

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.29/PUN/2022

निर्धारण वर्ष / Assessment Year : 2019-20

Mukesh Padamchand Sogani, Row House No.A-211, Five Gardens, Aundh Annexe, Kalewadi Phata, Pune 411 017 Maharashtra PAN : ACOPS8404N	Vs.	ACIT, Circle-8, Pune
Appellant		Respondent

Assessee by Shri Dinesh Ramesh Gulabani  
Revenue by Shri Ramnath P. Murkunde

Date of hearing 27-01-2023  
Date of pronouncement 30-01-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 09-12-2021 passed by the Id. CIT(A) in National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2019-20.

2. The only issue raised herein is against not allowing credit u/s 143(1) of the Act for tax deducted at source by the employer amounting to Rs.8,21,149/- (which amount has swelled to

Rs.11,39,290/- with interest) that was not deposited with the exchequer.

3. Briefly stated, the facts of the case are that the assessee has been an employee of M/s. Earth Water Limited (in short 'EWL') working as Chief Operating Officer. Return was furnished declaring total income under the head 'Salaries' at Rs.38,57,500/- and also claiming credit for deduction of tax at source amounting to Rs.9,04,632/- on such salary income. The return was processed u/s.143(1) allowing credit for tax deducted at source from salary only to the tune of Rs.83,483/-. The remaining amount of tax deducted at source by the employer at Rs.8,21,149/- [Rs.9,04,632 (total deduction of tax at source) minus Rs.83,484 (credit allowed)] was not allowed credit on account of "Mismatch". The assessee argued before the Id. CIT(A) that the employer company deducted tax at source from the salary but failed to deposit the same from May, 2018 onwards. It was further submitted that the employer had not paid salary from October, 2018. The Id. CIT(A) countenanced the Intimation u/s.143(1) in not allowing credit for Rs.8,21,149 because of Form No.26AS not reflecting the same.

Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. The employer issued monthly pay-slips to the assessee, copies of which have been placed on record from page 4 onwards of the paper book, deducting tax at source throughout the year, which totals up to Rs.9,04,632/-. However, a sum of Rs.8,21,149/- was deducted at source by EWL from the salary but not deposited. Since the non-deposit of the tax at source did not get reflected in Form No.26AS, this led to the processing of return u/s.143(1) not allowing credit for such amount. Here, it is pertinent to mention that though the assessee continued to remain in the employment of EWL for whole of the year but salary from October, 2018 was not paid. The Id. AR submitted that insolvency proceedings against the employer company are in progress and till date no salary for the period October, 2018 onwards has been paid. The moot question is about allowing or otherwise of credit for tax deducted at source from the salary income, which was not deposited by the employer due to its own precarious financial condition. Admittedly, the amount of tax deducted at source to the

tune of Rs.8,21,149/- has not gone to the coffers of the Revenue. At the same time, it is equally true that such amount of tax was deducted at source from salary of the assessee for full year, even though salary was paid only for six months despite the assessee serving EWL for full year.

5. Section 15 of the Act provides that any salary due from employer whether paid or not is chargeable to tax under the head 'Salaries'. This indicates that salary income becomes chargeable to tax at the time of either receipt or becoming due, whichever is earlier. If salary becomes due earlier and is paid later on, there arises no problem because employee gets the salary which became due earlier and got chargeable at the due stage only. We are confronted with a peculiar situation in which though the salary became due and offered by the assessee in terms of mandate of section 15 of the Act, but it was not paid for the last six months of the year under consideration. There is no corresponding provision in the Act bailing out an employee from getting deduction of such salary, which was included in the total income on due basis, but remained unpaid.

6. Be that as it may, we are extantly concerned with the Intimation issued by the Central Processing unit u/s.143(1) of the Act in which the credit for Rs.8,21,149/- was not allowed because the amount was not deposited by the employer. In this regard, it would be relevant to take note of the prescription of section 143(1) dealing with the processing of return. Clause (a) of section 143(1) provides for making certain adjustments to the income declared for determining the total income. Clause (b) states that the taxes, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a). Clause (c), which is material for our purpose, runs as under :

‘(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b) by any *tax deducted at source*, any tax collected at source, any *advance tax paid*, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;’

7. On going through section 143(1) of the Act, it becomes ostensible that the total income as computed under its clause (a) is considered for computing the amount of tax etc. payable on it as per clause (b). Clause (c) then comes into operation, which provides for determining the amount payable or refundable to the

assessee after adjusting the amount of any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable u/s.89 etc. from the amount of tax determined under clause (b). Essence of clause (c) of section 143(1) is to allow adjustment of tax deducted or collected at source or advance tax etc. against the tax liability on total income. Important thing to be borne in mind in this regard is that though the word `paid' has been used after the words `advance tax', but it is absent in the context of `tax deducted at source'. The effect of this is that unlike advance tax, the credit for tax deducted at source is to be allowed only when it is deducted and there is no further stipulation of the same having been paid also as a condition precedent. As a sequitur, credit for the amount of tax deducted at source is not dependent upon its subsequent deposit by the deductor. Once there is deduction of tax at source, the benefit of such tax deduction has to be allowed in the hands of deductee u/s 143(1) of the Act irrespective of its subsequent deposit or non-deposit by the deductor.

8. Our view is fortified by section 234B dealing with interest for default in payment of advance tax. This section provides that

where an assessee fails to pay due advance tax etc., he shall be liable to pay simple interest at the specified rate on the amount of 'assessed tax'. The term "assessed tax" has been defined in Explanation 1 to mean the tax on total income determined u/s.143(1) or regular assessment as reduced by the amount of: '(i) any *tax deducted or collected at source* in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income'. Since section 234B has reference to advance tax. Computation of advance tax has been dealt with in section 209 of the Act. There are four clauses, (a) to (d) of section 209(1) of the Act, and clause (d) provides that : 'the income-tax calculated under clause (a) or clause (b) or clause (c) shall, in each case, be reduced by the amount of income-tax which would be *deductible* or collectible at source during the said financial year ....'. Effect of the above provision is that if there is an income on which tax is deductible at source, then such income will be reduced for determining the advance tax liability and the consequential interest liability u/s 234B of the Act, even if no tax was actually deducted at source. The Finance Act, 2012 inserted a proviso to

section 209(1) nullifying the above position of deducting income on which tax is deductible but not actually deducted. Instantly, we are confronted with a situation in which the deductor has duly deducted tax at source but not paid the same to the exchequer. Albeit gap between 'tax which would be deductible' as per section 209(1)(d) and 'tax deducted at source' has been abridged by insertion of proviso to section 209(1), but the open space between the 'tax deducted at source' as per section 143(1)(c) and 'tax deducted at source and deposited' still persists.

9. Coming back to the context under consideration, we find that the requirement for allowing credit is only of the amount of *tax deducted at source* and not the amount eventually getting deposited with the Government after deduction. Since a sum of Rs.8,21,149/- was duly deducted at source by the employer from the salaries credited/paid to the assessee for the year under consideration, we hold that benefit of such tax deducted at source has to be allowed in Intimation u/s 143(1) of the Act notwithstanding the fact that it was not deposited. The impugned order is overturned *pro tanto*.



10. In the result, the appeal is allowed.

Order pronounced in the Open Court on 30<sup>th</sup> January, 2023.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

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

पुणे Pune; दिनांक Dated : 30<sup>th</sup> January, 2023  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A) concerned
4. The Pr. CIT concerned
5. DR, ITAT, 'A' Bench, 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	27-01-2023	Sr.PS
2.	Draft placed before author	27-01-2023	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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