IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)

ITA. No: 765/AHD/2015
(Assessment Year: 2005-06)

Shri Azizbhai A. Lada 497/6AB, Gulmohar Park,Shishuvihar Circle, Bhavnagar-364001	**V/S**	**Income Tax Officer, TDS-4, Ahmedabad**
(Appellant)		**(Respondent)**

PAN: AANPL 4907G

Appellant by	**: Shri Parimal Singh Parmar, AR**
Respondent by	**: Shri V.K. Singh, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 04 -01-2018
Date of Pronouncement : 10-01-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-4, Ahmedabad dated 11.02.2015 pertaining to A.Y. 2005-06.

2. The only grievance of the assessee is that the ld. CIT(A) erred in confirming the action of the A.O. in holding that the assessee was liable to collect tax at source @ 1% on sale of alleged scrap amounting to Rs. 4,84,56,288/-.

3. The assessee is engaged in the business of Trading of Scraps obtained from Ship Breaking Yard. The return for the year was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. The A.O. observed that the assessee is not collecting any TCS in respect of sale of scrap. The A.O. further found that the assessee has neither submitted Form No. 27C nor obtained Form 27C from the buyers. The A.O. issued show cause notice to the assessee asking it to explain why it should not be treated as an assessee in default within the meaning of Section 206C of the Act. In its reply, the assessee pointed out that sales made against TCS amounts to Rs. 28,50,300/- on which TCS collected is Rs. 31,536/- which has been deposited in treasury in time. The A.O. found that the assessee has not submitted proof of filing of Form 27C nor it has obtained the same from the buyers of scrap. The A.O. concluded by holding that the assessee was liable for collecting TCS @ 1% and accordingly raised the demand u/s. 206C(1) at Rs. 5,43,679/- and u/s. 206C(7) Rs. 5,87,173/-.

4. Aggrieved by this, the assessee carried the matter before the ld. CIT(A) but without much success.

5. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. The ld. D.R. strongly supported the findings of the A.O.

6. We have carefully considered the orders of the authorities below. There is no dispute that the assessee is engaged in the business of trading of scraps obtained from Ship Breaking Yard. In our considered opinion, provisions of Section 206C do not apply in case of scrap generated in the course of ship breaking activity. Items generated out of ship breaking activity might be commercially known as "scrap" since such items are not waste and scrap. Since such items are re-useable. Once such items sold cannot be termed as "scrap" would make the provisions of Section 206C of the Act in applicable. For this proposition, we draw support from the decision of the Co-ordinate Bench in the case of Dhasawala Traders in ITA No. 979, 980 & 1535/Ahd/2015. The relevant findings of the Co-ordinate Bench read as under:-

> *8. A perusal of the paragraph-6 of the above judgment, would indicate that certain items generated out of ship breaking activity might be known commercially as "scrap" but they are not waste and scrap. These items are re-usable as such, and therefore, would not fall within the definition of "scrap" as envisaged in the Explanation to section 206C(1). The assessee has also contended that it was engaged in the sale of MS pipe, iron which were obtained from ship breaking industries. The assessee himself has not generated any scrap in manufacturing activity, as contemplated in the Explanation. He was a trader. Therefore, the assessee has not sold scrap as such. He has sold the products resulted from ship breaking activity, which are re-usable. Thus, the assessee was not supposed to collect tax under section 206C of the Act. The Id.AO has erred in raising the demand. I allow all appeals and delete additions.*

7. The Hon'ble Jurisdictional High Court of Gujarat in the case of Priya Blue Industries (P.) Ltd. (supra) was seized with the following substantial questions of law:-

> *"(A) Whether the Appellate Tribunal has substantially erred in law in interpreting the term Scrap as defined in clause (b) to Explanation to section 206C of the*

Income Tax Act by holding that the words 'waste and scrap' is a singular item and not distinct?

(B) Whether the Appellate Tribunal has substantially erred in law in placing reliance upon the case of Navin Flourine Chemicals despite the fact that the Hon'ble Special Bench in the case of Bharti Auto Products had held that the words 'waste and scrap' are two different and distinct words?

(C) Whether the Appellate Tribunal has substantially erred in deleting the order passed under section 201(1) of the Income Tax Act of Rs. 40,16,418/- and interest charged under section 201(1 A) of the Act of Rs. 23,29,522?"

