income was processed by the Central Processing Centre (CPC), Bangalore and assessed u/s 143(1) raising demand of Rs. 32,06,700/-. The main difference in the computation of tax by the assessee and the AO was as under:

| Particulars | Ref | As per original return | As per the intimation u/s 143(1) |
|---|-----|------------------------|----------------------------------|
| Business income | | 38,51,78,940 | 38,51,78,940 |
| Interest income | | 4,36,10,747 | 4,36,10,747 |
| Total income | | 42,87,89,687 | 42,87,89,687 |
| Tax under normal provisions @ 30% | | 12,86,36,907 | 12,86,36,907 |
| Add: Surcharge – 5% | | 64,31,845 | |
| Add: Education cess – 3% | | 40,52,063 | |
| | A | 13,91,20,815 | 12,86,36,907 |
| Book profits as per section 115JB | | 48,41,87,422 | 48,41,87,422 |
| Tax on book profits @ 18.5% | | 8,95,74,673 | 8,95,74,673 |
| Add: Surcharge – 5% | | 44,78,734 | |
| Add: Education cess – 5% | | 28,21,602 | |
| Total tax liability under MAT provisions (including surcharge and cess) | B | 9,68,75,009 | 8,95,74,673 |
| Tax liability (higher of A&B) | | 13,91,20,815 | 12,86,36,907 |
| Less: MAT credit set off | A-B | 4,22,45,806 | 3,90,62,234 |
| Tax payable | | 9,68,75,009 | 8,95,74,673 |
| Add: Surcharge 5% | | | 64,31,845 |
| Add: Education cess – 3% | | | 40,52,063 |
| Total tax liability | | 9,68,75,009 | 10,00,58,581 |
| | | | |

3. Aggrieved with assessment made u/s 143(1), the assessee filed appeal before the CIT(A) and has raised two grounds in this regard, which are as under:

1. That on the facts and circumstances of the case, the Id.

Assessing officer has erred in law and on facts in computation of the eligible MAT credit available of Rs. 3,90,62,234 without including surcharge and education cess while arriving at the amount of total tax payable under the normal provisions of the Income Tax Act, 1961 and under sec. 115JB of the Act.

2. Without prejudice to the Ground 1 above, that on the facts and circumstances of the case, the Id. Assessing officer has erred in computation of the tax liability (excluding interest u/s 234C of the Act) by increasing the

tax liability with surcharge and education cess and then granting the MAT credit instead of granting the MAT credit and then increasing the balance tax liability with surcharge and education cess.

4. The CIT(A) has rejected ground No. 1 of the assessee by observing as under:

“4.5 The decision of the ITAT is squarely applicable to the issue in appeal. Following the decision of the ITAT in the case of Richa Global Exports Pvt. Ltd., it is held that surcharge and education cannot be taken into account for the purpose of set off of brought forward MAT credit.”

5. The CIT(A) also dismissed ground No. 2 of assessee by making following observations:

5.5 The term 'income-tax' used in the Finance Act as the basis for levy of surcharge and education cess is defined in the Finance Act under Paragraph E as 30 per cent of the total income' and does not refer to any deductions there from. Though the provisions of sec.115JB apply to the appellant, in view of the fact that tax under the regular provisions was higher than the tax u/s 115JB, the income-tax was levied under the regular provisions of the Act. The income-tax payable was, accordingly, as per Paragraph E of the First Schedule of the Finance Act, 30 per cent of the total income, amounting to Rs. 12,86,36,907. As per the Finance Act, it was 'the income-tax', i.e. this sum of Rs. 12,86,36,907 on which the surcharge of 5 per cent was to be levied. Similarly, u/s 11 of the Finance Act, the basis for computation of education cess was also the income-tax.

5.6 Further, MAT credit is treated under the Act on par with prepaid taxes. This is clear from sec.140A where the self- assessment tax is required to be determined after deducting advance tax, TDS and other relief u/s 90, 90A and 91. It follows that surcharge and education cess are levied on the gross amount of income tax and not the net figure after deducting advance tax, TDS etc. In fact, though the appellant had claimed credit for TDS of ~2.36 crores and advance tax of Rs. 6.95 crores, these sums were not deducted for the purpose of levy of surcharge and education cess. For the same reason, deduction of MAT credit is not warranted before calculating surcharge and education cess.

5.7 In view of the above, it is held that computation of tax liability by increasing the tax liability with surcharge and education cess and then granting MAT credit is in order and correct. The second ground of appeal is accordingly dismissed.”

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

Based on the facts and circumstances of the case and in law the Learned ('Ld.') AO and the Ld. CIT (A), Hyderabad have:

1. Erred in computing the eligible Minimum Alternate Tax ('MAT') credit u/s 115JAA of the Act at Rs. 3,90,62,234/- by not including surcharge and education cess while arriving at the amount of total tax payable under the normal provisions of the Act and under section 115JB of the Act.

2. Without prejudice to the Ground 1 above, the Ld. CIT(A) has erred in computation of the tax liability (excluding interest under section 234C of the Act) by increasing the tax liability with surcharge and education cess and then granting the MAT credit instead of granting the MAT credit and then increasing the balance tax liability with surcharge and education cess.

3. Erred in disregarding the judicial precedent in the case of K. Srinivasan vs CIT (1972) 83 ITR 346 (SC) submitted by the Appellant which has held that the term 'tax' includes surcharge and education cess.

