IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.6.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.369 OF 2019

Principal Commissioner of Income Tax-6, Chennai-34. ...Appellant

Vs

M/s.Scope International Pvt. Ltd., Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 16.11.2018 in ITA No.200/Chny/2018 on the file of the Income Tax Appellate Tribunal Chennai 'B' Bench for the assessment year 2009-10 as against the order of the Commissioner of Income Tax, (Appeals)-15 Chennai -34 made in ITA No.439/2013-14/CIT A-15 dated 28.09.2017 as against the order of the Deputy Commissioner of Income Tax Company Circle VI(1), Chennai - 600 034 made in Assessment order for the year 2009 -10 ,dated 31.3.2018 as against the order of the Joint Commissioner, Income Tax, Transfer pricing Officer III, Chennai made in Cr.No.S.307/TPO-111/A.Y.2009-10, dated 03.10.2012.

For Appellant : Mr.T.R.Senthilkumar, SSC assisted by Mrs.K.G.Usha Rani

For Respondent: Mr.SP.Chidambaram

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 16.11.2018 passed by the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) in ITA No.200/Chny/2018 for the assessment year 2009-10.

2. The Revenue has filed this appeal by raising the following substantial questions of law :

> "i. Whether the Appellate Tribunal is correct in law in directing the inclusion of surcharge and cess in MAT credit under Section 115JAA of the Income Tax Act ? And

ii. Whether the Appellate Tribunal is correct in placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. K.Srinivasan [reported in (1972) 83 ITR 346], which was rendered in context to Section 2 of the Act whereas Section 115JAA of the Act was inserted subsequently with retrospective effect from 01.4.1997 ?"

3. We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Mrs.K.G.Usha Rani, learned Standing Counsel for the Revenue and Mr.SP.Chidambaram, learned counsel accepting notice for the respondent.

4. The short issue, which falls for consideration in this appeal, is as to whether the order passed by the Commissioner of Income Tax (Appeals)-15, Chennai-34 [for short, the CIT(A)], in ITA.No.439/2013-14 dated 28.9.2017 as confirmed by the Tribunal in the impugned order requires interference and as to whether any substantial question of law arises for consideration.

5. A reference under Section 92CA(1) of the Act was received from the Assistant Commissioner of Income Tax Act, Company Circle VI(2), Chennai. Accordingly, a notice under Section 92CA (2) of the Act along with questionnaire was issued to the assessee on 18.11.2011 calling for details of documents and information. The assessee submitted their explanation and their authorized representative appeared before the Assessing Officer and the case was discussed. The assessee is a wholly owned subsidiary of M/s.Standard Chartered Bank, UK and is engaged in the business of providing back end support to certain branches of the bank spread across the globe including India. The Transfer Pricing Officer passed an order on 03.10.2012, based on which, the Assessing Officer completed the assessment vide order dated 31.3.2013. As against the order passed by the Assessing Officer, the assessee preferred an appeal to the CIT(A). In this appeal, we are concerned only about the issue relating to MAT credit not being given on surcharge and cess.

6. Before the CIT(A), the assessee contended that the tax liability discharged during the assessment year 2009-10 was based on Section 115JB of the Act, as the tax calculated under the MAT provisions was higher than the tax calculated as per normal provisions of income tax and that this resulted in a MAT credit to the extent the tax liability under the MAT provisions higher than the tax liability under normal tax provisions to be carried forward for adjustment during the subsequent assessment years. It was further contended that while calculating the MAT credit, the Assessing Officer considered only the tax amount without considering the surcharge and cess under normal tax

provisions and MAT provisions and that this resulted in reduced amount of MAT credit.

7. In support of their contention, the assessee placed reliance upon the decision of the Hon'ble Supreme Court in the case of CIT Vs. K.Srinivasan [reported in (1972) 83 ITR 346]. It was further contended that while giving effect to the carried forward MAT credit in the tax calculation for the assessment year 2012-13, the Assessing Officer had correctly considered tax, surcharge and cess.

8. The CIT(A), after taking note of the submissions made by the assessee, found the same to be prima facie acceptable and further found that the Assessing Officer did not consider the appellant's submission. The Assessing Officer was directed to verify the appellant's submission with reference to assessment record. The Assessing Officer was further directed to allow the appellant's claim for the MAT credit, if the assessee' submission was factually correct. Accordingly, the appeal filed by the assessee stood partly allowed.