8. And the relevant findings of the Hon'ble High Court reads as under:-

5. From the facts as narrated hereinabove, it is apparent that the respondent assessee had collected and paid tax at source (TCS) on the seven items as enumerated in the orders passed by the Commissioner (Appeals) as well as the Tribunal and had not collected tax at source on the following four items :-

1. Old and used plates

2. Non-excisable (exempted) like furniture, wood, etc.

3. Trading of scrap (melting)

4. High seas sale.

6. The Tribunal, after considering the definition of scrap under clause (b) to section 206C of the Act, has noted that the assessee is engaged in ship breaking activity and the items in question are finished products obtained from the activity and constitute sizeable chunk of production done by ship breakers. Though such products may be commercially known as "scrap" they are not "waste and scrap", as such items are usable as such, and, therefore, do not fall within the definition of scrap as envisaged in the Explanation to section 206C(l) of the Act.

7. Section 206C of the Act bears the heading, "Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc." and provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage specified in the

corresponding entry in column (3) of the said Table, of such amount as income-tax. The nature of goods specified at serial No.(vi) is scrap, and the percentage provided is 1%. The expression of scrap is defined under clause (b) to the Explanation to section 206 of the Act, to mean waste and scrap from manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. On a plain reading of the said expression, it is evident that any material which is usable as such would not fall within the ambit of the expression "scrap" as envisaged under clause (b) of the Explanation to section 206C of the Act.

8. The Tribunal, in the impugned order, has recorded that the items/products in question obtained from the activity of ship breaking are usable as such and, therefore, do not fall within the definition of scrap. However, since the assessee had not collected tax at source on items other than items obtained out of the manufacturing activity in the course of ship breaking, the Tribunal has remitted the matter to the Assessing Officer for the purpose granting relief to the assessee under the provisions of section 206C(1) of the Act with regard to only sale of scrap arising out of manufacturing activity in the course of ship breaking after providing due opportunity of hearing to the assessee. Thus, the Tribunal after recording a finding of fact to the effect that the products obtained by the assessee in the course of ship breaking activity are usable as such, and, therefore, do not fall within the definition of scrap has remitted the matter to the Assessing Officer to grant relief accordingly. Essentially, therefore, the impugned order of the Tribunal is based upon a finding of fact which does not give rise to any question of law.

9. Insofar as the course of action adopted by the Tribunal in remitting the matter to the Assessing Officer to decide in relation to which of the items the assessee is entitled to relief under the provisions of section 206C(1) of the Act is concerned, no fault can be found in the approach adopted by the Tribunal, inasmuch as, out of the four items of which tax was not collected at source, the matter has merely been referred to the Assessing Officer for the purpose of examining as to what extent relief is required to be granted to the assessee under the provisions of section 206C(1) of the Act having regard to the findings of fact rendered by it.

10. In the opinion of this court, the impugned order passed by the Tribunal does not suffer from any legal infirmity so as to give rise to any question of law, much

less, a substantial question of law warranting interference. The appeal, therefore, fails and is, accordingly, dismissed.

9. If the facts of the case in hand are considered in the light of the decision of the Hon'ble Jurisdictional High Court (supra), we find that the items sold by the assessee do not fit into the category of scrap as explained by the Hon'ble High Court (supra). Therefore, in our considered opinion, the assessee cannot be treated as an assessee in default and on the impugned sales cannot be treated as sale of scrap thereby making the assessee out of the purview of Section 206C of the Act.

10. Insofar as the submissions of Form 27C is concerned, the Hon'ble High Court of Gujarat in the case of Siyaram Metal Udyog (P.) Ltd. (supra), has held that "No time limit is provided in section 206C(1A) to make a declaration in Form 27C collected from buyers; mere minor delay in furnishing Form 27C would not make assessee liable for non-collection of TCS".

11. Facts being similar, respectfully following the findings of the Hon'ble Jurisdictional High Court (supra), we do not find any merit in the impugned demand raised by the A.O.

12. Considering the facts of the case in the light of the afore-stated decisions of the Hon'ble Jurisdictional High Court, we set aside the findings of the ld. CIT(A) and direct the A.O. to delete the impugned demand.

13. Appeal filed by the Assessee is accordingly allowed.

Order pronounced in Open Court on 10- 01- 2018

Sd/- Sd/-

(MAHAVIR PRASAD) **(N. K. BILLAIYA)**
JUDICIAL MEMBER **True Copy** **ACCOUNTANT MEMBER**

Ahmedabad: Dated 10 /01/2018

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad