

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

**SHRI PARTHA SARATHI CHAUDHURY, JM
AND
DR. DIPAK P. RIPOTE, AM**

ITA No. 770/PUN/2018 : Assessment Year : 2013-14

Walvekar Brothers & Co.,
1 Dwarka Apartment, HKM Road,
Opp. Central Mall, Model Colony,
PUNE - 411 016
PAN; AAAPW 5046 L :Appellant

Vs.

The I.T.O. Ward 3(2) Pune. : Respondent

Appellant by : Smt. J.R. Chandekar
Respondent by : Shri Arvind Desai
Date of Hearing : 27-07-2022
Date of Pronouncement : 10-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Id. CIT(A)-3, Pune dated 07-02-2018 for A.Y. 2013-14 as per the grounds of appeal on record.

2. At the time of hearing, the Id. Counsel for the assessee wanted an adjournment on the ground that she is not prepared to argue the case. This is not a valid ground for seeking an adjournment where a notice has been served on the assessee well in time. Therefore, the adjournment is rejected and the case is heard on merits.

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of IMFL products including wines and beers for many liquor and beer manufacturing companies. The firm supplies stock to retail wine and beer shops, permit rooms and clubs. The assessee filed return of income electronically for A.Y. 2013-14 on 30-09-2013 declaring total income of Rs. 1,63,34,305/-. The case was selected for scrutiny under CASS and a notice

u/s 143(2) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) was issued to the assessee on 03-09-2014 which was duly served on the assessee. The income of the assessee as per its return was accepted and computed as assessed income (rounded) at Rs. 1,63,34,310/-. The assessee paid income-tax by way of TDS/TCS of Rs. 58,35,682/- against the tax liability of Rs. 50,47,302/- which resulted into refund of Rs. 7,88,380/-. Now coming to the grievance of the assessee, one supplier M/s. Cromex Liquors Pvt. Ltd, from whom the assessee purchased liquor during the year under consideration and paid TCS of Rs. 6,09,322/- did not deposit the amount in the Government account and therefore, this TCS amount was not reflected in Form 26AS statement of the assessee. Consequently, the A.O denied this tax credit since it was not reflected in the 26AS statement. The A.O had examined the record of the assessee and had reported that M/s. Cromex Liquors Pvt. Ltd., has deducted TCS of Rs. 6,09,322/- but tax collected at source was not deposited into the Government account and the same was not reflected in Form 26AS. Therefore, it is an undisputed fact that tax was deducted from the assessee by M/s. Cromex Liquors Pvt. Ltd. It was the duty of M/s. Cromex Liquors Pvt. Ltd., to deposit such deducted amount into the Government account. The failure of doing so resulting in the fact that in the form 26AS of the assessee such TCS already deducted was not reflected and thus the revenue authorities made an addition. In the case of Yashpal Sahni Vs. ACIT (2007) 165 Taxman 144 (Bom), it was observed and held as follows:

“19. Section 205 of the Act as it stood at the relevant time reads thus:

“Bar against direct demand on assessee – Where tax is deductible at the source u/s 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 195 and section 196A, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income”

20. From the language of section 205, it is clear that once the tax is deducted at source, the same cannot be levied once again on the assessee who has suffered the deduction. Once it is established that the tax has been deducted at

source from the salary of the employee, the bar under section 205 of the Act comes into operation and it is immaterial as to whether the tax deducted at source has been paid to the Central Government or not, because elaborate provisions are made under the Act for recovery of tax deducted at source from the person who has deducted such tax."

4. Examining the provisions of section 205, the Hon^{ble} High Court has held that once it is established that tax has been deducted at source, the bar in section 205 of the Act comes into operation and it is immaterial as to whether tax deducted at source has been paid to Central Government or not because provisions are made under the Act for recovery of tax deducted at source from the person who has deducted such tax. Similarly, the Hon^{ble} Gauhati High Court in the case of Omprakash Gattani Vs. ACIT (2000) 242 ITR 638 has held that

"Thus complete machinery is provided under the Act for recovery of tax deducted at source the person who has deducted such a at source and the revenue is barred from recovering the TDS amount from from whose income, tad has been deducted at source Therefore the fact that the revenue is unable to recover the tax deducted at source from the person who has deducted such tax would not entitle the revenue to recover the said amount once again from the employee assessee, in view of the specific bar contained in section 205 of the Act."

5. The Id. CIT(A) observed that tax was deducted from the assessee at source by Cromex Liquors Pvt. Ltd. Since M/s. Cromex Liquors Pvt. Ltd., did not deposit the amount in the Government account, the Id. CIT(A) ordered that the refund amount which was due to the assessee of Rs. 7,88,380/- should not be issued and the appeal was partly allowed.

6. We have examined the facts of the case and the detailed perusal of the records demonstrates the fact that admittedly tax was deducted at source by M/s. Cromex Liquors Pvt. Ltd. to deposit that amount in the government account, which they failed to do so. The Revenue has sufficient machinery to recover such amount of TDS deducted from the defaulting assessee but this is not the right way for the revenue to collect the tax again or debar genuine refund to the assessee who has already suffered taxation at source. Considering the judicial precedents, we set aside the order of the Id. CIT(A) and

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allow the appeal of the assessee. We direct the A.O to immediately refund the eligible refund amount to the assessee.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 10th August 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 10th day of August 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT - 2, Pune.
4. The CIT(A)-3, Pune
5. The D.R. ITAT „A“ Bench Pune.
6. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	26-07-2022	Sr.PS
2	Draft placed before author	26-07-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	10-08-2022	Sr.PS/PS
7	Date of uploading of order	10-08-2022	Sr.PS/PS
8	File sent to Bench Clerk	<i>11-08-2022</i>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		