INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B+SMC": NEW DELHI

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6583/Del/2019
(Assessment Year: 2013-14)

Fiserv India Private Limited, Regus Elegance, Level-2, Jasola District Centre, Old Mathura Road, Delhi PAN: AACCR0787L	Vs.	ACIT, Circle-9(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Sachit Jolly, Adv Shri Vasudevan, Adv
Revenue by:	Ms. Ashima Neb, Sr. DR
Date of Hearing	16/03/2020
Date of pronouncement	03/ 07/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. Assessee has filed ITA number 6583/Del/2019 for A.Y. 2013-14 against the order of The Commissioner Of Income Tax (Appeals) – 34, New Delhi [The LD CIT (A)] dated 22/4/2019 passed in appeal by assessee against the order dated 18/8/2017 passed u/s 154 read with 143 (3) of The Income Tax Act by the Asst Commissioner of Income Tax, Circle – 9 (1), New Delhi [the ld AO] .

2. The assessee has raised the following grounds of appeal in ITA No. 6583/Del/2019 for the Assessment Year 2013-14:-

"1. That the Commissioner of Income tax (Appeals) ["CIT(A)"] erred on the facts and in law in upholding the action of the Assessing Officer ("AO") in passing the order under Section 154 of the Income Tax Act, 1961 (the "Act") reducing the MAT credit entitlement of the Appellant to the extent of Rs. 5,68,28,807/- on the ground that certain transfer pricing adjustments for earlier A. Y. 2011 -12 have been affirmed by the Dispute Resolution Panel ("DRP").

1.1 That the CIT(A) erred on the facts and in law in not appreciating that the issue of reduction of MAT credit under Section 115JAA is debatable in nature and the same cannot be rectified under Section 154 of the Act.

1.2 Without Prejudice, the CIT(A) erred on the facts and in law in not appreciating that the transfer pricing adjustments confirmed by the DRP for AY 2011-12 are sub-judice before the Tribunal and, in any case, are covered by the orders of the Tribunal for the earlier years.

2. That the CIT(A) erred on facts and in law in confirming the action of the AO in charging interest under Section 234B of the Act on account of above reduction in the MAT credit."

3. Brief facts shows that the assessment in this case was completed u/s 143 (3) of the income tax act 1961 on 31st of December 2016 at an assessed income of Rs. 599,057,890/– as against the returned income of Rs. 526,519,530/– after making the addition of ₹ 72,538,360/- . Subsequently learned assessing officer passed a rectification order u/s 154 of the Act on 18 July 2017 wherein the double disallowances of stamp duty charges of ₹ 68 lakhs was deleted. Accordingly assessed income of the assessee was determined at ₹ 592,257,890/–.

4. On perusal of the assessment record, the AO observed that assessee company was allowed to adjust minimum alternate tax [MAT] credit of ₹ 76,023,086 comprising of Rs. 191,94,279/- for assessment year 2010 – 11 and ₹ 56,828,807 for assessment year 2011 – 12. The AO noted that during the assessment year 2011 – 12, additions were made in draft assessment order on account of transfer pricing adjustment of Rs. 202,999,837 and credit card expenditure were disallowed of ₹ 989,491. Against which the assessee filed objection before the learned Dispute Resolution Panel. Consequent to the direction of the learned Dispute Resolution Panel, transfer-pricing adjustment of ₹ 202,999,837 was sustained and the credit card expenditure addition was deleted. For A. Y. 2011 – 12, because of transfer pricing adjustment of ₹ 202,999,837 made by the learned assessing officer, MAT credit allowed by the AO of Rs. 56,828,807/– was not allowable to the assessee in A.Y. 2013 – 14. Therefore, MAT credit availed by the assessee and allowed by the AO was not correct. Therefore, the learned AO held that this is the mistake apparent from record, which resulted into the incorrect set-off of MAT credit amounting to ₹ 56,828,807. Therefore the learned assessing officer passed an order u/s 154 read with Section 143 (3) of the act wherein income of the assessee remained unchanged at ₹

592,257,890/- but MAT credit of Rs 56,828,807/- was withdrawn. Such order was passed on 18 August 2017.

