IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOs.10677-79 OF 2010
(arising out of S.L.P. (C) Nos. 25320-25322 of 2009)

Commissioner of Income Tax, Chennai ... Appellant(s)

versus

Tulsyan NEC Ltd. ...
Respondent(s)

with
Civil Appeal Nos.10680-81/2010 (@ S.L.P. (C) Nos. 29672-73/09),
Civil Appeal No.10682/2010 (@ S.L.P. (C) No. 27584/09),
Civil Appeal No.10683/2010 (@ S.L.P. (C) No. 29674/09),
Civil Appeal No.10684/2010 (@ S.L.P. (C) No. 29675/09),
Civil Appeal No.10685/2010 (@ S.L.P. (C) No. 25691/09),
Civil Appeal No.10686/2010 (@ S.L.P. (C) No. 25850/09),
Civil Appeal No.10687/2010 (@ S.L.P. (C) No. 26330/09),
Civil Appeal No.10688/2010 (@ S.L.P. (C) No. 26523/09),
Civil Appeal No.10689/2010 (@ S.L.P. (C) No. 27353/09),
Civil Appeal No.10690/2010 (@ S.L.P. (C) No. 30207/09),
Civil Appeal No.10691/2010 (@ S.L.P. (C) No. 30209/09),
Civil Appeal No.10692/2010 (@ S.L.P. (C) No. 30212/09),
Civil Appeal No.10693/2010 (@ S.L.P. (C) No. 30235/09),
Civil Appeal No.10694/2010 (@ S.L.P. (C) No. 30217/09),
Civil Appeal No.10695/2010 (@ S.L.P. (C) No. 30214/09),
Civil Appeal No.10696/2010 (@ S.L.P. (C) No. 30213/09),
Civil Appeal Nos.10697-98/2010 (@ S.L.P. (C) Nos. 30237-38/09),
Civil Appeal Nos.10699-10700/2010 (@ S.L.P. (C) Nos. 30240-41/09),
Civil Appeal No.10701/2010 (@ S.L.P. (C) No. 30242/09),
Civil Appeal No.10702/2010 (@ S.L.P. (C) No. 32044/09),
Civil Appeal No.10703/2010 (@ S.L.P. (C) No. 32045/09),
Civil Appeal No.10704/2010 (@ S.L.P. (C) No. 31396/09),
Civil Appeal No.10705/2010 (@ S.L.P. (C) No. 31782/09),
Civil Appeal No.10706/2010 (@ S.L.P. (C) No. 31812/09),
Civil Appeal No.10708/2010 (@ S.L.P. (C) No. 26265/09),
Civil Appeal No.10709/2010 (@ S.L.P. (C) No. 30854/09),
Civil Appeal No.10710/2010 (@ S.L.P. (C) No. 30254/09),

