

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A and B” BENCH : BANGALORE**

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA Nos. and Assessment Year	Appellant	Respondent
545/Bang/2021 2019-20	Shri. Kalakar Seetharam Rai, D.No.3-100, Rashmi Nivas, Savanoor Post, Puttur – 574 205. PAN : ABKPR 0024 Q	The Assistant Director of Income Tax, CPC, Bengaluru – 560 500.
546/Bang/2021 2019-20	M/s. 7 Star Wines, D.No.23-2-133/1, Near Morgans Gate Circle, Mangalore, Karnataka – 575 001. PAN : AAAFZ 4262 B	DCIT, CPC, Bengaluru – 560 500.

Assessee by	:	Shri. Srinivas Kamath, CA
Revenue by	:	Shri.Ganesh R Ghale, Standing Counsel for Department

Date of hearing	:	04.01.2022
Date of Pronouncement	:	06.01.2022

ORDER

Per N. V. Vasudevan, Vice President

These are two different appeals by two different assessees against two separate orders of CIT(A)-2, Panaji, dated 18.08.2021 and of National Faceless Appeal Centre, Delhi, dated 23.09.2021. Both the appeals are in relation to Assessment Year 2019-20. The facts and circumstances under which both these appeals arise for consideration are identical and are therefore taken up for hearing together. I deem it convenient to pass a consolidated common order.

2. The assessee in ITA No.545/Bang/2021 is an individual. For Assessment Year 2019-20, he filed a return of income declaring total income of Rs.44,01,150/-. The assessee had claimed Tax Credit at Source (TCS) of a sum of Rs.4,36,288/- which was denied while processing the return of income under section 143(1) of the Act and in the intimation dated 02.07.2020 under section 143(1) of the Act, the credit for TCS was denied. It was the plea of the assessee that though TCS has been effected in the name of one Mrs. Pramila P. Rai, the assessee was entitled to claim credit of the TCS. The assessee is in the business of selling liquor under the name and style M/s. Prashanth Wines, Kadaba and Prashanth Bar and Restaurants, Darbe. Originally this business was run by Balakrishna Rai who was elder brother of the Assessee and who also held licence of the wine shop. After his demise in 2001, his son Shri. Pramod Kumar Rai became proprietor as well as excise licence holder of the shops run by the Balakrishna Rai. Mr. Pramod Kumar Rai also died and as per the oral family arrangement between Mrs. Pramila Rai wife of Pramod Kumar Rai and wife of late Balakrishna Rai i.e., Mrs. Leelavathy B Rai, ownership of the business was given/transferred to the Assessee, however, the license from excise department continued in the name of Mrs. Pramila Rai, wife of Shri. Pramod Kumar Rai. The excise licence was transferred to Mrs. Pramila Rai after the death of Pramod Kumar Rai by the Excise Department and that the assessee has applied for transfer of excise licence in his name which is pending in a litigation before the Hon'ble Karnataka High Court. The assessee therefore explained that the credit for TCS which is in the name of Mrs. Pramila P. Rai, the licence holder, should be given to the assessee. In this regard, the assessee also submitted that whatever business was done by virtue of the licence in the name of Pramila Rai was offered as turnover of the assessee and the income from such turnover was also declared in the return of income and therefore the assessee was entitled for credit for TCS though such

credit was in the name of the Pramila P. Rai. The above contentions were raised by the assessee before CIT(A).

3. The CIT(A) fixed the hearing of the appeal on 19.07.2021 and at the request of the assessee the hearing was adjourned to 17.08.2021. It appears that the assessee had filed an online reply on 16.08.2021 and based on the online reply without affording an opportunity for personal hearing, the CIT(A) decided the appeal of the assessee denying the credit for TCS. It was the plea of the assessee before this Tribunal that the CIT(A) should have afforded an opportunity of personal hearing and therefore the ex-parte order passed by the CIT(A) is liable to be set aside and the assessee should be afforded an opportunity of being heard personally (physically) before the CIT(A).

4. In ITA No.546/Bang/2021, the facts are identical. The assessee in this case is a partnership firm and the licence was in the name of one Mr. Lokanath, Mangalore, till October 2018. The assessee in this appeal also made a similar claim for credit for TCS in the name of K. Lokanath on the ground that as per the oral agreement and mutual understanding, the assessee was to carry on the business of dealing in liquor, on the licence in the name of K. Lokanath. In this case also, the credit for TCS was denied and the plea of the assessee in this appeal is also that the CIT(A) fixed for hearing on 16.08.2021 and proceeded to decide the appeal without giving any further opportunity of hearing to the assessee.

5. I have heard the rival submissions. I am of the view that in the given facts and circumstances, in both these appeals, the assessee did not have the fair and proper opportunity of being heard before the First Appellate Authority. In the given circumstances of the case, I deem it fit and proper to

set aside the impugned order and direct the CIT(A) to decide the appeals afresh, after affording assessee's opportunity of being heard, physically.

6. In the result, both the appeals are treated as allowed for statistical purposes.

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

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 06.01.2022.

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

By order

Assistant Registrar,
ITAT, Bangalore.