5. Assessee, being aggrieved with that order, preferred an appeal before the learned Commissioner of Income Tax (Appeals) – 34, New Delhi. Assessee contested that assessee has already submitted a letter dated 24 July 2017 to the learned assessing officer stating that transfer pricing addition confirmed by the learned Dispute Resolution Panel in its direction and incorporated by the learned assessing officer in his final order, are contested before The Income Tax Appellate Tribunal, so matter is sub-judice. Claim of assessee was that where any issue is the subject matter of litigation that has not attained finality, no action should be taken to the detriment of the parties to the dispute. Assessee further relied on several judicial precedents. Learned CIT – A, as per para number 6.3 of his order, held that AO has rectified order on the basis of the prima facie mistake apparent from the record. As AO has allowed excess credit of MAT Credit to appellant where appellant is not entitled to get the credit of ₹ 56,828,807/–, on the basis of the addition made in the case of the appellant on account of transfer pricing adjustment in assessment year 2011 – 12. He therefore held that mistake is apparent from record and wrongly excess credit allowed by the AO to the appellant. Therefore, learned assessing officer was justified in correcting mistake apparent from the record. Accordingly, appeal of assessee was dismissed.

6. Aggrieved, with the order of the learned CIT (A), assessee preferred an appeal before us. At the outset it was found that the appeal is delayed by 30 days. Assessee has filed condonation letter dated 7 March 2019. According to that letter, assessee has submitted that order of the learned CIT - A dated 22 April 2019, was received by appellant on 08-05- 2019 and therefore the appellant has preferred the appeal before the tribunal which is delayed by 30 days. Reason for delay was stated that learned CIT A has disposed of two appeals filed by the appellant from the original assessment order and the rectification order on the same day for same AY 2013 – 14. Assessee was under the belief that since the matter pertaining to one assessment year in any case and the matter pertains to the MAT credit allowability which is being consequential to the proceedings for assessment

year 2011 – 12, only one appeal to tribunal against the order passed in appeal number 18/18 – 19 would be sufficient. However, later on, assessee was advised to file a separate appeal against order passed by the learned CIT – A u/s 154 order passed by the assessing officer. Therefore, based on this legal advice, assessee filed an appeal, which happened to be late by 30 days. The assessee submitted that the delay in the filing of the appeal is bona fide and therefore it may be condoned.

7. The learned departmental representative vehemently objected to the condonation request of the assessee.

8. On careful perusal of the reasons given by the assessee it is apparent that on 22nd of April 2019 the learned CIT – A passed two orders in case of the assessee for same assessment year 2013 – 14 in two subject matters i.e. one was against the order passed u/s 143 (3) of the act and second was against the order passed u/s 154 of the act withdrawing MAT credit. On the legal advice, the assessee preferred an appeal, which was delayed by 30 days. According to us, delay was for the 'sufficient cause' and assessee did not derive any benefit by filing delayed appeal. Further, before ITAT, cause of justice must be served and pedantic approach should be abdicated. Therefore relying on the decision of the honourable Supreme Court in case of collector, land acquisition versus MST Katiji 167 ITR 471 we condone the delay and proceed to decide the issue is on merits.

9. Adverting to ground number [1] of the appeal wherein the learned authorised representative has submitted that on a debatable issue there is no scope for passing rectification order u/s 154 of the act. He submitted that the issue of the reduction of MAT credit u/s 115 JAA is a debatable in nature and the same cannot be rectified, therefore, u/s 154 of the act. What is debatable in the one issue he referred to the provisions of Section 115 JAA (4) and (5) where the tax credit is allowed to be set-off to the assessee. He submitted that provisions of Section 115 JAA (4) leaves scope for the debate that whether the tax credit allowable to the assessee is an option of the assessee or it is automatic. He submitted that therefore the action of the learned assessing officer is not correct. He further referred to the page number six of the paper book which is an audit objection dated 23rd may 2017 based on which the rectification proceedings are initiated. He

therefore submitted that the action of the learned assessing officer and subsequent confirmation by the learned CIT – A not in accordance with the law.

