

आयकर अपीलिय अधिकरण, नागपुर न्यायपीठ, नागपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR

Before **Shri Jason P Boaz, Hon'ble Accountant Member** and  
**Shri Sandeep Gosain, Hon'ble Judicial Member**

**ITA No.176/Nag/2015 &  
ITA No.164-166/Nag/2018**  
Assessment Years:2009-10 to  
2012-13

Buldana Urban Co-op Credit Society Ltd & National Building Construction (JV) Hutatma, Gore Path, Buldana [PAN no.AAABB 0753 D]	बनाम/ V/s.	Income Tax Officer, Ward-1(2), TDS, Akola
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri P.R. Gandhi, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Gitesh Kumar, SR-DR
सुनवाई की तारीख/Date of Hearing	11-07-2018
घोषणा की तारीख/Date of Pronouncement	13-07-2018

**आदेश /O R D E R**

**PER BENCH:-**

These present four appeals by the assessee are against the common order of Commissioner of Income Tax (Appeals)-II, Nagpur dated 04.03.2015 for assessment years 2009-10 to 2012-13 respectively.

2. Since all the issues involved in these appeals are common therefore they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity. First of all we take up assessee's appeal in ITA

no.176/Nag/2015 for AY 2009-10. The grounds of appeal are mentioned hereinbelow:-

- “1. No sufficient opportunity is given to the assessee.*
  - 2. Order based on statement recorded on survey is not legal.*
  - 3. The AOP cannot collect TCS from its member.*
  - 4. The debt, who was in know, of the fact should have asked ‘Assessee’ to pay TCS. During the course of survey itself.*
  - 5. AO had not verified fact that ‘Assessee’ had paid necessary taxes on income covering receipts of toll money.*
  - 6. Assess on whom order is served is not the person in whose name order is passed. This is material irregularity.*
- Any other ground coming during the course of hearing. Order passed under section 206C(IC) r.w.s. 206C(6) and sec 206C(7) for FY 08-09 to 11-12 be cancelled.*

3. The brief facts of the case are that assessee being contractor AOP by the name of M/s Buldhana Urban Credit Coop. Society Ltd. And National Building Construction JV, Buldhana (henceforth referred to as JV). It was noted that the appellant is engaged in the business of construction and had entered into a toll contract with the Executive Engineer, PWD, Buldhana on built operate and transfer (BOT basis) for undertaking the work of two laning of Malkapur Buldhana Chikhali Road in Buldhana district. It was further noted that the JV had further entered into a toll contract with the contractor firm M/s JV Kulkarni and Friends Associates for collection of toll and it was noted that the appropriate Tax Collection at Source (TCS for short) as per the requirement of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) had not been made by the assessee from the said contractor of toll plaza. The Assessing Officer noted that the assessee had not collected the TCS from JV Kulkarni and Friends Associates while debiting their account with the amounts payable by them for the contract/rent transferred at the time of receipt of amounts so payable. Therefore on the basis of above facts, the AO came to conclusion that assessee had committed the said default, hence, assessee was found liable to pay TCS u/s206C(1C) r.ws 206C(6) and 206C(7) of the Act as under:-

Sl No	F.Y	TCS u/s 206C(1C) 206(C)	u/s rws	interest under section. 206C(7)	Total demand
1	08-09 (as per	393700/-		3937/-	397637/-

	Annexure I)			
2	09-10 (as per Annexure II)	817140/-	369846/-	11886986/-
3	10-111 (as per Annexure III)	1068700/-	10687/-	1079387/-
4	11-12 (as per Annexure IV)	807640/-	187824/-	995464/-
	Total	3087180/-	572294/-	36959474/-

4. Aggrieved by this assessee filed appeal before Ld. CIT(A) and submitted that assessee was an AOP and work of collection of toll had given to one of the member of AOP and that since in the case of AOP, a member thereof is not “another person” and therefore there was no default in not making TCS and in support of assessee’s arguments, Ld. AR relied upon the judgment of Hon’ble Supreme Court in the case *M/s Hindustan Coca Cola Beverage Pvt. Ltd. v/s. CIT* (2007) 293 ITR 226 (SC). The learned CIT(A) on the basis of submission filed by the assessee sought remand report from the AO and the AO vide letter dated 01.01.2015 addressed the various issues raised by the assessee. While relying upon the judgment of Hon’ble Supreme Court in the case of *Hindustan Coca Cola Beverages Pvt. Ltd. (supra)* and the relevant portion is reproduced hereunder:—

*“The order was served on dtd 11.12.2014 and further the AOP has furnished the Ledger Accounts of the TOLL Contract Contractor M/s J.V. Kulkarni & Friend Associates, the Contractor has paid the To Receipts to the AOP and the AOP has offered the TOLL RECEIPTS, the same has been furnished by the appellant on 25.10.2013. The same has been perused and it is found that Toll Receipts has been disclosed by the AOP in the return filed by them for FY 2008-09 to 2011-12, copy of which has been submitted by them to this office. Ledger copies of Toll Account for FY 2008-09 to 2011-12 has been called for and examined and it is found that Toll Receipt has been disclosed by the AOP deductor and the same has been freshly computed by examining the books of Accounts, Ledger of the contractor M/s JV KULKARNI 7 Friends Associates. Thus, a fresh computation is made. I is to submit that since the AOP has disclosed the Toll Receipts for FY 2008-09 to FY 2011-132 and filed the return of income and paid the taxes, hence default committed by way of Non-TCS under section. 206C(1C) r.w.s. 206C(6) is to rectified and since the TCS*

