

**MAT credit brought forward has to be set off with the current year tax on income inclusive of surcharge and education cess:**

The High Court of Calcutta recently clarified the position regarding the amount to be considered available for setting off the brought forward MAT credit u/s. 115JAA of the IT Act. The Court had to decide as to whether the ITAT was right in holding that MAT credit brought forward had to be set off against the income tax of the concerned year ‘including’ the amount of surcharge and education cess. The Assessee in the said case contended that ‘tax’ under the IT Act does not include ‘surcharge’ and ‘education cess’ since the same are levied vide the Finance Act. The Assessee also contended that the provisions of charging section i.e. 115JB also contemplate the tax payable at a specific flat rate e.g. 10% / 15% etc. of the book profits and since there is no mention of any surcharge or cess, the same should not be included while setting of the brought forward MAT credit. However, the High Court observed that provisions of sub-section 1, the second proviso to sub-section 3, sub-section 11 and sub-section 12 of section 2 of the IT Act support the view that surcharge and cess has to be included while set off of MAT credit. The use of words ‘tax... shall be increased by a surcharge...’ and ‘...tax.....shall be increased by an additional surcharge, for purposes of Union, to be called the “education cess on income tax...’, in these sections make it amply clear that these are nothing but a part of income tax only. Even though the Assessee had relied on the income tax computation format in the form of return of income for the concerned assessment year, the same was held to be wrong and contrary to the provisions of the Act since the form cannot have an overriding effect over the provisions of the Act. The High Court therefore held that the MAT credit brought forward had to be necessarily set off against the current year tax on income ‘with’ surcharge and education cess thereon.

For complete text of the decision, refer **Srei Infrastructure Finance Ltd. V. DCIT [72 taxmann.com 239 (Cal HC)]**