

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.365/PUN/18
निर्धारण वर्ष / Assessment Years : 2015-16

M/s. S.D. Lal,
3, South Sadar,
Solapur – 413002

Vs. ITO, Ward-1(2),
Solapur

PAN : AA EFS8653D

(Appellant)

(Respondent)

Appellant by
Respondent by

Smt. Deepa Khare
Shri Rajesh Gawali

Date of hearing 09-01-2019
Date of pronouncement 09-01-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-7, Pune on 27-12-2017 in relation to the Assessment Year 2015-16.

2. The only issue raised in this appeal is against confirmation of disallowance of Rs.6,49,017/- made by the Assessing Officer u/s.43B of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. Briefly stated, the facts of the case are that the assessee is a retail dealer engaged in the trading of IMFL and country liquor. During the course of assessment proceedings, it was observed that the assessee paid Local Body Tax (LBT) of Rs.59,20,707/-, which included a sum of Rs.6,49,017/- of LBT pertaining to earlier year which was recovered by SMC authorities during the year under consideration. The assessee submitted that payment of Rs.6,49,017/- was made because of the demand raised by the competent authorities in this year and hence, the same should be allowed. Not convinced, the AO made addition, which came to be confirmed in the first appeal.

4. We have heard both the sides and perused the relevant material on record. The assessee paid LBT @ 8% in the preceding year, as against the correctly applicable rate of 10%. It was only in the course of assessment by the competent authority that the demand for the remaining 2% was raised and deposited by the assessee. The authorities have canvassed a view that since such an amount is a prior period expense, the same cannot be allowed as deduction on payment made in the

instant year. In our considered opinion, this view of the authorities is not in accordance with the settled legal position.

The Hon'ble Supreme Court in *CIT VS. Bharat Carbon & Ribbon Manufg Co. P.Ltd.* (1999) 239 ITR 505 (SC) has held

that a statutory liability accrues on issuance of demand notice.

Their Lordships laid down in this case that Excise department

having issued demand notice asking assessee to pay basic

excise duty and special excise duty for past years during the

previous year in question, liability accrued at that stage and

assessee is entitled to deduction thereof irrespective of the fact

that assessee has challenged the demand by way of writ

petition. In view of the *ratio* laid down in this case, we are

satisfied that the liability to pay additional 2% arose in the

extant year, when the demand was raised. Once it is held that

the liability was incurred in the instant year, the case of the

Revenue authorities falls. Since the amount in question was

admittedly paid by the assessee during the year under

consideration, we hold that the same is not disallowable

u/s.43B of the Act. The impugned order is overturned to that

extent.

5. In the result, the appeal is allowed.

Order pronounced in the Open Court on 09th January, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 09th January, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-7, Pune
4. The Pr.CIT-6, Pune
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
5. DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	09-01-2019	Sr.PS
2.	Draft placed before author	09-01-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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