10. Contesting the argument of the learned authorised representative, the learned departmental representative vehemently supported the order of the learned CIT – A stated that when the language of the act is clear there cannot be any debate. He submitted that there is no option available to the assessee alternative is available to the assessee with respect to the set-off of the mat credit and therefore the learned assessing officer has correctly zero jurisdiction u/s 154 of the income tax act.

11. We have carefully considered the rival contentions and perused the orders of the lower authorities. The only issue involved in this ground of appeal is that whether the action of the learned assessing officer in correcting MAT credit available to the assessee is a debatable issue and therefore the learned assessing officer could not have invoked the provisions of Section 154 of the income tax act. The provisions of Section 115 JAA is as Under:-

> [**Tax credit in respect of tax paid on deemed income relating to certain companies.**
>
> **115JAA.** (1) Where any amount of tax is paid under sub-section (1) of section 115JA by an assessee being a company for any assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.
>
> [73][(1A) Where any amount of tax is paid under sub-section (1) of section 115JB by an assessee, being a company for the assessment year commencing on the 1st day of April, 2006 and any subsequent assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.]
>
> [74][(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JA and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:
>
> **Provided** that no interest shall be payable on the tax credit allowed under sub-section (1).
>
> (2A) The tax credit to be allowed under sub-section (1A) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JB and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:
>
> **Provided** that no interest shall be payable on the tax credit allowed under sub-section (1A).
>
> (3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1).

(3A) The amount of tax credit determined under sub-section (2A) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the [75][tenth] assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1A).]

(4) The tax credit shall 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 [76][or section 115JB, as the case may be].

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of sub-section (1) of section 115JA [76][or section 115JB, as the case may be] for that assessment year.

(6) Where as a result of an order under sub-section (1) or sub-section (3) of section 143, section 144, section 147, section 154, section 155, sub-section (4) of section 245D, section 250, section 254, section 260, section 262, section 263 or section 264, the amount of tax payable under this Act is reduced or increased, as the case may be, the amount of tax credit allowed under this section shall also be increased or reduced accordingly.]

[77][(7) In case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, 2008 (6 of 2009), the provisions of this section shall not apply to the successor limited liability partnership.

Explanation.—For the purposes of this section, the expressions "private company" and "unlisted public company" shall have the meanings[78] respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009).]

12. On reading of the above Section it is clear that the amount of tax credit Under the above sections shall be carried forward and set-off in a future year in which tax becomes payable on the total income computed in accordance with the provisions other than Section 115JB. Thus, it is clear that it can be set-off in that year when tax computed under normal provision is more than a minimum alternate tax payable by the assessee. There is an outer time limit provided, that it cannot be carried forward beyond 10 years. There is no other condition to claim the benefit of the set off credit has been prescribed. Furthermore, there is no provision that the assessing officers should determine the tax credit, which shall be carried forward and set off. It is an inbuilt mechanism of the law of the credit and set off. Therefore , on application of a particular formula, if the tax payable Under the normal computation is higher than the minimum alternate tax payable by the assessee, and if the assessee has MAT credit available, same shall be granted as a credit to the assessee against the tax liability. Therefore, we do not find that there is any option available either to

the assessing officer or to the assessee. The ld AR also could not show us that this issue is debatable. According to us, language of law is simple and clear. In view of this, we reject the argument of the learned authorised representative that MAT credit is also an option to the assessee. We do not find that there is such option available to the assessee. It is automatic. Therefore, we do not find any debatable issue involved in adjusting the MAT credit against the tax liability of the assessee. In the present case, MAT credit given to the assessee was found to be a mistake apparent from the record. We do not find any reason to disturb the finding of the lower authorities that the learned assessing officer has correctly assumed jurisdiction u/s 154 of the income tax act to rectify MAT credit granted to the assessee wrongly. Therefore, we dismiss ground number 1.1 of the appeal.