4. Having accepted the income returned by the Appellant, the Ld. Assessing Officer/ Ld. CIT (A) erred in levying interest under section 234C of the Act at Rs. 68,878 as against the correct amount of interest under section 234C of the Act of Rs. 37,042 returned by the Appellant.

5. The Ld. CIT(A) has erred in confirming the tax demand of Rs. 32,06,697 raised on the Appellant under section 156 of the Act, hence, the same is unjustified, bad in law and should be completely vacated.

The Appellant also submits that each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant craves leave to add, alter, vary, omit, substitute, amend or withdraw the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Hon'ble Income Tax Appellate Tribunal, Hyderabad to decide this appeal in accordance with law and on the facts and circumstances of the case."

7. With regard to Ground Nos. 1, 2 & 3: Ld. AR submitted that it is clear from the return of income filed by the assessee that the difference between the tax payable under normal provisions and as per MAT provisions is Rs 4,22,45,804 (i.e. Rs. 13,91,20,812 less Rs 9,68,75,009). On the other hand, as per intimation u/s 143(1) of the Act, it is Rs. 3,90,62,234 (i.e. Rs 12,86,36,907 less Rs 8,95,74,673). Hence, in the intimation, the eligible MAT credit considered for set off has been erroneously calculated, exclusive of surcharge and education cess at Rs. 3,90,62,234 as against the correct eligible MAT credit available for set off of Rs. 4,22,45,803, inclusive of surcharge and education cess as considered in the return of income filed by the Company.

7.1 The Id. AR further submitted that the brought forward MAT credit for A Y 2008-09 is Rs 3,86,45,182/- and for A Y 2009-10 is Rs. 5,07,73,030. Hence, assessee would be eligible to set off the difference between the tax liability as per normal provisions and tax liability as per MAT amounting to Rs 4,22,45,803.

7.2 He submitted that as per section 115JAA(5) of the Act, set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on its total income and the tax which would have been payable under the provisions of Section 115JB of

the Act for that assessment year. Accordingly, the eligible MAT credit available to setoff for the Company during the captioned A Y, needs to be arrived at by comparing the difference between the tax liability (inclusive of surcharge and cess) computed under the normal provisions of the Act and the tax liability (inclusive of surcharge and cess) computed under the provisions of section 115JB of the Act.

(b) Calculation of Surcharge

7.3 Ld. AR submitted that as per intimation, the surcharge has been calculated at Rs. 64,31,845 as against the surcharge of Rs. 44,78,734. Ld. AR also submitted that the assessed tax liability (excluding surcharge and education cess) arrived at in the intimation is the same as the returned tax liability (excluding surcharge and education cess). Therefore, as there has been no change in the assessed tax liability, the surcharge calculated in the intimation suffers from error and needs rectification.

(c) Calculation of Education cess

7.4 Ld. AR submitted that as per intimation intimation, the education cess has been calculated at Rs. 40,52,063 as against the education cess of Rs. 28,21,602. Ld. AR also submitted that the assessed tax liability (excluding surcharge and education cess) arrived at in the intimation is the same as the returned tax liability (excluding surcharge and education cess). Therefore, as there has been no change in the assessed tax liability, the education cess calculated in the intimation suffers from error and needs rectification.

(d) Interest under section 234C of the Act

7.5 Ld. AR submitted that in the intimation issued under section 143(1) of the Act, interest under section 234C of the Act is levied at Rs. 68,878 as against Rs 37,042 computed by assessee. This deviation in interest is due to consideration of the MAT credit before surcharge & education cess.

7.6 He submitted that the MAT credit is arrived at by the assessee based on the ITR 6 form, which is being followed universally by all the assesseees under the Act. He, therefore, submitted that the AO also bound to follow the same. He also submitted that CIT(A) has not considered the judicial precedent in the case of K. Srinivasan Vs. CIT, [1972] 83 ITR 346 (SC), on which reliance placed by the assessee, to bring to the knowledge of CIT(A) that in the above judgment, the Apex Court has held that the term 'tax' includes surcharge. Ld. AR also referred to the section 115JAA (2A) of the Act and the provisions of such Act describes the tax credit to be allowed shall be the difference of the tax 'paid' for any AY under sub-section (1) of section 115JB and the amount of tax payable by the assessee on total income computed in accordance with the other provisions of the Act. From the above, it is important that the assessee has paid the tax which includes surcharge and education cess, hence, the MAT credit should include surcharge and education cess. Ld. AR also submitted alternate MAT credit calculation before us to demonstrate that the method adopted by the assessee and the AO will give the same tax liability irrespective of the method adopted.

8. Ld. DR, on the other hand, relied on the orders of Id. CIT(A).

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 | | |

| | | | | | | |
|-------------------|--|---|------------|-----------|------------|---|
| TAXES PAID | 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.

10. With regard to other grounds of appeal, they become infructuous and are dismissed as such.

11. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 4th March, 2016

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 4th March, 2016

kv

Copy forwarded to:

1. Virtusa (India) Pvt. Ltd., (now merged with Virtusa Consulting Services Pvt. Ltd.) Survey No. 115/part, Plot No. 10, Nanakramguda Village, Serilingampally, Hyd – 500 032
2. DCIT, Circle – 17(2), 6th Floor, 'B' Block, IT Towers, AC Guards, Hyd – 500 004.
3. CIT(A) - IV, Hyderabad
4. CIT - III, Hyderabad
5. The DR, ITAT, Hyderabad