

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1099/Bang/2024</b>
<b>Assessment Year : 2022-23</b>

M/s. Dolphin Bar and Restaurant, D.No. 15-13-705, Shivabagh, Kadri, Mangaluru – 575 002. <b>PAN: AADFD5581E</b>	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle -1(1) & TPS, Mangaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Ms. Salome Lobo, CA
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	08-07-2024
Date of Pronouncement	:	01-08-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order dated 30.03.2024 passed by Ld.CIT(A)-Aurangabad for A.Y. 2022-23 on following grounds of appeal:

Sl No	Grounds of Appeal	Tax effect relating to each ground of appeal (see note below)
1	1. The order of the authorities below, in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities, facts, and circumstances of the case. 2. On the facts and in the circumstances of the case and in law, the denial of credit for TCS amounting to Rs. 1,69,337.00 in the intimation issued under section 143(1) and the adjustment of pre-paid taxes against the demands for the previous Assessment Year 2016-17, for which an appeal is pending, is unjustified and unlawful. Therefore, the credit of TCS of Rs. 1,69,337.00 should be kindly allowed	0
2	3. The appellant, a partnership firm, filed its Return of Income electronically for the Assessment Year 2022-23 on 26 September 2022, claiming a refund of Rs.1,72,006.00 vide ARN 541393291260922. However, the ADIT, CPC did not grant the credit of TCS amounting to Rs. 1,69,337.00 and adjusted the resultant refund against the dues of the earlier Assessment Year 2016-17.	0
3	4. The learned ADIT, CPC failed to grant TCS credit despite the fact that the TCS was withheld on purchases declared in the return of income. When the purchases were accepted, denying the corresponding TCS credit is erroneous and not in accordance with the law.	0
4	5. The learned ADIT, CPC has erred in law and on facts by rejecting the appellant's claim for the credit of Tax Collected at Source (TCS) amounting to Rs. 1,69,337.00, collected in the account of Mr. Prashanth Shetty, Mangalore due to the excise licence being in his name. Despite the fact that the	0

	business was carried on by the appellant under an oral and mutual understanding and the income from such business was duly offered and declared by the appellant in its return of income, the learned ADIT, CPC did not allow the TCS credit to the appellant. This denial is contrary to the principles of equity and justice, as well as established legal precedents.	
5	6. The appellant emphasizes a mutual understanding wherein they conducted and declared income from the business where TCS was collected. Despite the TCS reflecting in another person's account, the appellant offered income from the same business. The denial of TCS credit solely based on account ownership overlooks the substantive involvement of the appellant in business operations and income declaration. This approach contradicts the fundamental principle upheld in Million Traders Bhopal Pvt. Ltd. Vs. ADIT, CPC, wherein TCS credit was allowed to the entity conducting the business, irrespective of formal ownership.	0
6	7. The denial of TCS credit is premised on the condition that tax collected by the collector must be paid to the Central government and corresponding information furnished. However, this condition overlooks the appellant's fulfilment of tax obligations and reporting of income. Legal precedent, including Hindustan Coca Cola Beverage Pvt. Ltd. v. CIT, recognizes the entitlement to TCS credit upon proper collection and payment to the government, irrespective of the collector's reporting. Therefore, denial based solely on administrative procedures is unjustified and warrants reconsideration.	0
7	8. The learned ADIT and the First Appellate authority both failed to note that there is no law prohibiting the credit of Tax Collected at Source in case of variance between the TCS claimed in the Return of Income and the Form No. 26AS of the claimant, since there may be various reasons for the variance between TCS claimed and TCS in Form No. 26AS. This is supported by Commissioner of Income-Tax v. Relcom [2015] 57 taxmann.com 377 (Delhi), where Hon'ble Justice of the High Court of Delhi recognized that variances between TCS claimed and Form 26AS can occur and must be reconciled.	0
8	9. As stated above, TCS is done in the name of the licence holder. However, the purchases pertaining	0