Civil Appeal No.10711/2010 (@ S.L.P. (C) No. 31785/09),
Civil Appeal No.10712/2010 (@ S.L.P. (C) No. 31786/09),
Civil Appeal No.10713/2010 (@ S.L.P. (C) No. 31787/09),
Civil Appeal No.10714/2010 (@ S.L.P. (C) No. 33764/09),
Civil Appeal No.10715/2010 (@ S.L.P. (C) No. 33991/09),
Civil Appeal No.10716/2010 (@ S.L.P. (C) No. 33744/09),
Civil Appeal No.10717/2010 (@ S.L.P. (C) No. 33747/09),
Civil Appeal No.10718/2010 (@ S.L.P. (C) No. 33748/09),
Civil Appeal No.10719/2010 (@ S.L.P. (C) No. 33148/09),
Civil Appeal No.10720/2010 (@ S.L.P. (C) No. 34742/09),
Civil Appeal No.10721/2010 (@ S.L.P. (C) No. 34743/09),
Civil Appeal No.10722/2010 (@ S.L.P. (C) No. 34744/09),
Civil Appeal No.10723/2010 (@ S.L.P. (C) No. 34740/09),
Civil Appeal No.10724/2010 (@ S.L.P. (C) No. 34133/09),
Civil Appeal No.10725/2010 (@ S.L.P. (C) No. 35671/09),
Civil Appeal No.10726/2010 (@ S.L.P. (C) No. 35598/09),
Civil Appeal No.10727/2010 (@ S.L.P. (C) No. 1149/10),
Civil Appeal No.10728/2010 (@ S.L.P. (C) No. 668/10),
Civil Appeal Nos.10729-30/2010 (@ S.L.P. (C) Nos. 1152-53/10),
Civil Appeal No.10731/2010 (@ S.L.P. (C) No. 1130/10),
Civil Appeal No.10732/2010 (@ S.L.P. (C) No. 666/10),
Civil Appeal No.10733/2010 (@ S.L.P. (C) No. 642/10),
Civil Appeal No.10734/2010 (@ S.L.P. (C) No. 1702/10),
Civil Appeal No.10735/2010 (@ S.L.P. (C) No. 2416/10),
Civil Appeal No.10736/2010 (@ S.L.P. (C) No. 2971/10),
Civil Appeal No.10737/2010 (@ S.L.P. (C) No. 2969/10),
Civil Appeal No.10738/2010 (@ S.L.P. (C) No. 4542/10),
Civil Appeal No.10739/2010 (@ S.L.P. (C) No. 5435/10),
Civil Appeal No.10740/2010 (@ S.L.P. (C) No. 31394/09),
Civil Appeal Nos.10745-46/2010 (@ S.L.P. (C) Nos. 8601-02/10),
Civil Appeal No.10747/2010 (@ S.L.P. (C) No. 8998/10),
Civil Appeal No.10748/2010 (@ S.L.P. (C) No. 12310/10),
Civil Appeal No.10749/2010 (@ S.L.P. (C) No. 13052/10),
Civil Appeal No.10750/2010 (@ S.L.P. (C) No. 13053/10),
Civil Appeal No.10751/2010 (@ S.L.P. (C) No. 9078/10),
Civil Appeal No.10752/2010 (@ S.L.P. (C) No. 17875/10),
Civil Appeal Nos.10753-55/2010 (@ S.L.P. (C) Nos. 20258-60 /10),
Civil Appeal No.10756/2010 (@ S.L.P. (C) No. 22722/10),
Civil Appeal No.10757/2010 (@ S.L.P. (C) No. 23576/10),
Civil Appeal No.10758/2010 (@ S.L.P. (C) No. 30780 /10),

Civil Appeal No.10759/2010 (@ S.L.P. (C) No. 31601/10) and
Civil Appeal No.10760/2010 (@ S.L.P. (C) No. 638/10),

J U D G M E N T

S. H. KAPADIA, CJI

1. Leave granted.

2. The issue involved in this batch of civil appeals, by special leave, filed by the Department relates to the question whether MAT credit admissible in terms of Section 115JAA has to be set off against the tax payable (assessed tax) before calculating interest under Sections 234A, B and C of the Income Tax Act, 1961 (the Act).

3. At the outset, it may be stated that there is no dispute in regard to eligibility of the assessee for set off of tax paid under Section 115JA. The dispute is only in regard to priority of adjustment for the MAT credit.

4. To answer the above, we set hereinbelow the provisions of Sections 115JA and 115JAA, which read as under:

> "**Deemed income relating to certain companies**.
>
> 115JA. (1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or

after the 1st day of April, 1997 but before the 1st day of April, 2001 (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956(1 of 1956) :

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.

Explanation.—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

(a) the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves by whatever name called; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by,—

(i) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but ending before the 1st day of April, 2001 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation; or

(ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause, the loss shall not include depreciation; or

(iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

(v) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in sub-section (4) and sub-section (5) of section 80-IB, for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the profits and gains under sub-section (4) or sub-section (5) of section 80-IB; or

(vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as defined as defined in the Explanation to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that sub-section; or

(vii) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

(viii) the amount of profits eligible for deduction under section 80HHC, computed under clause (a), (b) or (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in sub-sections (4) and (4A) of that section;

(ix) the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) of that section.

