

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.428 of 2010
Date of decision: 1.10.2015**

Commissioner of Income Tax, Jalandhar I, Jalandhar
.....Appellant

M/s Max India Limited
.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Sethi, Advocate for the appellant-revenue.
Mr. Ajay Vohra, Sr. Advocate with Mr. Gaurav Jain, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 1.1.2010, Annexure A.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No.102(ASR)/2006 for the assessment year 2000-01, claiming following substantial questions of law:-

"I. Whether on the facts and circumstances of the case, the ITAT was right in law in allowing the set off of tax credit under section 115J (correct provision is Section 115JAA) for the purpose of calculation of interest under section 234B of the IT Act ignoring the fact that there is no provision in law warranting such set off?

II. Whether on the facts and circumstances of the case, the ITAT was right in law in directing that depreciation should be worked out with reference to the WDV computed as a result of order passed under section 250(6) of the IT Act for the assessment year 1998-99?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee company filed its returns on 30.11.2000 declaring income at ₹ 12,33,12,265/- under section 115J of the Act which was processed under Section 143(1)(a) of the Act on 30.3.2001. Later on, the assessee company revised its return of income on 30.10.2001 declaring income at ₹ 12,22,50,282/- under section 115J of the Act which was processed under section 143(1)(a) of the Act on 30.4.2002. The case of the assessee was taken up for scrutiny. Notices under section 143(2)/142(1) of the Act were issued to the assessee. Assessment was made at total income of ₹ 15,46,86,210/- under Section 143 (3) of the Act on 12.3.2003. The Assessing Officer vide order dated 12.3.2003, Annexure A.1 disallowed ₹ 2,31,54,235/- on account of excess depreciation allowance. Further the Assessing Officer computed the interest under section 234B of the Act without setting off of the brought forward tax credit available under Section 115JAA of the Act from the tax payable. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 19.1.2006, Annexure A.2, the CIT(A) allowed the appeal deleting the addition made by the Assessing Officer. Not satisfied with the order, the revenue filed appeal before the Tribunal. Vide order dated 1.1.2010, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.
4. It was not disputed by the learned counsel for the parties that question No.II is covered by our decision dated 8.9.2015 in ITA No.426 of 2010 (*CIT, Jalandhar I, Jalandhar vs. M/s Max India Limited*) against the revenue. Accordingly, question No.II is answered against the revenue.
5. With regard to Question No.I, learned counsel for the revenue relied upon judgment of the Apex court in *Joint CIT vs. M/s Rolta India Limited*, (2011) 330 ITR 470 to urge that the set off of tax credit under Section 115JAA of the Act was not admissible for the purpose of calculation of interest under section 234B of the Act.
6. On the other hand, learned counsel for the assessee submitted that the issue stands concluded against the revenue by the decision of the Apex Court in *CIT vs. Tulsyan Nec Limited*, (2011) 330 ITR 226 wherein judgment of the Madras High Court in *CIT vs. Tulsyan Nec Limited*, (2011) 330 ITR 224 was affirmed.
7. The issue herein is whether while computing interest under Section 234B of the Act, the tax credit available under Section 115JAA of the Act is to be reduced from the taxes payable or not.
8. The matter is no longer res integra. The Apex Court in *Tulsyan Nec Limited's* case (supra) considering identical issue held that the Assessing Officer is required to give benefit of tax credit available under Section 115JAA of the Act and determine the interest payable under Section 234B of the Act thereafter. Noticing the scheme of Section 115JAA of the Act, it was recorded as under:-

“6. The relevant provisions under [Section 115JAA](#) of the Act, introduced by [Finance Act, 1997](#) w.e.f. 1.4.1997, i.e., applicable

for assessment years 1997-98 and onwards, governing the carry forward and set off of credit available in respect of tax paid under [Section 115JA](#), show that when tax is paid by the assessee under [Section 115JA](#), then 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 under [Section 115JA](#), as per the return of income filed by that assessee for a previous year (say, year one). [See [Section 115JAA\(1\)](#)]. The said credit gets limited to the tax difference between tax payable on book profits and tax payable on income computed under the normal provisions of the Act [see [Section 115JAA\(2\)](#)] in year one. Such credit is, however, allowable for a period of five succeeding assessment years, immediately succeeding the assessment year in which the credit becomes available (say years 2 to 6) [See [Section 115JAA\(3\)](#)]. However, MAT credit is available for set off against the tax payable in succeeding years where the tax payable on income computed under the normal provisions of the Act exceeds the tax payable on book profits computed for that year [See [Section 115JAA\(4\)](#), (5)]. At this stage, we would like to emphasize the word "allowed" in all the sub-sections of [Section 115JAA](#). The statute envisages under [Section 115JAA](#) "credit in respect of tax so paid" because the entire tax is not an automatic credit but has to be calculated in accordance with sub-section (2) of [Section 115JAA](#). Sub-section (4) to [Section 115JAA](#) allows "tax credit" in the year tax becomes payable. Thus, the amount of set off is limited to the tax payable on the income computed under the normal provisions of the Act less the tax payable on book profits for that year. [Refer [Section 115JAA\(4\)](#) and [Section 115JAA\(5\)](#)]. The tax credit to be allowed is the function of the tax payable on book profits and the tax payable on income computed under the normal provisions of the Act, in year one. As stated, the difference of the two is the amount of tax credit to be allowed. The A.O. may vary the amount of tax

