

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE Ms.JUSTICE **K.B.K.VASUKI**

Tax Case (Appeal) No.1468 of 2007

The Commissioner of Income Tax
Tamil Nadu – I, Madras.

.. Appellant

versus

M/s.Ambattur Clothing Limited
No.86, E/2, Industrial Estate,
Ambattur, Chennai – 58.

.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 10.05.2007 made in I..T.A..No.3361/Mds/2004 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 1998-1999.

For Appellant : Mrs.Hema Muralikrishnan
Standing Counsel for Income Tax

For Respondent : Mr.R.Venkat Narayanan

J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.**)

This Tax Case (Appeal) filed by the Revenue as against the order of the Income Tax Appellate Tribunal was admitted by this Court on the following substantial question of law:

“ Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in setting aside the orders of the lower authorities and decide the issue in favour of the assessee, even though interest under Section 244A has not been granted on the refund of Rs.6,52,517/- which is only consequential to the credit given under Section 115JAA of the Income Tax Act, 1961?”

2. It is submitted by the learned Standing Counsel appearing for the Revenue that after admission of this Tax Case (Appeal), the Tribunal has passed an order reducing the amount of refund to Rs.2,71,798/-. This figure is subject to verification by the Officer concerned in the light of the decision that we are now rendering in the present tax case (Appeal). It is made clear that either parties will be entitled to clarify the exact amount of refund.

3. Hence, the question of law that arise for consideration in this Tax Case (Appeal) is modified as follows:

"Whether the Tribunal was justified in allowing the appeal filed by the assessee, who claimed interest under Section 244A of the Income Tax Act consequent to the benefit of MAT credit under Section 115JAA of the Income Tax Act extended to the assessee?"

4. The brief facts of the case are as follows:

The assessment in this case relates to the assessment year 1998-99. The assessee is a company engaged in the business of manufacture and export of cotton garments. The assessee filed its return of income on 27.11.1998 declaring gross total income of Rs.6,50,15,073/-. The Assessing Officer determined the total taxable income under normal computation at Rs.1,33,06,600/- and the book profit under Section 115JA of the Income Tax Act at Rs.1,77,48,720/-. The Assessing Officer arrived the taxable income at 30% of the book profit at Rs.53,24,616/-. Hence, the higher amount of taxable income, namely, Rs.1,33,06,600/- was taken as taxable income of the assessee and tax was determined at 35% at Rs.46,57,310/-. From the said amount, the amount of TDS and Advance Tax paid was deducted. Thereafter, interest under Section 234B and 234C were

added. Thereafter, tax paid under Section 140A and MAT Credit was deducted. Finally the Assessing Officer passed an order directing the assessee to pay the balance demand after deducting the refund already granted. Aggrieved by the said order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal holding as follows:

"4.2. I have considered the appellant's submission. MAT Credit is nothing but the assessee's credit lying with the government available to the assessee for adjustment against the tax due from the assessee in the subsequent year. The moment tax becomes payable by the assessee in subsequent year on normally computed income, the tax credit brought forward is to be automatically adjusted against such income tax by virtue of the provision of Section 115JAA(4). Therefore, the assessee is not to be expected to pay the advance tax to the extent of MAT credit brought forward from the preceding years. Only the balance tax liability remaining, if any, after such set off, is payable by the assessee as advance tax. To expect otherwise will lead to two credits [MAT and Advance Tax Payment] against one tax liability. Further, as there is no express provision to show the working of MAT credit and there is an ambiguity in the provision with regard to the tax payments made under the MAT Credit Scheme, the A.O. is directed to give credit of MAT payment of Rs.27,93,693/- and afterwards work out the interest

payment u/s.234B & C. The appellant's claim is allowed."

5. As against the order of the Commissioner of Income Tax (Appeals), the Revenue has not filed any appeal and hence, the said order has become final. To give effect to the order of the Commissioner of Income Tax (Appeals), the Assessing Officer passed an order on 29.11.2002, but the said order is not giving effect to order, but contrary to the order passed by the Commissioner of Income Tax (Appeals). Hence, the Assessing Officer passed another order on 28.3.2003 correcting the error in the earlier giving effect to order of the Commissioner of Income Tax (Appeals) in the following manner:

" Giving effect to the order of CIT(A) cited, the assessment order dated 18.03.2002 is modified as under:

*Grant total income as
per order dated 18.03.2002
6,50,15,073*

Less:

Deduction u/s.80HHC

[As held by CIT(A)] 5,53,19,475

Deduction u/s.80G [as claimed] 15,000 5,53,34,475

*Revised Taxable income as per
normal computation*

96,80,598

(or)

96,80,600

[A]

Taxable Income u/s. 115JA:

<i>Book profit as per order</i>	
<i>Dated 18.03.2002</i>	6,94,42,189
<i>Less: Deduction u/s.80HHC</i>	5,53,19,475
<i>Revised Book Profit</i>	<u>1,41,22,714</u> OR 1,41,22,710
<i>30% thereof</i>	<u>42,36,814</u> [B]
<i>Taxable Income being higher of [A] or [B] i.e., Rs.96,80,600/-</i>	
<i>Income tax thereon @ 35%</i>	33,88,210
<i>Less : MAT Credit u/s.115JAA</i>	19,05,326
	14,82,884
<i>Less: TDS</i>	13,09,401
<i>Advance Tax</i>	8,26,000
	<u>21,35,401</u>
<i>Refund Due</i>	6,52,517"

6. Consequent to the above-said giving effect to order, the assessee filed a petition on 08.04.2003, requesting interest under Section 244A of the Income Tax Act on the refund determined at Rs.6,52,517/- after adjusting TDS and Advance Tax of Rs.21,35,401/-. The Deputy Commissioner of Income Tax was of the view that interest on the refund amount could not be granted as per proviso under Section 115JAA (2) of the Income Tax Act. Aggrieved by the same, the assessee filed an appeal before the Commissioner of Income Tax

(Appeals). The order of the Deputy Commissioner of Income Tax was upheld by the very same Commissioner of Income Tax (Appeals), who granted relief in favour of the assessee in the earlier round of litigation. The said order of the Commissioner of Income Tax (Appeals) reads as follows:

"3. The Assessing Officer has correctly determined that as per proviso to Section 115JAA(2), no interest shall be payable on the tax credit allowed under sub-section (1). Hence interest u/s.244A has not be granted on the refund of Rs.6,52,517/- which is only consequential to the credit given u/s.244A on the refund of Rs.6,52,517/- has been correctly rejected. I find no reason to interfere with the order of the assessing officer. The appellant's ground fails."

7. Aggrieved by the same, the assessee filed an appeal before the Income Tax Appellate Tribunal. Before the Tribunal, the Departmental Representative conceded that there was an error on the part of the Assessing Officer in giving effect to order of the Commissioner of Income Tax (Appeals) passed originally. Hence, after hearing the submissions on both sides, the Tribunal passed the following order:

"5. We have heard the rival contentions and perused the relevant records. The learned counsel of the

assessee submitted that there is no question of assessee receiving refund on account of MAT credit. Unadjusted MAT credit is only carried forward and no credit is received on account of that. It is only the tax paid and TDS which remain after adjustment of MAT credit that the assessee become eligible for refund. Hence, the claim of interest on the refund is perfectly justified.

6. *The learned Departmental Representative conceded that there was in fact an error on the part of the Assessing Officer in giving effect to the original Commissioner of Income Tax (Appeals)'s order. In this order dated 3.10.2002, the Commissioner of Income Tax (Appeals) has clearly directed that assessee was not expected to pay the advance tax to the extent of MAT credit brought forward from the preceding year and the Assessing Officer was directed to give credit to MAT payment of Rs.27,93,693/- and afterwards work out the interest payment u/s. 234B&C.*

7. *Upon consideration of the aforesaid, we are of the opinion that the assessee's claim is perfectly justified. Hence, we set aside the orders of the authorities below and decide the issue in favour of the assessee."*

8. Aggrieved by the order of the Tribunal, the Revenue is before this Court.

9. Heard learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed before this Court.

10. It is seen from the order of the Tribunal that the Departmental Representative has conceded before the Tribunal that there was an error on part of the Assessing Officer in giving effect to the order of the Commissioner of Income Tax (Appeals). At the threshold, we fail to see whether an appeal could be filed, when the Revenue has fairly conceded before the Tribunal. However the issue having been raised by the Revenue, we are inclined to take up the issue for consideration.

