

## MAT credit is allowed inclusive of surcharge and education cess

### Background

Recently, the Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Consolidated Securities Ltd<sup>1</sup> (the taxpayer) held that Minimum Alternate Tax (MAT) credit is allowed inclusive of surcharge and education cess. The amount of tax includes both the components, namely, tax and surcharge. Surcharge cannot be treated as distinct from the amount of income tax. It is an integral component and constitutes part and parcel of the amount of tax.

Further, the interest under Section 234B and 234C of the Income-tax Act, 1961 (the Act) is to be charged on the net amount of tax determined i.e. after reducing the amount of MAT credit from the amount of tax payable for the year in the same manner in which advance tax and TDS are reduced.

### Facts of the case

- During the Assessment Year (AY) 2011-12, the taxpayer while computing the amount of tax, reduced MAT credit of INR10.58 million available under Section 115JAA<sup>2</sup> of the Act from the amount of tax of INR 29.60 million. However, the AO allowed the MAT credit of INR9.55 million excluding surcharge and education cess.
- Further, the MAT credit was not allowed from the amount of tax payable for computation of interest under Section 234B and 234C of the Act

### Tribunal's decision

#### ***Whether surcharge and education cess are treated as distinct from the amount of tax***

- Finance Act provides for the rates of tax and also the surcharge and cess, etc. Such rates vary from the year to year or from class of taxpayers even for the same year. The tax on total income for a year refers not only to the amount of income-tax but also the surcharge and education cess, etc.
- Distinct from interest payable under the Act, tax includes both the components, namely, tax on one hand and surcharge, cess, etc. on the other. One cannot see surcharge, etc. as distinct from the amount of income tax, which is an integral component and constitutes part and parcel of the amount of tax.
- MAT credit available under Section 115JAA of the Act includes the amount of surcharge, cess, etc., and the same ought to be allowed from the amount of tax plus surcharge or education cess.
- If the amount of tax credit split into two artificial limbs, that is, tax and surcharge, etc., there can be a possibility of the taxpayer even losing the benefit of the full amount of surcharge, etc. as the same keeps on varying from year to year.
- Since surcharge etc. was part and parcel of tax, both have to be considered as one unit. Therefore, it has been held that the benefit of MAT credit, which includes the amount of surcharge, etc. also, has to be allowed.

<sup>1</sup> Consolidated Securities Ltd v. ACIT (ITA No. 3739/Del/2015) – Taxsutra.com

<sup>2</sup> Section 115JAA of the Act – Where MAT paid by the taxpayer being a company for any AY, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section

## **Interest under Section 234B and 234C of the Act**

- The interest under Section 234B and 234C of the Act is to be charged on the net amount of tax determined, i.e. after reducing the amount of MAT credit from the amount of tax payable for the year in the same way as advance tax and TDS are reduced.
- On a perusal of the language of Section 140A of the Act dealing with 'self-assessment', it indicates that the amount of advance tax and TDS, etc. rank on an equal footing with the amount of MAT credit available under Section 115JAA of the Act. The amount of tax payable for the year is to be determined after reducing the amount of advance tax, TDS, and MAT credit. The resultant amount arrived at after making such deductions is the amount of tax, which the taxpayer is liable to pay.
- The amount of interest payable under any provision of the Act is calculated on the resultant amount. This indicates that the amount of interest under the Act is liable to be paid on the amount of tax payable determined after deducting, inter alia, the amount of MAT tax credit.
- Accordingly, it was held that the amount of the MAT tax credit, inclusive of surcharge and education cess, etc., if any, should be reduced from the amount of tax plus a surcharge and education cess, etc. Only the resultant amount payable will suffer interest under the relevant provisions of the Act.

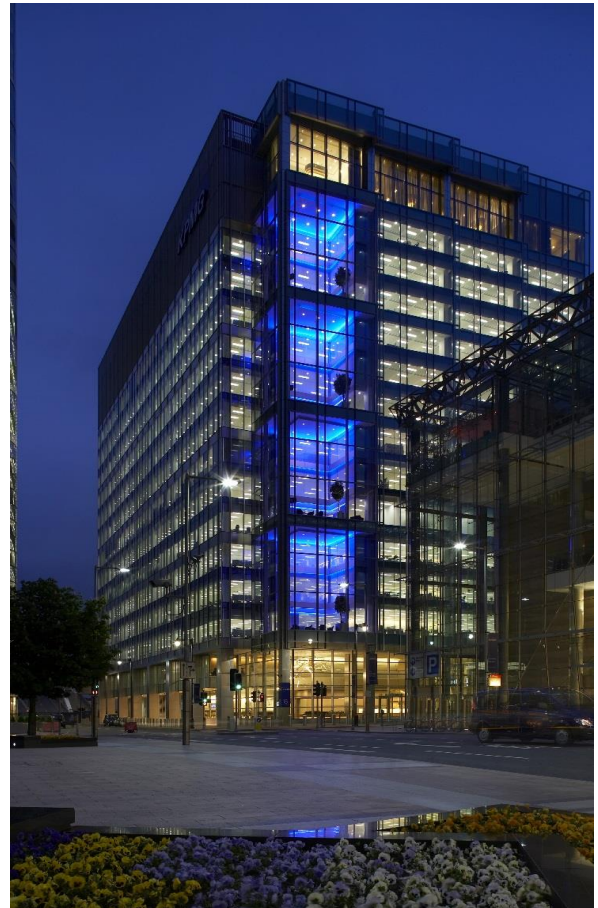
Since the amount of MAT tax credit was uncertain, the Tribunal set aside the order and remitted issue back to AO for ascertaining the correct amount of MAT credit available with the taxpayer inclusive of surcharge and education cess, etc.

## **Our comments**

The issue with respect to the allowability of MAT credit inclusive of surcharge and cess has been a matter of debate before the Courts/Tribunal.

The Hyderabad Tribunal in the case of Virtusa (India) Pvt. Ltd.<sup>3</sup> held that MAT credit is to be calculated after taking surcharge and education cess into consideration. However, the Delhi Tribunal in the case of Richa Global Exports Pvt. Ltd.<sup>4</sup> held in favour of the tax department that for the purpose of carry forward and set off in subsequent years, MAT credit shall not include surcharge and cess.

The Delhi Tribunal in the present case has held that the amount of tax includes both the components, namely, tax and surcharge. Surcharge cannot be treated as distinct from the amount of income tax. It is an integral component and constitutes part and parcel of the amount of tax. Therefore, MAT credit is allowed inclusive of surcharge and education cess.



<sup>3</sup> Virtusa (India) Pvt. Ltd (ITA No. 146/Hyd/2015, 4 March 2015)

<sup>4</sup> Richa Global Exports Pvt. Ltd. v. ACIT [2012] 54 SOT 185 (Del)

[www.kpmg.com/in](http://www.kpmg.com/in)

#### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

#### Bengaluru

Maruthi Info-Tech Centre,  
11-12/1, Inner Ring Road,  
Koramangala,  
Bengaluru – 560 071.  
Tel: +91 80 3980 6000

#### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

#### Chennai

KRM Towers,  
Ground Floor, 1, 2 & 3 Floor,  
Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

#### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

#### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2,  
Serilingampally Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

#### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road  
Jaipur – 302 018.  
Tel: +91 141 – 7103224

#### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

#### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

#### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi, Mumbai – 400 011.  
Tel: +91 22 3989 6000

#### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

#### Pune

9th floor, Business Plaza,  
Westin Hotel Campus,  
36/3-B, Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

#### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2018 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only