	<p>to the business and the corresponding TCS have been reported and declared only in the name of the appellant firm and not in the Return of Income of Mr. Prashanth Shetty. This principle is supported by Commissioner of Income-Tax v. Bhooratnam &amp; Co. [2013] 29 taxmann.com 275; [2012] 344 ITR 232 (Andhra Pradesh High Court), which held that TDS should be allowed to the claimant who declared the income on which tax at source was deducted. 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, doesn't disentitle the assessee to claim credit of TCS in whose hands the income is finally assessed to tax</p>	
9	<p>10. The very basis of the decision of the Jaipur Bench of ITAT in the case of Jai Ambey Wines Vs. ACIT, order dated 11.01.2017 is based on the facts that what is applicable for TDS should also be applicable for TCS. The provisions of section 206C read with section 190 of the Act state that the nature of tax collection at source (TCS) is exactly identical to TDS 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 to deny the legitimate claim for credit of TCS made by an assessee. The assessee should be given the benefit of credit for TCS.</p>	0
10	<p>11. Further, the learned ADIT, CPC has erred in adjusting the prepaid taxes being TDS of Rs. 2,669.00 against the dues of the litigated demand of AY 2016-17, as an appeal has been filed for the year in question. When the appellate order has been passed allowing the credit of TCS, setting off the pre-paid taxes of the current year against the unconfirmed demand of AY 2016-17 is not in the interest of the appellant assessee. This is supported by CIT v. Shelly Products [2003] 261 ITR 367 (SC), where the Supreme Court held that tax adjustments should not be made against disputed demands. The adjustment against a litigated demand without resolution of the appeal is not in accordance with law.</p>	0
11	<p>12. The credit for TCS should not be denied when there is in fact no double claim made for the same</p>	0

TCS by 2 different persons. 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 licensee. This is upheld by the "SMC - A" Bench : Bangalore in the case of M/s Hotel Ashok Garden Vs. ITO Hubli..	
Total Tax Effect	Rs. 0

## **2. Brief facts of the case are as under:**

**2.1** The assessee is managing the trading business in IMFL (Indian Made Foreign Liquor) where the license issued by the Department of Central Excise was in the name of a different person. As the license holders were unable to carry on the specified business on their own, assessee was using the license without being transferred to its name based on a mutual understanding between the license holder and the assessee.

**2.2** The assessee has submitted that as per the arrangement, the assessee was to account the purchases and the sales relating to the IMFL license in the name of the license holder and declared the net profit from the sale business in the hands of the assessee only.

**2.3** The assessee submitted before the Ld.AO that the license holder had not declared the profit from sales in his return of income and that the license holder did not claim TCS in his return of income relating to the sale based on the excise license. It is submitted that the license holder has not reflected the purchases and sales in the return of income.

**2.4** It was thus submitted by the assessee that when the income from sale is offered by the assessee, TCS made on behalf of that business must also be given credit to the assessee only. In support of the contention, the assessee relied on the decisions of *Hon'ble Madras High Court* in case of *CIT vs. Tanjore Permanent Bank Ltd.* reported in 149 ITR 788 and *Hon'ble Andhra Pradesh High Court* in case of *CIT vs. Bhooratnam & Co.* reported in (2013) 29 taxmann.com 275. The CPC however did not appreciate the submission of the assessee and made addition and adjusted the prepaid taxes as TDS against the demand due for A.Y. 2016-17.

**2.5** Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) after considering the submissions of the assessee observed and held as under:

*“6.2. The reply submitted by the appellant has been considered, however, found not acceptable. In its reply the appellant has submitted that the TCS has been collected in the account of another person as the license (liquor) was in the name of that person. Appellant further submitted as per oral and mutual understating the appellant was carrying-on the business and was offering the income on the same. Now, the appellant wants to claim the credit of TCS on the same as income has been offered by the appellant on the same. However, credit of TCS is not transferable at this stage, it can be claimed only by the person in whose account it is reflecting in 26AS.*

*6.3. Further, as mentioned in the notice, as per the provision of the Act, credit of TCS cannot be granted until and unless the tax collected by the collector is paid to the credit of the Central government and the information for TCS is furnished by him to the Central government.*

*6.4. In the instant case, TCS has not been collected in the account of appellant, and it is not reflected in its 26AS. So, it has no evidence to show that TCS has been collected from him and hence, it is clear that neither the tax paid to the government nor the information has been furnished to*

*the government. The fact of tax deduction can be checked only by the information furnished by the alleged collector. Therefore, the credit for the same cannot be allowed. Accordingly, this ground of appeal is dismissed.”*

**2.6** Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

**3.** The Ld.AR submitted that, there was a mutual understanding wherein assessee declared the income from business and collected TCS despite the fact that the TCS collected was reflecting in the license holder's account. She submitted that the assessee offered the income from the sale proceeds as business income in its hand and therefore denial of TCS credit solely for the reason that the ownership of the license was with another person is not as per the ratio laid down in the decisions relied by the assessee.

