

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
T.C.A.No.716 of 2018

The Commissioner of Income Tax,
Chennai.

.. Appellant

Versus

M/s.Saint Gobain Glass India Limited,
Plot No.A-1, Sipcot Industrial Park
Sriperumbudur,
Kanchipuram District - 602 105
PAN : AABCS4338M

... Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 31.05.2018 made in I.T.A.No.2549/Mds/2017 relating to the Assessment Year 2011-12 against the order of the Commissioner of Income Tax (Appeals)-17, Chennai dated 21/08/2017 made in ITA NO.07/2012-13, against the order of the Deputy Commissioner of Income Tax, Large Tax payers Unit, Chennai dated 10/08/2012 made in U/s 143(1) of the Income Tax Act for the assessment years 2011-12.

For Appellant : M/s.R.Hemalatha
Senior Standing counsel

For Respondent : Mr.Venkatanarayanan
For M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal has been filed by the Revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 31.05.2018 passed by the Income Tax Appellate Tribunal, Madras, 'B' Bench ('the Tribunal' for brevity) Chennai in I.T.A.No.2549/Mds/2017 for the Assessment Year 2011-12. The appeal was admitted on 18.12.2018 on the following Substantial Questions of Law:

"1. Whether the reasoning and finding of the Tribunal is right in confirming that MAT credit under Section 115JAA includes surcharge and education cess

instead of excluding surcharge and education cess?"

2. We have heard M/s.R.Hemalatha, learned Senior Standing counsel for the appellant / Revenue and Mr.Venkatanarayanan, learned counsel for M/s.Subbaraya Aiyar Padmanabhan, appearing for the respondent / assessee.

3. Identical question was considered by us in the case of Principal Commissioner of Income Tax-6 Vs. M/s.Scope International Pvt. Ltd., in T.C.A.No.369 of 2019 dated 19.06.2019. The operative portion of the judgment reads as follows:

"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's 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 assessee 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 SubSections (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."

4. M/s.R.Hemalatha, learned Senior Standing counsel referred to a decision of the High Court of Calcutta in the case of Srei Infrastructure Finance Ltd. Vs. Deputy Commissioner of Income-tax, Circle-11(2), Kolkata, [2016] 72 taxmann.com 239 (Calcutta)

5. In the said decision it was held that the MAT Credit under Section 115 JAA has brought forward from the earlier orders is to be set off against tax on total income including surcharge and education cess instead of adjusting the same from tax on total income before charging such a surcharge and education cess.

6. We find factually the said decision is different and cannot be applied to the facts and circumstances of this case. Furthermore, in the case of M/s.Scope International Pvt. Ltd., (cited supra), we had followed the decision of the Hon'ble Supreme Court of India in the case of CIT Vs. K.Srinivasan [reported in (1972) 83 ITR 346]. As on date, the decision in the case of M/s.Scope International Pvt. Ltd., (cited supra) continue to hold the field and therefore, we are inclined to follow the same.

7. Thus, by following the above decision, the Tax Case Appeal is dismissed and the Substantial Question of Law is answered against the appellant / Revenue. No costs.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax,
(Appeals)-17, Chennai.

3. The Deputy Commissioner of Income Tax,
Large Tax Payers Unit, Chennai.

+1cc to Mr.T.Ravikumar, Advocate SR.No.34003

+1cc to M/s.Subbaraya Aiyar, Advocate SR.No.33996

GP(CO)
GMY(18/11/2020)

T.C.A.No.716 of 2018

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