*is not collected at the time of the date of collectible of TCS, the interest under section. 206C(7) is to be charged from the date of TCS collectible till the date of filing of Return by the AOP. The computation of interest is as below mentioned table.*

The learned CIT(A) on the basis of remand report and the arguments of the parties had recorded its findings which are contained in para-6 of his order and the same is reproduced below:-

*“6. Thus it is evident that the Ld. AO herself has accepted the contention of the appellant in the light of the judgment of the Hon’ble Supreme Court in the case Hindustan Coca Cola Beverages Pvt. Ltd and has given a finding that no demand under section 206C(6) lies in the case of the appellant and only demand on account of interest under section. 206C(7) is chargeable till the date of filing of return of income. In view of the above clear finding of the Ld. AO, the demand raised under section. 206C(1C) r.w.s 206C(6) of ₹.3087180/- between the years FY 2008-09 to FY 2011-12 is hereby deleted.”*

5. Now before us the assessee has raised a solitary ground thereby challenging the order of learned CIT(A) in holding that only demand on account of interest u/s 206C(7) of the Act is chargeable from the assessee till the date of filing of return of income.

6. Ld. AR reiterated the same arguments as were raised before Revenue Authorities. On the other hand, Ld DR also relied upon the orders passed by the Revenue Authorities.

7. We have heard counsels for both the parties at length also perused the material placed on record as well as judgments cited by respective parties. It is an undisputed fact that assessee is a member of AOP and contract for collection of toll was also given to its member i.e. M/s JV Kulkarni & Friends Associates. It was argued by the Ld. AR that the provision with regard to charging of interest u/s 206C(7) were introduced by the Finance Act, 2012 and thus the same are not applicable to the earlier years. After having gone through the facts of the case and after hearing the parties at length, we find that undisputedly, the

assessee is an AOP and the contract for collection of toll was given to its member i.e. M/s JV Kulkarni & Friends Associates, Buldhana. The learned CIT(A) had already concluded that no demand u/s 206C(1C) lies in the case of assessee. Even otherwise the provision of Sec. 206C(7) of the Act were not applicable to the earlier years clause of section 206C(7) of the Act with regard to charging of interest was introduced by Finance Act, 2012 and was thus not applicable to any years prior to that.

8. The AOP and its members are not separate entities, therefore no TCS was required to be collected from its member. Even, in the remand report, learned CIT(A) has admitted that assessee was not liable to make TCS u/s 206C(1C) r.w.s 206C(6), thus there was no question of charging interest u/s 206C(7) of the Act. More particularly, the proviso clause with regard to charging of interest u/s 206C(7) of the Act was introduced by Finance Act, 2012 and since the present case pertains to AY 2009-10. Therefore, the assessee was not covered under the said provision, hence, was not liable to pay interest. We order accordingly and also these grounds raised by the assessee.

9. Remaining grounds raised by assessee are general in nature, therefore need no specific adjudication.

10. In the net result the appeal filed by the assessee stands allowed.

**Now coming to remaining appeals by assessee in ITA no.164-166/Nag/2018 for AYs 10-11 to 12-13.11.**

11. At the very outset, it was noticed that all the above three appeals are barred by limitation, however, Ld. AR has drawn our attention to an application for seeking condonation of delay of 1126 days in filing the above appeals.

12. We have heard ld. counsels of both the parties on this application and we have also perused the records. As per the contents of the application and an affidavit of Shri Rajesh Laddha, Ld. Authorized Representative of the assessee

could not preferred appeals for AYs 2010-11 to 2012-13 as they were under 'bona fide belief' that the decision of hon'ble ITAT for AY 2009-10 will be equally applicable for the other three years as the facts of the case of all the four years were same. This plea raised by the assessee does not hold much water as the same do not constitute "sufficient cause" for not filing the appeals within time.

13. Be that as it may, since the facts of the above appeals are also identical of the facts of the appeal in ITA no.176/Nag/2015 for A.Y. 2009-10 and we have already decided the appeal on merits. So even on merits even otherwise being based on identical facts, the order passed by us in **ITA No.176/Nag/2015** (supra) would even otherwise be applicable to these appeals.

14. Although assessee has not been able to successfully demonstrate before us any "sufficient cause" for condonation of delay but keeping in view the above mentioned peculiar facts and the principle of natural justice, equity and fair play, we hereby hold that this is a fit case to condone the delay. We order accordingly and admit these appeals for adjudication.

15. Now we proceed to decide the above appeals on merits. Since we have already allowed assessee's appeal in **ITA No.176/Nag/2015** for AY 2009-10 (supra), the grounds of these appeals are also allowed with similar observation.

12. **In the result, all the appeals filed by the assessee stand allowed.**

Order pronounced in open court on 13/07/2018

Sd/-  
(लेखा सदस्य)  
(Jason P. Boaz)  
Accountant Member  
\*Dkp-Sr.PS

Sd/-  
(न्यायिक सदस्य)  
(Sandeep Gosain)  
Judicial Member

दिनांक:- 13/07/2018 Nagpur

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant–Buldana Urban Co–op Credit Society Ltd. & National Building Constn. (JV), Hutatma, Gore Path, Buldana
2. प्रत्यर्थी/Respondent–Income Tax Officer Ward–1(2), TDS, Akola
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण नागपुर / DR, ITAT, Nagpur
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,  
(on tour)