

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'B'**

**BEFORE AMARJIT SINGH, ACCOUNTANT MEMBER
AND
BEFORE MS.MADHUMITA ROY, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No.1381 TO 1386/Ahd/2015
निर्धारण वर्ष/Asstt. Year: 2005-06 TO 2010-11**

DCIT, TDS Circle Ahmedabad.	Vs.	M/s.Ahmedabad Vadodara Express Way Co. Ltd. 2 nd Floor, Amul Building Amrut Bag Society, Vejalpur Ahmedabad 380 051. PAN : AADCA 3349 L
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Revenue by :	Shri Mudit Nagpal, Sr.DR
Assessee by :	Shri Sumat Chadha, AR

सुनवाई की तारीख/Date of Hearing : 02/01/2019
घोषणा की तारीख/Date of Pronouncement: 09/01/2019

आदेश/ORDER

PER BENCH:

These six appeals of the Revenue are against common order of the Id.CIT(A)-8, Ahmedabad dated 25.3.2015 passed for the Asstt.Years 2005-06 to 2010-11. Since common issue is involved in all these appeals, the same are disposed of by this consolidated order.

2. Revenue has filed separate appeals for each assessment year. Grounds raised in all these appeals are identical except change in the figures of quantum. In short, sole grievance of the Revenue in all these appeals is that the Id.CIT(A) has erred in deleting demand raised by the

AO under section 206C(6A)/206C(7) of the Income Tax Act, 1961 of the following amounts in respect of respective assessment years:

	<u>Asstt.Year</u>	<u>Amount (Rs.)</u>
1)	2005-06	47,91,112/-
2)	2006-07	79,21,592/-
3)	2007-08	1,19,80,403/-
4)	2008-09	2,14,11,372/-
5)	2009-10	2,55,16,678/-
6)	2010-11	1,61,32,231/-

3. The facts being common in all the years under appeals, we notice the facts, except quantum, from the Asstt.2005-06 for the sake of brevity for adjudication of the issue.

4. Brief facts as emerges out from the record are that, the assessee is a wholly owned subsidiary of National Highway Authority of India (NHAI) incorporated to construct express highway between Ahmedabad and Vadodara. On verification of record, it was noticed by the AO that the assessee company had given licence to Col. Pankaj Roy Bhatia (Retd.) proprietor of A.B. Infrastructure to collect toll tax on various places on the expressway between Ahmedabad and Vadodara. During the F.Y.2004-05, total amount of toll collection was Rs.12,22,24,427/-, however, the assessee company has not collected TCS from the said A.B. Infrastructure and not paid to the government. During the course of verification, the AO has noticed that the assessee company had started its operation from F.Y.2004-05, but had not collected any TCS on the toll collected by it. However, AO noticed that w.e.f 27.12.2010, the assessee company had entered into a contract with M/s.MEP Toll Road Pvt.Ltd., Mumbai for collection of toll and till the date of verification i.e. 8.3.2011 TCS amount of Rs.27,59,341/- has been collected and deposited in the government account. Therefore, Id.AO issued show cause notice as to why order under section 206C(6A)/206C(7) of the Act should not be passed in this case *qua* toll

tax collected by A.B. Infrastructure. The assessee submitted its reply dated 26.3.2012 stating that the assessee-company was not liable to deduct TCS under section 206C(1C) of the Act before 29.12.2010 as the company did not transfer the right to collect toll tax to the Agency, rather the agency was engaged sole for the purpose of collecting toll on behalf of the assessee, and whatever collection made, was deposited by the agency in the very next day in assessee's bank account. For this work, the assessee was paying manpower charges to the collecting entity besides services charges at the agree rate. Toll collection is nothing but an income of the assessee, which was collected by the Agency on its behalf, and therefore, provisions of section 206C(1C) was not applicable, as the right to collect toll was not transferred to the agency. The assessee its reply also distinguished the treatment given by the assessee company before 29.12.200 and after 29.12.2010, which was incorporated by the Id.AO in his order in page no.5 to 7 of the assessment order. However, the Id.AO has not satisfied with submissions of the assessee. He held that right to collect the toll has been granted by the assessee to the said A.B. Infrastructure by entering into a contract agreement titled "Contract for department collection of fee". The AO has referred para 23 of the contract regarding obligation of the collecting entity. He has also stated that sub-clause (a) to (o) indicate that the right to collect the toll was transferred by the assessee to A.B. Infrastructure. It was further held by the AO that as per the provisions of section 206C(1C) of the Act even in case of partial transfer of the right or interest, the case of the assessee clearly falls within this purview. Accordingly, the Id.AO treated the assessee as assessee-in-default for not collecting tax at source from toll collecting entity at the rate of 2%, and also levied interest under section 206C(7) of the Act.