**3.1** She placed reliance on the decision of *Hon'ble Indore Bench of this Tribunal* in case of *Million Traders Bhopal Pvt. Ltd. vs. ADIT* in *ITA Nos. 124 & 125/Ind/2023* vide order dated *12.10.2023* wherein, on identical issue TCS credit was allowed to the entity conducting the business, irrespective of the fact that the license was in the name of another person. She also placed reliance on the decision in assessee's own case passed by the erstwhile Ld.CIT(A) for A.Ys. 2016-17 to 2020-21 placed on record.

On the contrary, the Ld.DR relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

**4.** It is noted that the assessee is a partnership firm, and filed its return of income for the year under consideration claiming refund of Rs.1,72,006/-. The Ld.AO in the assessment order did not grant credit of TCS amounting to Rs.1,69,337/- and adjusted the resultant refund against the dues for A.Y. 2016-17. The Ld.AO withheld the TCS on the purchases declared by the assessee in the return of income. It is noted that, the purchases were accepted by the Ld.AO however, in turn denied the TCS credit on the ground that the TCS was collected and was reflecting in the account of one Mr. Prashanth Shetty from Mangalore, as he was the original owner of the excise license.

**4.1** It is not a disputed fact that, the business was carried on by the assessee based on an arrangement between the assessee and Mr. Prashanth Shetty. It is noted that Mr. Prashanth Shetty provided a declaration stating that, though the excise license is in his name, he has not declared the income as declared by the assessee and has also not claimed the credit of TCS amounting to Rs.1,69,337/-. The declaration was filed by Mr. Prashanth Shetty is annexed herewith as under:



From  
Prashanth Shetty  
A J Towers  
Balmatta

Date: 04-10-2022

To  
The Commissioner of Income Tax(Appeals)-10, Bangalore  
Camp: C R Building Annexe,  
Attavara, Mangalore.

Dear Sir/Madam,

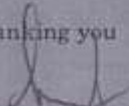
Sub: Declaration for non-claiming of TCS of DOLPHIN BAR & RESTAURANT,  
Shivbagh, kadri for A.Y. 2022-23.

I, Prashanth Shetty (PAN: AHMPS 6444 H), Excise License holder of M/s DOLPHIN RESTAURANT & BAR, Kadri, do hereby affirm that:-

1. I am running Wineshop businesses at Prashanth Wines Ashok Nagar, Bejai, Baikamapady, Bhavanthi Street & Kakkepadav and I am declaring the same in my return of income.
2. I have claimed TCS on purchases, pertaining to only Prashanth Wines, Ashok Nagar, Bejai, Baikamapady, Bhavanthi Street & Kekepadav in my return of income for A.Y.2022-23..
3. The excise license of M/s Dolphin Bar & Restaurant is in my name. However, the said business is locked after and managed by partners of M/s Dolphin Bar & Restaurant (PAN AADFD 5581 E).
4. I have not declared income of above mentioned business of Dolphin Restaurant & Bar and have not claimed credit of TCS of the said wine shop amounting to Rs 1,69,337/-
5. Since the said business is in the name of M/s Dolphin Bar & Restaurant, hence, sales, purchase, income etc, has been declared by them in their return of income. Purchases of the said business amounts to Rs. 1,69,30,635.50 for A.Y.2022-23, which has been incurred/paid by M/s Dolphin Restaurant & Bar.
6. I am hereby enclosing copy of 26AS for the above said Assessment Year.

All the above is true and correct to the best of my knowledge and belief.

Thanking you

  
(PRASHANTH SHETTY)

72

**4.2** The assessee has been consistently carrying on business in this similar fashion as has been recorded by the erstwhile

Ld.CIT(A) in the appellate orders passed for the preceding assessment years placed in the paper book from pages 9-43 referred to by the Ld.AR.

**5.** Every year, this issue was considered and allowed in favour of assessee based on the declaration given by Mr. Prashanth Shetty. The declaration given by Mr. Prashanth Shetty reproduced hereinabove is verifiable by the authorities below. The Ld.DR before us also could not establish any contrary to what has been stated in the declaration by Mr. Prashanth Shetty. We therefore do not find any reason to uphold the impugned order of Ld.CIT(A). We direct the Ld.AO to allow assessee's claim after due verification of what is stated in the declaration.

**Accordingly, the grounds raised by the assessee stands allowed.**

**In the result, the appeal filed by the assessee stands allowed.**

**Order pronounced in the open court on 01<sup>st</sup> August, 2024.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 01<sup>st</sup> August, 2024.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,  
ITAT, Bangalore