IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC - A" BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA Nos.12 to 15/Bang/2023
Assessment Years : 2016-17 to 2019-20

M/s. Hotel Ashok Garden, Ganesh Nagrar, Haliyal Road, Srinagar Extn, Dharwad – 580 007. **PAN : AACFH 4184 Q**	Vs.	ITO, Ward – 1(1), Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Preethi S. Patel, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	01.02.2023
Date of Pronouncement	:	06.02.2023

O R D E R

These are 4 appeals by the assessee against 4 different orders all dated 10.11.2022 passed by the NFAC, Delhi, relating to Assessment Years 2016-17 to 2019-20.

2. The only common issue that arises for consideration in these appeals is as to whether the Revenue authorities were justified in not giving credit for Tax Collected at Source (TCS) as claimed by the assessee. The assessee is a partnership firm. It is engaged in the business of liquor bar and restaurant. The liquor licence stands in the name of Shri. Raju S. Shetty, one of the partners of the firm. The firm utilized the said licence in the business of selling liquor. The purchase of liquor for sale was made from the Karnataka State Beverages Corporation Ltd., (KSBCL). In terms of section 206C of the Income Tax Act, 1961 (hereinafter called 'the Act'),

KSBCL collected tax at source at the time of purchase (hereinafter referred to as TCS) in respect of purchases made in all the Assessment Years 2016-17 to 2019-20. The TCS certificate was in the name of Shri. Raju S. Shetty as he was the licencee.

3. The assessee filed return of income for all the aforesaid Assessment Years and claimed credit for TCS made by KSBCL. In an intimation issued under section 143(1) of the Act, the claim for credit of TCS was not granted because the TCS certificate was in the name of the partner Mr.Raju S.Shetty. The assessee filed application under section 154 of the Act claiming that credit for TCS should be given to the Assessee firm and pointing out the facts with regard to licence standing in the name of Shri. Raju S. Shetty and that the assessee is entitled to credit for TCS along with the application under section 154 of the Act and indemnity bond was also furnished duly signed by Shri. Raju S. Shetty giving the following declaration:

> *"I Sri Raju S Shetty, Dharwad hereby state that the CL - 9 State Excise License stands in my name the same license is utilized by Hotel Ashok Garden, Dharwad wherein I am one of the partner, to carry on the business of Bar & Restaurant. The total purchases on which TCS collected, sales and income derived thereon is duly accounted by Hotel Ashok Garden, accordingly the TCS is claimed by Hotel Ashok Garden (PAN : AACFH4184Q). I once again state and confirm that I have not claimed these TCS in my return of income for the A.Y 2016-17."*

4. The request for rectification was however rejected by the AO by an order dated 18.04.2022 for Assessment Years 2016-17 and 2019-20 and dated 16.04.2022 for Assessment Years 2017-18 and 2018-19. The Assessee filed appeal against orders under section 154 of the Act claiming that the assessee should be given credit for TCS. The First Appellate

Authority (FAA) was of the view that under section 254 of the Act only a mistake apparent from the record can be rectified. In the opinion of the FAA, mistake apparent from the record means a mistake which is obvious and patent mistake and not something which is established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. In other words, the FAA took the view that a decision on a debatable point of law cannot be said to be a mistake apparent on record. According to the FAA, the question whether TCS deducted in the name of some party can be given credit in the assessment of some other party cannot be subject matter of an application under section 154 of the Act.

5. Alternatively, the FAA referred to the provisions of section 206C (4) and (5) of the Act and came to the conclusion that those provisions provide that credits can be given only to such persons on whose behalf tax has been collected at source and whose name is mentioned in the TCS certificate. The claim of the assessee was accordingly rejected by the FAA.

6. Aggrieved by the orders of the FAA, the assessee has preferred the present appeals before the Tribunal.

7. I have heard the rival submissions. Learned Counsel for the assessee brought to my notice the decision of the ITAT, Jaipur Bench, in the case of Jai Ambey Wines Vs. ACIT, order dated 11.01.2017. In the said order, identical issue with regard to claim of TCS in the hands of the partnership firm when the licence stands in the name of the partners came up for consideration. The Hon’ble ITAT, Jaipur Bench, after referring to the

statutory provisions viz., sections 190, 199, 206C of the Act and Rule 37BA(2)(i) of the Income Tax Rules, 1962 (hereinafter called 'the Rules'), held that the assessee firm should be given benefit of credit for TCS made in the hands of the partner. The following are the relevant observations of the Tribunal:

> *"2.6 We have heard the rival contentions and perused the material available on record. In order to appreciate the arguments, it would be relevant to refer to the provisions of Section 190, Section 199, Section 206C and the Rule 37BA(2)(i) of Income tax Rules.*
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> *Section 190 reads as under:*
> *"(1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment or by payment under sub-section (1A) of section 192, as the case may be, in accordance with the provisions of this Chapter.*
> *(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4."*
>
> *Section 199 reads as under:*
> *"(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*
> *Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.*
> *The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section*

(1) and sub-section (2) and also the assessment year for which such credit may be given."

Section 206C reads as under:

"(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

[TABLE

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Alcoholic Liquor for human consumption	One per cent
(*ii*)	Tendu leaves	Five per cent
(*iii*)	Timber obtained under a forest lease	Two and one-half per cent
(*iv*)	Timber obtained by any mode other than under a forest lease	Two and one-half per cent
(*v*)	Any other forest produce not being timber or tendu leaves	Two and one-half per cent
(*vi*)	Scrap	One per cent
[(*vii*)	Minerals, being coal or lignite or iron ore	One per cent

Provided *that every person, being a, seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.*

Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing, in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

(2) The power to recover tax by collection under sub-section (1) or sub-section (1C) or subsection (1D)] shall be without prejudice to any other mode of recovery."