11. Before going into the merits of the case, for better appreciation, we extract hereunder the relevant provisions, namely, Section 115JA (1) and (2) and proviso:

"115JA. Deemed income relating to certain companies.—(1) Not withstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, 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, 1997, but before the 1st day of April,

2001 (hereafter in this section referred to as the relevant previous year), is less than thirty per cent. of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent. of such book profit.

(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) :

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year."

12. In the present case, originally the Commissioner of Income Tax (Appeals) has correctly interpreted the provisions of Section 115JAA(4) of the Income Tax Act to the effect that tax credit should be allowed set-off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than Section 115JA or Section 115JB, as the case may be. He rightly held that the assessee is not expected to pay the advance tax to the extent of MAT credit brought forward from the preceding years. Only the balance tax liability remaining, if any, after such set off, is payable by the assessee as advance tax. If that is so, the MAT credit that is available should be allowed to set off and thereafter the tax liability has to be determined taking note of the Advance Tax paid and the TDS available.

13. It is relevant to note that the case in converse came up for consideration before the Supreme Court in the decision reported in **[2011] 330 ITR 226 (SC) COMMISSIONER OF INCOME-TAX v. TULSYAN NEC LTD**, wherein the issue before the Supreme Court was regarding the priority to be given on the adjustment of MAT credit. The Supreme Court observed that when tax is paid by the assessee under Section 115JA, the assessee becomes entitled to claim credit of

such tax in the manner prescribed. Such a right gets crystallized no sooner the tax is paid by the assessee. It further held that although the right to avail of tax credit gets crystallized in year one, on payment of tax under section 115JA and the set off thereof follows statutorily, the amount of credit available and the amount of set off to be actually allowed as in all cases of deductions/allowances under sections 30-37, is fluid/inchoate and subject to final determination only on adjudication of assessment either under section 143(1) or under section 143(3). The fact that the amount of tax credit to be allowed or to be set off is not frozen and is ambulatory, does not take away/destroy the right of the assessee to the amount of tax credit.

14. In the above-said case before the Supreme Court, the Assessing Officer, while determining the interest payable under Section 234B and C, computed the short fall of tax payable without taking into account the set off of MAT Credit. Hence, the Supreme Court came to the conclusion that insofar as priority is concerned, MAT credit should be taken into account and thereafter credit should be given to Advance Tax paid and TDS etc. The Supreme Court rejected the contention of the Department that even if there is a MAT Credit balance, the assessee is required to pay the Advance Tax and if he fails to pay,

interest under Section 234 would be chargeable, thereby, making it clear that MAT credit should be first given effect to. For better clarity, we extract the relevant portion of the decision of the Supreme Court hereunder:

"8. We have discussed hereinabove the scheme of section 115JA(1) and section 115JAA. The entire scheme of sections 115JA(1) and 115JAA shows that if an assessee is entitled to a tax credit as a consequence of the assessee making payment of tax under section 115JA(1) in year one, then, the set off of such tax credit follows as a matter of course once the conditions mentioned in section 115JAA are fulfilled and the grant of such credit is not dependent upon determination by the Assessing Officer save and except that the ultimate amount of tax credit to be allowed will be dependent upon the final determination of the total income for the first assessment year. There is no provision under section 115JAA which postpones the right of the assessee to claim set off to the determination of the total income by the Assessing Officer in the first assessment year. Entitlement/ right to claim set off is different from the quantum/quantification of that right. Entitlement of MAT credit is not dependent upon any action taken by the Department. However, the quantum of tax credit will depend upon the assessment framed by the Assessing Officer Thus, the right to set off arises as a result of the payment of tax under section 115JA(1) although