13. With respect to the ground number 1.2, e assessee has contested that the transfer pricing adjustment confirmed by the learned Dispute Resolution Panel for assessment year 2011 – 12 are subjudice before the tribunal. In any case, they are covered by the orders of the tribunal for the earlier years and therefore the learned assessing officer should not have exercised the power u/s 154 of the income tax act to withdraw MAT credit already granted to the assessee. We do not find any justification in the above argument of the assessee. Merely because the assessee has disputed the assessment before the higher appellate forum, it does not deprive the right of the revenue to rectify the assessment order or the tax demand raised against the assessee provided the action of the assessing officer false within the parameters of Section 154 of the act. Learned CIT – A has correctly rejected this argument of the assessee. Even otherwise, if the assessee gets any relief on account of the order of the appellate authorities, naturally, the income and the consequent tax liability of the assessee would be adjusted pursuance thereto. Therefore, pendency of appeal before the higher forum cannot be a ground to hold that the order passed by the learned assessing officer u/s 154 of the act is not proper, if it is otherwise in order. Therefore, upholding the orders of the lower authorities, we do not find any merit in ground number 1.2 of the appeal and it is dismissed.

14. Ground number two of the appeal is with respect to the action of the learned assessing officer confirmed by the learned CIT Appeal in charging interest u/s 234B of the act on account of above reduction in the MAT credit. The learned CIT – A has held that the charging of interest u/s 234B is a mandatory and it is consequential in nature.

15. The learned authorised representative submitted that if the above MAT credit has been withdrawn, then subsequent to that, there would be a failure to pay advance tax; it would result in shortfall of advance tax. Subsequently the assessing officer has charged interest u/s 234B of the act. He submitted that if MAT credit is withdrawn, then revenue authorities have found that the interest u/s 234B of the act is also chargeable. He submitted that the honourable Delhi High Court in case of Commissioner Of Income Tax Versus Anand Prakash (2009) 316 ITR 141 (Delhi) in para number 15 held that when the income was not even known to the assessee till much later, assessee is not expected to have paid advance tax on such income which had not been received by the assessee and which would not have been in his contemplation. The honourable High Court held that the assessee could not have included the interest received on enhanced compensation in the assessment year while estimating income for the purpose of calculation of advance tax for the relevant years. He further stated that in view of the fact that the MAT credit is now being withdrawn by the learned AO, it has resulted into the liability of interest u/s 234B of the income tax act, which could not have been visualized by the assessee, so interest u/s 234B cannot be charged, as there is no fault of the assessee on this account. He further referred to the decision of the honourable Bombay High Court in CIT versus JSW energy Ltd (2015) 379 ITR 36 (BOM) wherein it has been held that due to the retrospective effect from 1-4 -2001 u/s 115JB of the act interest would not be levied u/s 234B of the act. He therefore submitted that both these decisions support the case of the assessee and therefore the interest charged by the learned AO and confirmed by the learned CIT – A deserves to be deleted.

16. The learned departmental representative vehemently opposed argument of the learned authorised representative and supported the orders of the lower authorities. It was stated that the interest chargeability u/s 234B of the

income tax act is a mandatory provision. He further submitted that the decision relied upon by the learned authorised representative does not fit into the facts of the present case. He further submitted that in the present case, there was merely an error apparent from the record where the excess credit was granted to the assessee, who should not have been granted and the same has been rectified by the learned assessing officer. He further submitted that that at the first instant itself the interest u/s 234B would have been chargeable had the correct credit was determined by the learned assessing officer. As the same was not determined, now it is being determined and consequent interest is being charged to the assessee. He further submitted that the decisions relied upon by the learned authorised representative does not fit into the facts of the case, as the interest liability has not arisen because of any retrospective amendment in the present case or any unexpected income that is arising. He therefore submitted that both these judicial precedents relied upon by the learned authorised representative does not apply to the facts of the case and should not be relied upon.