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

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.

(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).

(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-section (4) and sub-section (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).

(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 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 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."

5. As per provisions of Section 115JA, a company is liable to pay tax on 30% of book profits, if the income computed under normal provisions of the Act is less than 30% of the book profits. Thus, the assessee is required to compute income chargeable to tax on two alternative basis - (i) income computed under normal provisions of the Act and (ii) 30% of book profits as disclosed in the P & L Account prepared in accordance with Parts II and III of Schedule VI to the Companies Act, 1956, subject to the adjustments specified in the Explanation to Section 115JA. The higher of the two computations is deemed to be the "total income" chargeable to tax and tax is payable accordingly. Thus, Section 115JA enacts a deeming fiction by deeming 30% of book profits to be the "total income" chargeable to tax. The amount of tax paid under Section 115JA is held to be a "tax" payable under the Act, as defined in Section 2(43). [See **National Thermal Power Corpn. Ltd.** v. **Union of India** 192 ITR 187 (Delhi)]

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.

7. In the present batch of cases, it is not in dispute that the assessees are entitled to set off of MAT credit carried forward from year one. In fact, the A.O. did set off the MAT credit while calculating the amount of tax payable for years 2 to 6. However, while calculating interest payable under Sections 234B and C, the A.O. computed the shortfall of the tax payable without taking into account the set off of MAT credit.

8. The effect of the stand of the Department is as follows:

In **Titan's case,** the assessee files its returns for assessment year 2001-02. The total income declared in the return was `23,48,68,460/-. The assessee claimed a refund of `10,60,394/-. The A.O. initially processed the return under Section 143(1) and accepted it. Subsequently, the A.O. rectified the alleged mistake and charged interest under Section 234B of `1,10,67,561/-. The A.O. further charged interest under Section 234C of `40,18,170/-. This levy of interest took place because the A.O. took the view that credit of the tax paid under Section 115JA(1) was to be given in terms of Section 115JAA only after computing the interest to be charged under Sections 234B and C. The result was that claim for refund in favour of the assessee of an amount of `10,60,394/- having regard to the pre-paid taxes got converted into the demand by Department of `1,50,58,707/- after giving full credit for the prepaid taxes only because the A.O. gave a set off of MAT credit in the sum of `5,40,15,189/- not against the total tax payable of `7,75,03,252/- but against the total tax payable of `7,75,03,252/- minus TDS and Advance Tax paid by the assessee resulting in the figure of `5,39,88,163/- being the balance tax payable by the assessee plus interest under Section 234B and under Section 234C in all amounting to

`6,90,73,894/- from which the A.O. deducts the MAT credit of `5,40,15,189/-. Consequently, under the computation of the assessee no tax was payable whereas under the computation, assessee became liable to pay tax of `1,50,58,707/-. This conversion from refund to demand took place because while computing interest under Sections 234B and C the A.O. computed the shortfall of the tax payable without taking into account the set off of MAT credit.

For sake of clarity, we set out the above facts in the case of M/s. Titan Industries Limited in the form of a Chart:

Particulars	**Return of Income**	**154 Order**
Business income	163,486,461	163,486,461
Capital gains-short	14,937	14,937
Capital gains-long	90,780,066	90,780,066
Gross Total Income	**254,281,464**	**254,281,464**
Less deduction under Chapter VI-A		
80G-Donation	1,500,000	1,500,000
80HHC-profits	6,590,600	6,590,600
80-1A new industrial unit	11,322,409	11,322,409
Net Income	**234,868,455**	**234,868,455**
Tax payable	68,586,949	68,586,950
Surcharge on the above at 13%	8,916,303	8,916,304
Total tax payable	**77,503,252**	**77,503,254**
Less: Set-off of MAT credit	54,015,189	
Less: TDS	5,231,557	4,198,191
Less: Advance Tax	19,316,900	19,316,900
Balance tax payable	**1,060,394**	**53,988,163**
Interest under 234B		11,067,561

Interest under 234C		4,018,170
Less: Set-off of MAT credit		54,015,189
Net tax payable	**1,060,394**	**15,058,707**

9. We have discussed hereinabove 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). However, the question before us is of priority of adjustment for the MAT credit. In this connection, it is important to bear in mind that the credit allowed is the excess of the normal tax liability over MAT liability in the subsequent years. In this connection the following illustration on MAT credit be seen:

Particulars	**Amount Rs.**
<u>Year 1</u> 115JB liability	 1,600
Normal tax liability	400
Credit which can be carried forward – I	1200
<u>Year 2</u> 115JB liability (A)	 600
Normal tax liability (B)	1400

Tax liability = (B) [since B is higher than A]	1400
MAT credit available for set off in Year 2 [(A) – (B)] – II	800
Net tax liability for Year 2 [B-II]	600
MAT credit to be carried Forward [I-II]	400

[See The Chartered Accountant, Vol. 57, No. 09, March, 2009, page 1584]

10. The issue which crops up for decision is – how should the advance tax be calculated when the Company has MAT credit?

11. To answer, we need to look at Section 234B. Under that section, "assessed tax" means the tax on the total income determined under Section 143(1) or on regular assessment under Section 143(3) as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income. The definition, thus, at the relevant time excluded MAT credit for arriving at assessed tax. This led to immense hardship. The position which emerged was that due to omission on one hand MAT credit was available for set off for five years under Section 115JAA but the same was not available for set off while calculating advance tax. This

dichotomy was more spelt out because Section 115JAA did not provide for payment of interest on the MAT credit. To avoid this situation, Parliament amended Explanation 1 to Section 234B by Finance Act, 2006 w.e.f. 1.4.2007 to provide along with tax deducted or collected at source, MAT credit under Section 115JAA also to be excluded while calculating assessed tax.

12. From the above, it is evident that any tax paid in advance/pre-assessed tax paid can be taken into account in computing the tax payable subject to one caveat, viz, that where the assessee on the basis of self computation unilaterally claims set off or MAT credit, the assessee does so at its risk as in case it is ultimately found that the amount of tax credit availed was not lawfully available, the assessee would be exposed to levy of interest under Section 234B on the shortfall in the payment of advance tax. We reiterate that we cannot accept the case of the Department because it would mean that even if the assessee does not have to pay advance tax in the current year, because of his brought forward MAT credit balance, he would nevertheless be required to pay advance tax, and if he fails, interest under Section 234B would be chargeable. The consequence of adopting the case of the Department would mean that MAT credit would lapse after five

succeeding assessment years under Section 115JAA(3); that no interest would be payable on such credit by the Government under the proviso to Section 115JAA(2) and that the assessee would be liable to pay interest under Sections 234B and C on the shortfall in the payment of advance tax despite existence of MAT credit standing to the account of the assessee. Thus, despite MAT credit standing to the account of the assessee, the liability of the assessee gets increased instead of it getting reduced.

13. Lastly, it is immaterial that the relevant form prescribed under Income Tax Rules, at the relevant time (i.e. before 1.4.2007), provided for set off of MAT credit balance against the amount of tax plus interest i.e. after the computation of interest under Section 234B. This was directly contrary to a plain reading of Section 115JAA(4). Further, a form prescribed under the rules can never have any effect on the interpretation or operation of the parent statute.

14. For the above reasons, there is no merit in the civil appeals filed by the Department and the same are dismissed with no order as to costs.

.....CJI
(S. H. Kapadia)

.....J.
(K.S. Panicker Radhakrishnan)

.....J.
(Swatanter Kumar)

New Delhi;
December 16, 2010