**IN THE HIGH COURT OF KARNATAKA**
**AT BANGALORE**

**ITA No.231 of 2009**

**1) COMMISSIONER OF INCOME TAX**
**C R BUILDING, QUEENS ROAD**
**BANGALORE**

**2) ASSTT COMMISSIONER OF INCOME TAX**
**CIRCLE-12(3), C R BUILDING, QUEENS ROAD**
**BANGALORE**

**Vs**

**M/s SAMI LABS LIMITED**
**NO 19/1 & 19/2, 1st MAIN**
**2nd PHASE PEENYA INDUSTRIAL AREA**
**BANGALORE-560058**

**N Kumar and Ravi Malimath, JJ**

**Dated: February 14, 2011**

**JUDGEMENT**

Smt. Vani is permitted to file power for the respondent.

2. The revenue has preferred this appeal challenging the order passed by the Tribunal holding that TDS and prepaid taxes should be set off against the total taxes payable and then only a MAT credit should be allowance.

3. The assessee is engaged in the business of manufacture and export of fine chemicals and herbal medicines. For the assessment year 2001-02, return of income was filed on 31.10.2001 declaring loss of Rs.57,37,160/-. The return was selected for scrutiny under Section 143 and assessment order was passed on 27.02.2004 by disallowing the exemption under Section 10B. The matter was appealed to the Tribunal, which in turn set aside the said order and remanded back to the Assessing Officer. After such remand, the Assessing Officer while computing the income under regular provisions allowed MAT credit against tax payable before giving credit to TDS and other prepaid taxes. Aggrieved by the said order the Commissioner of Income Tax in pursuance to the powers conferred on him under Section 263 initiated suo motto proceedings for revision and found that the order of the Assessing Officer in allowing interest under Section 244A on the refund of Rs.29,43,825/- for the assessment year 2001-02 and Rs.38,58,506/- for the assessment year 2003-04 entirely attributable to MAT credit was not in accordance with the law. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal set aside the order passed by the Commissioner of Income Tax and held that the MAT credit was rightly allowed by the Assessing Officer and the Revisional Authority committed a serious error in interfering with the said order. Aggrieved by the said order, the revenue is in appeal.

4. The appeal is admitted to consider the following substantial questions of law:

1) Whether the Tribunal was correct in holding that the TDS and pre-paid taxes should be set off against the total taxes payable and then only MAT credit should be allowable was liable to be set aside?

2) Whether the Tribunal was correct in holding that on the MAT credit over which refund had been allowed, interest u/s. 244A has to be paid by ignoring the proviso to Section 115JAA(2) of the Act?

5. The learned Counsel for the revenue assailing the impugned order contended that it is only after giving deduction towards TDS and advance tax, the question of consideration of MAT credit would arise. Therefore, the Tribunal was in error in interfering with the order passed by the Commissioner of Income Tax.

6. Per contra, the learned Counsel for the assessee supported the impugned order by placing reliance on the judgment of the Apex Court in the case of *CIT Vs. Tulsyan Nec Ltd., reported in ITR Vol 330 Page 228* where the question which arose for consideration before the Apex Court was regarding the priority of adjustment for the MAT credit.

7. After referring to Sections 115JA and 115JAA in the aforesaid judgment, it was held at para 5 as under:-

*"5. ....Thus, the tax credit allowable can be set off by the assessee while computing advance tax/self/assessment tax payable for years two to six 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 the 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."*

Thereafter, at paras 10, 11 and 12 of the aforesaid judgment, it was held as under:-

*"10. 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 the MAT credit for arriving at assessed tax. This led to immense hardship. The position which emerged was that due to omission on one hand the 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 cut 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 the Finance Act, 2006 with effect from April 1, 2007 to provide along with tax deducted or collected at*

*source, the MAT credit under Section 115JAA also to be excluded while calculating assessed tax.*

*11. 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 the MAT credit, the assessee does so at its risk as in case it is ultimately found that the amount of tax credit availed of 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 the MAT credit would lapse after 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 234C on the shortfall in the payment of advance tax despite existence of the MAT credit standing to the account of the assessee. Thus, despite the MAT credit standing to the account of the assessee, the liability of the assessee gets increased instead of it getting reduced.*

*12. Lastly, it is immaterial that the relevant form prescribed under the Income Tax Rules, at the relevant time (i.e. before April 1, 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."*

8. From the aforesaid judgment of the Apex Court and the provision of law makes it very clear that the MAT credit available to an assessee could be adjusted within a period of five years from the date of its accrual. The said credit should be set off while computing advance tax/self-assessment tax payable for the years two to six 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 the assessee's own computation.

9. The MAT credit is to be set off first, thereafter TDS, then the advance tax paid and then the tax paid along with returns. However, no interest is claimable against the MAT credit. Therefore, it is clear that under no circumstances, MAT credit can become the subject matter of refund. It is only liable to be adjusted for five years and it does not carry any interest.

10. In that view of the matter, the order passed by the tribunal is in accordance with law and does not suffer from any infirmity, which call for any interference. Accordingly, there is no merit in this appeal. Accordingly, it is dismissed. In view of the aforesaid legal position, all the substantial questions of law are answered in favour of the assessee and against the revenue.