5. Dissatisfied with this order of the Id.AO, the assessee carried the matter in appeal before the Id.CIT(A), who after considering the submissions of the assessee, relevant provisions of the Act and relying on decision of the ITAT, Cuttack Bench in the case of Project Director Vs. Department of IT held that the assessee was not liable to deduct TCS under section 206C(1C) of the Act and not liable for charging of interest under section 206C(7) of the Act. The Id.CIT(A) accordingly allowed the appeal of the assessee. Aggrieved Revenue is now before the Tribunal.

6. Before us, the Id.DR supported order of the AO and contended the AO has rightly invoked the provisions and treated the assessee, as assessee-in-default.

7. The Id.counsel for the assessee, on the other hand, relied on the order of the Id.CIT(A). He reiterated submissions as were made before the Revenue authorities. He has contended that A.B. Infrastructure was simply doing the toll collection work at the plaza on behalf of the assessee company and deposit the same in the designated banker of the assessee-company. No right to collect the toll was transferred by the assessee to A.B. Infrastructure. He has placed reliance on the decision of the ITAT, Cuttack Bench in the case of the Project Director Vs. Department of Income Tax.

8. We have considered submissions of both the parties and gone through the record carefully and also the orders of Revenue authorities below. The case of the department was that work carried out by the collecting agency was contract within the meaning of section 206C(6A) and is to be assessed as such by treating the assessee as "assessee-in-default" for not collecting TCS from the collecting party. Whereas the case of the assessee is that, the collecting entity is doing job of toll collection from different plazas on behalf of the assessee and the

collection amount daily deposited in the designated bank of the assessee-company, and therefore, there is no question of transfer of right or interest over the toll collection for the use of expressway with complete responsibility. Role of the collecting entity is just to collect the toll and deposit the amount in the bank account of the assessee-company. These facts have been appreciated by the Id.CIT(A), who after considering relevant materials and also contract agreement entered by the assessee-company and the collecting entity, came to the conclusion that the role of the collecting was very much restricted to collection of toll amount and depositing the same in the bank, and therefore, there is no transfer of right or interest by the assessee-company. Job assigned to the collecting entity was in the nature of outsourcing and there is no scope for elaboration of meaning of contract agreement so as to treat the assessee, as assessee-in-default for not collecting TDS.

9. On due consideration of facts and circumstances, we find that the assessee has filed point wise reply before both the authorities. In its reply, the assessee differentiated nature of the work carried out by the different agencies before 29.12.2010 and after 29.12.2010. This reply has been incorporated by the Id.AO in its order in page no.5. For better understanding of the issue on hand, we reproduce the same hereinbelow:

Sr. No.	Agreement before 29-12-2010	New arrangement with MEP Toll Road Pvt. Ltd. (w.e.f. 29/12/2010)
1.	<i>The Company has entered into contract with Ex-Serviceman sponsored Director General Re-settlement, Ministry of Defense for providing manpower for the work of collection of user fee on behalf of Company.</i>	<i>The Licensee is one of those bidders who submitted bid and quoted its offer in lieu of transferring Central Government's user fee collection rights for the said selection of the expressway. The licensee is authorized by its Memorandum of Association to carry on the business of providing various services on contract basis through its employees employed and where as the Licensee undertakes to get itself licensed and/or registered with appropriate authority</i>

		<i>under the relevant laws within 7 days of signing of this contract.</i>
2.	<i>Under this contact, Agency is collecting toll on behalf of company and whatever actual collection made, it has to deposit very next day in company's account. Company was paying manpower charges plus service charges at the agreed rate on manpower charges to the Agency.</i>	<i>Under this contract, Licensee has to remit the fixed amount in the company's account every Tuesday irrespective of the toll collected whether less or more than the quoted amount.</i>
3.	<i>Under this contract, entire cost towards the collection including wages of the staff, Admin exp. and toll plaza maintenance is the responsibility of company and all the cost was borne by company.</i>	<i>Under this contract, entire cost towards the collection including salary of the staff, Admin exp. and Toll Plaza maintenance is borne by Licensee itself.</i>
4.	<i>Only delegation of power to collect toll tax has been transferred in this agreement</i>	<i>Right in the toll plaza is transferred in this agreement</i>
5.	<i>All the risk and rewards was borne by the AVEXCL</i>	<i>All the risk and rewards is being borne by the Licensee.</i>
6.	<i>Toll collection is entirely the income of AVEXCL which is collected by the Agency on behalf of AVEXCL and deposited the same in to AVEXCL account.</i>	<i>Toll collection is entirely the income of Licensee. The licensee has given a fixed amount to the AVEXCL. That fixed Amount is the income of AVEXCL. Fixed amount is being paid for obtaining license for collection of toll tax on its own behalf.</i>
7.	<i>In the profit & loss account of the AVEXCL the toll collected was shown as income and the Agency charges paid to Agency was treated as expenses. The other expenses like salary expense, administration exp etc. was also booked as expenses.</i>	<i>In the profit & loss account of the AVEXCL the fixed amount paid by Licensee is shown as income.</i>
8.	<i>In the profit & loss account of the Agency the Agency charges paid by the AVEXCL was shown as income.</i>	<i>In the profit & loss account of the Licensee the toll collected is shown as income and the fixed amount paid to AVEXCL is treated as expenses. The other expenses like salary expense, administration exp etc, is also booked as expenses.</i>
9.	<i>Section 206C(1C) is not applicable where the right to collect toll is not transferred in the toll plaza. So section 206C(1C) of the Income Tax Act is not applicable in this agreement.</i>	<i>Section 206C(1C) is applicable where the right to collect toll is transfer in the toll plaza. So section 206C(1C) of the Income Tax Act is applicable in this agreement.</i>
10.	<i>As per point No. 1 to 9 AVEXCL is not required to deduct TCS. So the assessee was not deducted the TCS.</i>	<i>As per point No. 1 to 9 AVEXCL is liable to deduct TCS. So the assessee has been deducting the TCS as per the provisions of section 206C(1C) of the Income Tax ACT, 1961.</i>

10. We find that the Id.CIT(A) has gone through all the relevant material and analysed the issue in details including the agreement entered into by the assessee-company and the collecting entity, and came to a conclusion that the said collecting entity's role was restricted to collecting the toll amount and deposit the same on daily basis in bank account of the company and it has no right on any part of the toll collection. The Id.AO has construed the collection of toll with right of toll collection being transferred to the entity, which is not correct in the present case. Considering the scope and nature of the work carried out by the collecting entity, it clearly shows that activities of collecting toll fees as entrusted by the assessee was not a contract within the meaning of section 206C and will not attract provisions of section 206C(1C) of the Act, rather it was in the nature of outsourcing of job for collection of user fees. The finding of the Id.CIT(A) on this issue is reproduced as under:

"13.1 I have gone through the ordinance passed by assessing officer, remand report furnished by him, the submissions of the appellate and rebuttal of the remand report submitted by the appellant. As per Section 206C(1C), every person who grants a lease or a license or enters into a contract or otherwise transfers any right or interest in any parking lot or toll plaza or a mine or a quarry to another person, other than a public sector company, for the use of such parking lot or toll plaza or mine or quarry for the purpose business shall be responsible for collection of tax at source. Tax shall be collected at the time of debiting of the amount payable by the licensee or lessee to the account of the license or lease or at the time or receipt of such amount from the said license or lease in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier. In the present case, the appellant has made TDS on the payments made by it to the collecting agency rather than doing TCS in respect of toll collection. In the case cited and mentioned in Para 12.2 by the DCIT, it is seen that leave of toll plaza was granted in favour of Gulzar & Co. and thus that agreement was similar to the one entered by the appellant after 29/12/2010 with MEP Toll Road Pvt. Ltd. It is not so in the case where the collecting agency is making collection on behalf of the appellant.

13.2 In the present case, the assessee has not granted lease or a license nor entered into a contract or otherwise transferred right or interest in the Toll Plaza in favour of the contractors for use of the Toll Plaza for the purpose of business against consideration. Under such facts and circumstances of the case of the provisions of section 206(1C) are clearly not applicable in the case of the appellant. The words 'for the purpose of business' in section 206C(1C) is related to 'another-person', i.e., the lessee /licensee and not to the person awarding the contract i.e. the person liable for collecting TCS. The condition of business purpose applies to the licensee/lessee and not to the person awarding the contract i.e. the person liable for collecting TCS. In the instant case the contractor/manpower agency only supplies personnel to the appellant for purposes of toll fee collection by the appellant and is not engaged in business of toll fee collection. It acts only as a manager of the appellant. Rather than engaging its own employees, the work of toll fee collection was outsourced to its own contractor. The main purpose of the man power agency is to facilitate reemployment of ex-serviceman under guidance of Ministry of Defense in lieu service charges. Hence the provisions of section 206C(1C) are clearly not applicable to the appellant.

13.3 The appellant either engaged private companies for collecting the toll on its behalf or used to request the Director General of Resettlement, Ministry of Defence, for suggesting/recommending the names of manpower agencies for the purposes of collection of user fees at the toll plaza. On the basis of such request, the Director General of Resettlement is to sponsor/recommend various ex-serviceman (Officers), who run manpower agencies, out of which the appellant would engage some of them for collection of user fees at the toll plaza. The appellant used to indicate the manpower requirement for the toll plaza. After selecting the manpower agencies, appellant would also enter into performances security contract with such selected manpower agencies. The collecting agency is working under strict supervision of appellant. The appellant is monitoring its collection by a separate mechanism and thus it is provided in the contracts that any shortfall will have to be made good by collecting agency.

13.4 Thus, from the discussion aforesaid, it is clear that the NHAI has not given lease/ license or entered into contract for transferring right in respect of collection of toll fees to any person as understood by the provisions of section 206C(1C). In case of lease or license or transfer of right, the amount collected as toll would belong to collecting entity and in lieu of it, AVEXCL will get consideration which may be fixed or variable but this is not the

case here. In the present case the collection made by the collecting entity belongs to AVEXCL. Normally TCS is the amount that is collected over and above the amount of consideration agreed upon in case of toll plaza lease/license. In instant case the collecting agency is not paying any consideration to the appellant but rather the appellant is paying collection charges to the collecting agency. The appellant has made TDS in respect of consideration paid to the collecting entity for services provided by them by treating the same as work contract. Accordingly, appellant has merely outsourced the job of collection of the user fees and not entered into any contract or parted with any right in favor of a 3rd party man power-agency for lump sum receipts. Accordingly, under the facts and circumstances discussed above, section 206C(1C) is not applicable to the case of the appellant.

13.5 It is also interpreted that the internal circular of NHAI was mainly for collection of tax at source from franchisee. Under the Franchisee agreement, a fixed charges has to be paid by the Franchisee to the Franchisor. But in this situation, no fixed charges have been paid by the Agency, they only collect the toll tax and deposited the same amount to the AVEXCL'S account. For these services, AVEXCL paid the service charges to the Agency. So the NHAI's internal circular is not applicable in this situation.

13.6 On perusal of the above facts, it is clear that the assessee has not transferred any right to the collecting entities whereas the collecting entities are acting as the employees of the assessee and collecting toll on behalf of the assessee, in return for such collection of toll, the collecting entities are receiving remuneration and service charges. The toll collected by the collecting entities get deposited by them to the assessee's Bank account as the collecting entities does not carry any right on the toll collection. Therefore it is clear that the agreement entered into by the AVEXCL and the collecting entities does not amount to any contract granting lease or license and does not involve transfer of any right or interest in parking lot of toll plaza or a mine or a quarry to other persons and the assessee has not granted lease or license nor entered into a contract or otherwise transferring the right of toll plaza in favour of the contractors for use of the toll plazas for the purpose of business against consideration. Therefore, this activity will not come within the provisions of Section 206C (6A) of the Income Tax Act, 1961. Therefore, the assessee has no obligation to deduct any TCS from the collecting entities and it will not comprehend into the scope of provisions contained in Section 206C (1C) of the Income Tax Act, 1961 and TCS is not applicable to the assessee.

13.7 The same issue has been discussed and decided in the case of The Project Director, vs. Department Of Income Tax on 24 January, 2013 "The ITAT, Cuttack Bench. Cuttack where the case was held in favour of assessee and it was decided that the assessee have not granted any right or interest in the toll plaza to the collecting entities. The agreements entered between assessee and the collecting entities will not comprehend into the scope of provisions contained in Section 206C(1C) of the LT.Act,196I as was found by the learned CIT(A) rightly. Therefore, the learned CIT(A) has rightly found that the assesseees are not obliged to collect TCS from the collecting agency to whom it has entrusted the activities of collecting toll fees as prescribed by the assessee. As was observed by the learned CIT(A) it is not a contract. It is only outsourcing job for collection of user fees. The learned CIT(A) has come to this conclusion after thorough verification of the agreement entered by the NHAI with the collecting entities and other various provisions of the Rules made by the Government in regard to the management of toll plazas. Therefore, under these facts and circumstances of the case, we are of the considered view that the learned CIT(A)'s orders in all these appeals are not at all infirm in any way requiring interference and hence, we uphold the same by finding the issues raised by the Department as devoid of merit and as such, we dismiss the appeals of the Revenue."

11. We find that the Id.CIT(A) has also relied upon the order of the Tribunal Cuttack Bench in the case of the Project Director Vs. ITO, dated 24.1.2013, which is directly on issue and covered in favour of the assessee in the present case. We would note the ground taken by the Revenue before the ITAT, Cuttack Bench, and the finding of the Co-ordinate Bench, hereunder:

Grounds of Revenue:

1. On the facts and circumstances of this case, the Ld. Commissioner of Income Tax (Appeals)-1, Bhubaneswar does not appear to be justified in holding that National Highway Authority has merely outsourced the job of collection of the user.

"2. The Ld. Commissioner of Income Tax (Appeals)-1, Bhubaneswar does not appear to be justified. In holding that there was no contract between NHAI and the agency

for collecting toll-fees though in reality there exists a kind of contract which may not be always a written one.

3. The Ld. Commissioner of Income Tax (Appeals)-1, Bhubaneswar is not justified in arriving at a conclusion, that NHAI has merely engaged a manpower agency for doing the job of collection of Toll fees on its behalf. Actually the manpower agency has carried out the work basing on a kind of agreement/contract,"

5. In respect of the assessee. The Project Director, Paradip Port Road Co. I Revenue has raised the following common issues.

"1. On the facts and circumstances of" the case, the Commissioner of Income Tax (Appeals)-1, Bhubaneswar does not appear to be justified in holding that the "collecting entity" did the job of collection of toll fees on behalf of the 'assessee'. deductor.

2.. The Ld. Commissioner of Income Tax (Appeals)-1, Bhubaneswar does not Appear to be. justified in concluding that the 'assessee' deductor has not given any lease 1 license or entered into a contract to the collecting agency /entity where 'as M/s-Paradip Port Road Co. Ltd.(tax deductor) has entered into performance security contract with the collecting agency as would be seen from his order at para 4.4 of page 4.

3. The Ld. Commissioner of Income Tax (Appeals)-I Bhubaneswar has referred to the agreement that, the collecting agency is only getting service charges for supplying man power @14% per month under the service contract.-This goes to indicate that there exists some kind of agreement/contract (clause 17 of the agreement mentioned at page 3 of the order). This-being so, how can it be said that there is no contract. The Ld. Commissioner of Income Tax (Appeals)-If Bhubaneswar has failed to appreciate the issue."

Finding of the Tribunal:

9) On careful, analysis of the orders passed by the learned CIT(A) in the light of the submissions of both the parties together with, the agreements stated to have been entered into by the assessee with the-different collecting entities, it is seen that the assesseees have given only permission to the collecting entities to collect the toll fees and maintain the toll plazas by employing a specified category of persons and supervise them and deposit the toll collection in the signatory account of the NHAI has agreed to

pay service and the NHAI agreed to pay the men-power employed by the collecting entities the salary as fixed by the collecting entity. On perusal of all these, it is clear that the assesseees have not granted any right or interest in the toll plaza to the collecting entities. Therefore, the said agreement will not comprehend into the scope of provisions contained in Section 206C(1C) of the I.T.Act,1961 as was found by the learned CIT(A) rightly. Therefore, the learned CIT(A) has rightly found that the assesseees are not obliged to collect TCS from the collecting agency to whom it has entrusted the activities of collecting toll fees as prescribed by the assesseees. As was observed by the learned CIT(A) it is not a contract. It is only outsourcing job for collection of user fees. The learned CIT(A) has come to this conclusion after thorough verification of the agreement entered by the NHAI with the collecting entities and other various provisions of the Rules made by the Government in regard to management of toll plazas. Therefore, under these facts and circumstances of the case, we are of the considered view that the learned CIT(A)'s orders in all these appeals are not at all infirm in any way requiring interference and hence, we uphold the same by finding the issues raised by the Department as devoid of merit and as such we dismiss appeals of the Revenue in respect of both the assesseees."

12. In light of the above finding and observations of the Id.CIT(A), and following order of the ITAT Cuttack Bench decided on similar issue, we are not inclined to interfere with impugned order of the Id.CIT(A), which is accordingly confirmed, and the grounds of appeal of the Revenue in all the appeals are rejected.

13. In the result, appeals of the Revenue in all the assessment years are dismissed.

Order pronounced in the Court on 9th January, 2019 at Ahmedabad.

Sd/-
(MS.MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 09/01/2019