9. The Revenue challenged the order passed by the CIT(A) before the Tribunal and it was contended before the Tribunal that the CIT(A) had no power to direct the Assessing Officer to verify. The Tribunal took note of the decision of the Hon'ble Supreme Court in the case of K.Srinivasan and held that in exercise of its power, it is entitled to direct the Assessing Officer to verify the claim of the assesse and thereafter allow the claim with regard to MAT credit. Accordingly, the Tribunal declined to interfere with the order passed by the CIT(A).

10. The Revenue is before us contending that surcharge and cess should not be included and that the decision in the case of K.Srinivasan would not be applicable to the facts of this case. Thus, the argument advanced before us is that both the CIT(A) as well as the Tribunal ought not to have followed the decision in the case of K.Srinivasan, which was rendered in the context of Section 2 of the Act whereas Section 11JAA of the Act was inserted subsequently with retrospective effect from 01.4.1997.

11. Section 2(43) of the Act defines 'tax' in relation to the assessment year commencing on the 1st day of April, 1965 and any subsequent assessment year to mean income-tax chargeable under the provisions of this Act and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date and in relation to the assessment year commencing on the 1st day of April, 2006, and any subsequent assessment year includes the fringe benefit tax payable under Section 115WA of the Act.

12. Explanation (2)(iii) and (iv) to Section 115JB of the Act states that for the purposes of Clause (a) of Explanation 1 to Section 115JB of the Act, the amount of income tax shall include surcharge as levied by the Central Acts from time to time and education cess on income-tax, if any, as levied by the Central Acts from time to time. A useful reference may be made to Section 2 of the Finance Act and it would suffice to refer to Sub-Section (1) and Sub-Section (2), which state that subject to the provisions of Sub-Sections (2) and (3), income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax shall be increased by a surcharge for purposes of the Union calculated in either case in the manner provided therein.

13. The Hon'ble Supreme Court, in the case of K.Srinivasan, took note of the legislative history of the Finance Act as also the practice to indicate that the term "income tax" as employed in Section 2 of the Finance Act, which includes surcharge as also the special and the additional surcharge whenever provided which are also surcharges within the meaning of Article 271 of The Constitution. It was pointed out that the word 'surcharge' has been used to either increase the rates of income tax and super tax or to increase these taxes. It was also pointed out that according to Article 271, notwithstanding anything in Articles 269 and 270, the Parliament may, at any time, increase any of the duties or taxes referred to in those Articles by a surcharge for the purpose of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India. The Hon'ble Supreme Court took note of the distinction made by the High Court in the case and held that the distinction made by the High Court that the surcharges are levied only under the Finance Act and income tax under the Act may not hold good. The Hon'ble Supreme Court explained the term 'surcharge' to mean as the charge in addition to or subject to an additional or extra charge.

14. In our considered view, the decision of the Hon'ble Supreme Court in the case of K.Srinivasan will apply with full force to the assessee's case. Furthermore, if we refer to the circular of the Central Board of Direct Taxes in Circular No.3 of 2018 dated 11.7.2018, which fixed the monetary limit for filing appeals by the Department before the Tribunals, High Courts and Supreme Court, one gets a fair idea as to what was the understanding of the term 'tax' by the Board. If we have a look at paragraph 4 of the said circular, the Board states that for the purposes of the said Circular, tax effect shall be tax including applicable surcharge and cess.

15. Though the case on hand is not hit by the monetary limit according to Mr.T.R.Senthilkumar, learned Senior Standing

Counsel, yet, on a perusal of the said circular, it is evidently clear that consistently, the understanding of the Board was that tax includes applicable surcharge and cess.

16. For the above reasons, we are of the view that the Revenue has not made out any case to interfere with the order passed by the Tribunal. As pointed out earlier, in the assessee's own case, for the assessment year 2012-13, relief has been granted to the assessee and there is nothing on record to show that the said order is either reversed or reopened. Hence, the substantial questions of law raised are answered against the Revenue.

17. Accordingly, the above tax case appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai 'B' Bench

2.The Deputy/Assistant Registrar,
Income Tax Appellate Tribunal,
Chennai Benches.

3. The Commissioner of Income tax,
(Appeals_ 15, Chennai -34.

4. The Deputy Commissioner of Income tax,
Company Circle VI(1) Chennai - 34.

5. The Joint Commissioner of Income Tax,
Transfer Pricing Officer III,
Nungambakkam, Chennai - 34.

+1cc to Mr.T.R.Senthil Kumar, Advocate, SR.No.50709

TCA.No.369 of 2019

Kak(09/09/2019)