quantification of that right depends upon the ultimate determination of total income for the first assessment year. Further, an assessee has a right to take into account the set off even while estimating its liability to pay advance tax on the "current income" in accordance with the provisions of Chapter XVII-C. Although section 209(1)(d) does not make any specific provision either before or after the amendments carried out by the Finance Act, 2006 to the effect that an assessee is entitled to set off the tax credit that would be available in terms of section 115JAA(1) while computing the quantum of advance tax that is to be paid it must follow that an assessee would be entitled to do so otherwise it results in absurdity, viz, that an assessee pays advance tax on the footing that it is not entitled (when in fact it is so entitled as discussed above) to the credit and thereafter claims a refund of such advance tax paid as a consequence of the set off. Moreover, when an Assessing Officer makes an intimation under section 143(1) he accepts the return filed by the assessee to which the Assessing Officer may make an adjustment and consequently makes a demand or refund. Section 143(1) provides that where a return is made under section 139 and if any tax or interest is found due on the basis of such return after adjustment of any TDS, any advance tax, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation will be sent to the assessee

specifying the amount so payable and such intimation shall be deemed to be a notice of demand under section 156 and all the provisions of the Act shall apply thereto. This section itself makes it clear that whilst the Assessing Officer determines the tax payable he has to give credit for all taxes paid either by way of deduction at source, advance tax, self-assessment tax or tax paid otherwise which would include or which cannot exclude tax credit under section 115JAA(1). However, the question before us is of priority of adjustment for the MAT credit. In this connection, it is important to bear in mind that the credit allowed is the excess of the normal tax liability over the MAT liability in the subsequent years.....

9. The issue which crops up for decision is " how should the advance tax be calculated when the company has MAT credit ?

10. To answer, we need to look at section 234B. Under that section, "assessed tax" means the tax on the total income determined under section 143(1) or on regular assessment under section 143(3) as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income. The definition, thus, at the relevant time excluded the MAT credit for arriving at assessed tax. This led to immense hardship. The position which emerged was that due to omission on one hand the MAT credit was

available for emerged set off for five years under section 115JAA but the same was not available for set off while calculating advance tax. This dichotomy was more spelt out because section 115JAA did not provide for payment of interest on the MAT credit. To avoid this situation, Parliament amended Explanation 1 to section 234B by the Finance Act, 2006 with effect from April 1, 2007 to provide along with tax deducted or collected at source, the MAT credit under section 115JAA also to be excluded while calculating assessed tax.

11. From the above, it is evident that any tax paid in advance/pre-assessed tax paid can be taken into account in computing the tax payable subject to one caveat, viz, that where the assessee on the basis of self-computation unilaterally claims set off or the MAT credit, the assessee does so at its risk as in case it is ultimately found that the amount of tax credit availed of was not lawfully available, the assessee would be exposed to levy of interest under section 234B on the shortfall in the payment of advance tax. We reiterate that we cannot accept the case of the Department because it would mean that even if the assessee does not have to pay advance tax in the current year, because of his brought forward MAT credit balance, he would nevertheless be required to pay advance tax, and if he fails, interest under section 234B would be chargeable....."

15. The Supreme Court having thus cleared the position of law that priority should be given first on the adjustment of MAT Credit, we have no hesitation to hold that the order of the Tribunal is in consonance with the statutory provision of law as propounded by the Supreme Court in the above-said decision. We, therefore, answer the question of law against the Revenue and in favour of the assessee.

In the result, this Tax Case (Appeal) stands dismissed. No costs.

Index: Yes / No
Internet: Yes / No

(R.S.,J.) (K.B.K.V.,J.)
01.06.2015

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To

1. The Income Tax Appellate Tribunal, Madras 'A' Bench.
2. The Commissioner of Income Tax (Appeals) III, Chennai.
3. The Deputy Commissioner of Income Tax, Company Circle I(1), Chennai.

R.SUDHAKAR,J.
AND
K.B.K.VASUKI,J.

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