Rule 37BA(2)(i) of Income tax Rules as amended,by the Income Tax (Eight amendment) Rules 2011 reads as under:

"Where under any provisions of the Act, the whole or any part of income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of tax deducted at source, as the case may, shall be given to the other person and not to the deductee.

Provided that the deductee files a declaration with the deductor and deductor reports the tax deduction in the name of the other person in the information relating to deduction referred to in sub-rule (1)."

2.7 ***The essence of the above stated provisions and corresponding rules is that the tax deducted at source (TDS) is nothing but tax, and credit for TDS should go to the person in whose hands the income is rightfully and finally assessed to tax in accordance with law irrespective of the person in whose hands the TDS has been deducted and TDS certificate has been issued at first place. If we look at the provisions of section 206C read with section***

190 of the Act, the nature of tax collection at source (TCS) is exactly identical to TDS and it is in the nature of tax on income which has been collected at source in respect of specified business and the nature of goods as specified in section 206C of the Act. In light of above, the credit for TCS should be given to the assessee which is finally and lawfully assessed to tax in respect of the corresponding income on which TCS has been collected. The fact that there are no specific rules which have been provided in the Income tax Rules in respect of credit of TCS in such situations on the lines of Rule 37BA, in our view, doesn't disentitle the assessee to claim credit of TCS in whose hands the income is finally assessed to tax. The reason for the same is that the nature of TCS is nothing but tax which has been statutorily recognised in the Income tax Act, and the Rules are enabling and procedural in nature and absence thereof cannot result in denial of credit of TCS. *This issue also find supports from the decision of the Coordinate Bench in case of ACIT, Circle-2, Udaipur vs. Shri Krishnalal Meel & party (supra).*

2.8 In the instant case, the Id. AR has submitted that the income has been brought to tax in the hands of the assessee firrn and accordingly the credit for TCS should be granted to the assessee firm. In this regard, we find that there is no findings of fact by the AO in this regard and in A.Y. 2012-13 the Id. CIT(A) has stated that "the claim of the appellant that all the income of partners of the firm has been include in the income of the appellant is also not fully verifiable from the documents filed by the appellant."

2.9 In light of above discussions, we set-aside the matter in both the years to the file of the AO with the directions to verify whether the corresponding income in respect of which TCS has been claimed by the assessee firm has been brought to tax in the hands of the asessee firm or not. Where after due examination and verification, the AO find that the corresponding income has been brought to tax in the hands of the assessee firm, the AO is directed to allow credit for TCS in the hands of the assessee firm."

8. Learned DR, however, placed reliance on the decision of SMC Bench, Bengaluru, rendered in the case of Shri. Jayaprakasha Rai Vs. DCIT

ITA No.681/Bang/2021, order dated 13.06.2022. I have perused the aforesaid decision and I find that the said decision was a case of transfer of licence from one person to another where pending the formality of transfer of licence, the credit was claimed by transferee of the licence in respect of TCS made in the hands of the predecessor in interest of transferor of the licence. In the aforesaid decision, the Tribunal made a reference to the provision of section 206C(4) and Rule 37-I of the Rules and came to the conclusion that credit should be given to TCS on the basis of the ultimate outcome before the Central Excise authorities regarding transfer of excise licence. The Tribunal also held in the aforesaid case that the AO can take necessary safeguards to ensure that the interest of the Revenue is not affected or prejudiced in any manner.

9. It can thus be seen that the facts of the case cited by the learned DR are different. Nevertheless, the fact remains that the Tribunal in all these decisions took the view that credit for TCS should not be denied when there is in fact no double claim made for the same TCS by 2 different persons. As we have already observed in the present case, Raju S. Shetty the licencee has given Indemnity Bond before the AO clearly specifying that he has not claimed credit for TCS in his return of income. In such circumstances, I am of the view that the claim ought to have been allowed. In this regard, I may also mention that if the ultimate conclusion on an application under section 154 of the Act can only be one particular conclusion, then even if in reaching that conclusion, analysis has to be done then it can be said that the issue is debatable which cannot be done in proceedings under section 154 of the Act. I am of the view, that the conclusion in the present case can only be one viz., that one person alone is

entitled to claim credit for TCS and it is only the assessee who has claimed credit for TCS and not the licencee. In such circumstances, the application under section 154 of the Act ought to have been entertained by the Revenue.

10. In this regard, learned DR also made submission that the decision of the ITAT, Jaipur Bench, was in relation to provisions of Rule 37BA of the Rules which is applicable to TDS and not to TCS and it is only Rule 37-I of the Rules which is applicable when credit for TCS is claimed. I am of the view that the very basis of the decision of the Jaipur Bench of ITAT in the case of Jai Ambey Wines (supra) is based on the facts that what is applicable for TDS should also be applicable for TCS and merely because there is no Rule identical to Rule 37BA(2)(i) of the Rules with reference to TCS provisions, it cannot be the basis for the Revenue to deny the legitimate claim for credit of TCS made by an assessee. For the reasons given above, I am of the view that the assessee should be given the benefit of credit for TCS. The AO is directed to give credit for TCS. Appeals of the assessee are accordingly allowed.

11. In the result, appeals of the assessee are allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore,
Dated: 06.02.2023.
/NS/*

Copy to:

1.	Appellants	2.	Respondent
3.	CIT	4.	CIT(A)
5.	DR	6.	Guard file

By order

Assistant Registrar,
ITAT, Bangalore.