17. We have carefully considered the rival contention and perused the orders of the lower authorities. According the provisions of Section 234B of the income tax act, it is a payment of interest for default in payment of the advance tax. The interest is payable if an assessee who is liable to pay advance tax has failed to pay such tax, then interest is payable on the assessed tax. The assessee is to pay simple interest at the rate of one percent for every month or part of the month from first April of the assessment year to the date of determination of income u/s 143 (1) and where a regular assessment is made to the date of such regular assessment. In this particular case the regular assessment has been framed u/s 143 (3) of the income tax act on 29/12/2016. Therefore, naturally if any interest is payable by the assessee u/s 234B of the income tax act it is required to be payable up to that date. Now in the case of the assessee the excess MAT credit was allowed, however, income was already determined by the learned assessing officer. However, while calculating the tax payable by the assessee, MAT credit was allowed to the assessee, which was not to be allowed. Therefore, the liability u/s 234B arises. It is also clear that interest

u/s 234B can be levied only on net tax payable by the assessee when MAT credit is available. The provisions of Section 234B in a clear term impose mandate to collect interest at the rates stipulated therein. There is no discretion is available at the end of the assessing officer or with the assessee to not to compute/pay the above interest. Thus, it is clear that the provisions of Section 234B are mandatory and the assessing officer is duty-bound to charge interest u/s 234B of the income tax act. The honourable courts have granted certain leniency if there is a shortfall arising because of the interpretation of the law or unclear tax liability to the assessee. It may also happen where the advance tax liability arises because of a subsequent court ruling or an amendment. In all these cases, courts have taken a lenient view to not to allow the assessing officer to charge interest u/s 234B of the act. However, before us that is not the case. Here it is a clear-cut case of computational error. Anybody, either the AO or the assessee, would have computed the tax liability of the assessee at that particular time would have correctly claimed MAT credit available to the assessee and charged interest u/s 234B of the income tax act. Therefore, we do not find any infirmity in the order of the learned assessing officer in computing interest liability u/s 234B of the income tax act.

18. The decision relied upon by the learned authorised representative in case of 316 ITR 141 held that the assessee could not have included the interest received on enhanced compensation in the assessment year and the consideration while estimating income for the purpose of calculation of advance tax for the relevant years. In that particular case the land, belonging to the assessee was acquired on March 8, 1989 under the provisions of The Land Acquisition Act, 1894. On 4 April 2000, the compensation was enhanced by the court. The interest amount on the enhanced compensation was received by the assessee during the year 2001 – 02. The interest was chargeable for assessment year 1990 – 91 to 95- 96 and 1987 – 88 to 1991 – 92. The court at page number 147 has clearly held that interest u/s 234B is chargeable on account of the fact that the government is deprived of its revenue. In the present case it is a clear-cut case that the government should have received the tax payment earlier along with the return of income or at the time of assessment of the income

is made, to which the government is deprived of, therefore, the interest in the present case is correctly charged. Similarly, the judgment of the honourable Bombay High Court is relating to the retrospective amendment with effect from 1 April 2001 to the adjustment of the book profit. Therefore, the facts of both the cases cited by the learned authorised representative do not help the case of the assessee. Accordingly, we hold that order of interest charged by the learned assessing officer u/s 234B and upheld by the learned CIT – A does not suffer from any infirmity. Accordingly, ground number two of the appeal is dismissed.

19. Accordingly, appeal filed by the assessee is dismissed.

20. On the issue of time limit for pronouncement of order as per ITAT Rules 1963, this order is pronounced beyond 90 days from the date of hearing due to COVID 19 and consequent lockdown and restricted operations. Therefore relying up on the decision of the coordinate bench in [2020] 116 taxmann.com 860 (Mumbai - Trib.) we exclude the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963

Order pronounced in the open court on 03.07.2020.

Sd/-	Sd/-
(SUDHANSHU SRIVASTAVA)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 03.07.2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	03.07.2020
Date on which the typed draft is placed before the dictating member	03.07.2020
Date on which the typed draft is placed before the other member	03.07.2020
Date on which the approved draft comes to the Sr. PS/ PS	03.07.2020
Date on which the fair order is placed before the dictating member for pronouncement	03.07.2020
Date on which the fair order comes back to the Sr. PS/ PS	03.07.2020
Date on which the final order is uploaded on the website of ITAT	03.07.2020
date on which the file goes to the Bench Clerk	03.07.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	