credit to be allowed pursuant to completion of summary assessment under [Section 143\(1\)](#) or regular assessment under [Section 143\(3\)](#) for year one, in terms of [Section 115JAA\(6\)](#). As a consequence of such variation the tax credit to be allowed for year one is liable to change. With every change in the amount of tax payable on book profits and/ or tax payable on income computed under the normal provisions of the Act, the tax credit to be allowed would have to be changed by the A.O. by passing consequential orders, deriving authority from [Section 115JAA \(6\)](#) of the Act. Thus, the tax credit allowable can be set off by the assessee while computing advance tax/ self-assessment tax payable for years 2 to 6 limited to the difference between the tax payable on income computed under the normal provisions and tax payable on book profits in each of those years, as per assessee's own computation. Although the right to avail 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.”

9. Further, it was concluded by the Apex Court as under:-

“9. We have discussed herein above 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 the 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 A.O. 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 A.O. 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, quantum of tax credit will depend upon the assessment framed by the A.O. 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 A.O. makes an intimation under [Section 143\(1\)](#) he accepts the return filed by the assessee to which the A.O. 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 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 A.O. 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\(1\)](#).”

10. The CIT(A) while accepting the contention of the assessee directed the Assessing officer to compute the interest under section 234B of the Act after reducing the tax credit available under section 115JAA of the Act and giving the credit of the taxes paid. The said finding was affirmed by the Tribunal. The finding recorded by the CIT(A) on this question reads thus:-

“For the sake of setting the matter to rest with finally, the computation of interest under section 234B as computed by the AO and as per appellant's claim is :

	<i>As per AO (Rs.)</i>	<i>As per appellant (Rs.)</i>
Tax as per order under section 143 (3) dated 12.3.2003	59,554,190	59,554,190
Less : Set off of tax credit under section 115JAA		12,622,912

	<i>As per AO (Rs.)</i>	<i>As per appellant (Rs.)</i>
Net Tax payable	59,554,190	46,931,279
Less: Taxes paid (TDS and advance Tax)	46,032,203	46,544,770
Difference	13,521,987	386,509
Interest under section 234B for three months at the rate of 1.5% per month	608,489	17,392

The tax paid as per order under section 154 dated 12.2.2004 passed by the AO comes to ₹ 46,437,542.

After considering the matter, I am inclined to agree with the contentions of the appellant. The AO has clearly erred in computing interest under section 234B without allowing the set off of the tax credit available under Section 115JAA although he has allowed the tax credit for determining the net tax payable. The tax credit under section 115JAA is required to be considered when quantifying the net amount of advance tax. The following judicial rulings support the clam of the appellant:

- a) Phillips India Limited vs. ACIT 92 ITD 441 (ITAT Chandigarh)
- b) Synthetic Industrial Chemicals Limited vs. DCIT 90 ITD 851 (ITAT Couchin)
- c) Chemplast Sanmar Limited vs. DCIT 83 TTJ 427 (ITAT Chennai)

Respectfully, following the above judgments, I hold that the interest under section 234B is to be computed after reducing the tax credit under section 115JAA from the tax payable. This

ground of the appellant therefore, succeeds. Accordingly, the AO is directed to compute the interest under section 234B after reducing the tax credit available under section 115JAA and giving the credit of the taxes paid.”

The said findings were affirmed by the Tribunal on an appeal by the revenue.

11. Adverting to the judgment in *Rolta India Limited's* case (supra) on which learned counsel for the revenue has relied upon, the issue therein was whether the assessee whose book profits were computed under Sections 115J/115JA of the Act, was required to pay interest under Section 234B of the Act on the liability determined on that basis where the advance tax fell short thereof. The issue there was totally different.

12. Consequently, the substantial questions of law as claimed by the revenue are answered accordingly. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

October 1, 2015
'gs'

(Ramendra Jain)
Judge