

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1805/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2009-10)

Adani Enterprise Ltd. Adani House, Nr. Mithakhali Six Road, Navarangpura, Ahmedabad 380015	बनाम/ Vs.	DCIT TDS CIRCLE 'A' Wing, 3 rd Floor, Pratyakshakar Bhavan, Ambawadi, Ahmedabad 3800015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA2804L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri V. R. Chokshi, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri L. P. Jain, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	01/07/2019
घोषणा की तारीख /Date of Pronouncement	09/07/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-8, Ahmedabad ('CIT(A)' in short), dated 01.06.2017 arising in the assessment order dated 18.03.2015 passed by the

Assessing Officer (AO) under s. 206C(6A)/206C(7) of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. The grounds of appeal raised by the assessee read as under:-

- “1. *On the facts and in the circumstances of the case, the learned C.I.T.(Appeals) erred in rejecting the relevant ground of appeal raised before him by the appellant-company to the effect that the order passed by the Assessing Officer dated 18.3.2015 under sections 206C(6AJ) / 206C(7) of the I. T. Act is bad in law, being time barred.*
2. *On the facts and in the circumstances of the case, the learned C.I.T.(Appeals) erred in confirming the Assessing Officer's finding that the appellant-company is an "assesses in default" u/s.206C(6A) of the I.T. Act for non-collection of tax at source on sale of heavy scrap.*
3. *On the facts and in the circumstances of the case, the learned C.I.T.(Appeals) erred in confirming the Assessing Officer's order levying interest u/s.206C(7) of the I.T. Act.”*

3. The assessee company is *inter alia* engaged in trading of ‘scrap’ material wherein it imports the same and without changing any form or without applying any process sells the same in domestic market. During the FY 2008-09 relevant to AY 2009-10 in question, the assessee sold ‘scrap’ amounting to Rs.10,27,26,992/- to various parties on which tax was not collected as source as contemplated under s.206C(1) of the Act. In response to the show cause notice issued for failure to collect tax at source on sale of ‘scrap’, the assessee contended that Section 206C of the Act is inapplicable in the facts of the case as the assessee is merely a trader of such ‘scrap’ and the ‘scrap’ is not generated in any of the manufacturing process carried out by it. It was contended before the AO that the Section 206C of the Act is applicable only when the ‘scrap’ is generated and/or produced during the course of manufacturing or mechanical working of materials in the hands of the assessee. The assessee also took stand that the notice for alleged default under s. 206C(1) of the

Act has been issued on 04.08.2014 i.e. beyond the reasonable period of four years and hence is time barred. The AO however did not find substance in either of the plea and treated the assessee as in default under s.206C(6A) of the Act in respect of failure to collect tax. A demand of Rs.1,48,527/- was imposed for default in respect of tax under s.206C(6A) of the Act. Interest of Rs.1,71,397/- on such default was also levied under s.206C(7) of the Act. The aggregate demand of Rs.3,19,934/- was accordingly raised on the assessee by the AO by passing order under s.206C(6A)/206C(7) of the Act order dated 16.03.2015 for AY 2009-10 in question.

4. Aggrieved, the assessee preferred appeal before the CIT(A) without any success.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. We have considered the rival submissions on the issue and also perused the orders of the lower authorities. The controversy before us is whether the assessee can be 'treated as assessee in default' under s.206C(6A) of the Act in the facts and circumstances narrated above sub-section (6) of Section 206C fastens liability on the seller for collection of tax from buyer of goods specified in sub-section (1) to 206C. Sale of 'scrap' is one of the goods so specified. The seller may be treated as assessee in default under sub-section 6A for failure to discharge the obligations fastened. Sub-section (7) enjoins liability of interest on the amount of tax to be collected. It is the case of the assessee that 'scrap' imported from other countries have been sold in the domestic market without involving any manufacture or mechanical working of materials carried out by the assessee and thus do not fall within the sweep of Explanation (b) to Section 206C of the Act which

defines 'scrap' as 'waste and scrap' from the manufacture or mechanical working of materials which is definitely not usable as such. It is thus the case of the assessee that the 'scrap' sold do not meet the pre-requisite of the expression 'scrap' as statutorily defined.

7. The assessee has also objected to the issuance of show cause notice for alleged default under s.206C of the Act after the end of four years from the financial year in which the default was allegedly committed. It is the case of the assessee that in the absence of any statutory time limit prescribed for passing such order under s.206C of the Act, such orders are required to be passed within a reasonable period of time and the AO cannot be permitted to pass such order of alleged default in compliance of TCS provisions under s.206C of the Act after unreasonable lapse of time. It is thus contended on behalf of the assessee and order passed under s.206C of the Act imposing tax and interest for alleged default is vitiated by lapse of time in this regard. It is the case of the assessee that it is an established legal position that wherever under the scheme of the Act with reference to some obligations, no time limit is prescribed for passing an order especially an order having penal consequences, the order must be passed by the authorities within a reasonable period of time. It was reiterated that Section 206C(6A) of the Act is silent on the time limit for passing the order for default committed under s. 206C of the Act, unlike corresponding Section 201(3) of the Act in respect of 'tax deduction at source'. The reference was made to the decision of the co-ordinate bench in *Raymond Woollen Mills Ltd. Vs. ITO 57 ITD 536 (Mum)*; *CIT vs. Hutchison Essar Telecom Ltd. (2010) 323 ITR 230 (Del)*; *NHK Japan Broadcasting Corporation 305 ITR 137 (Del)*; *State Bank of India vs. ACIT 106 ITD 589 (Mum)* for the proposition that a period of four years was perceived as reasonable time limit by such judicial precedents. Thus such order under s. 206C of the Act cannot

be passed after the expiry of four years from the end of the relevant financial year where default has been allegedly committed.

8. Apart from the plea of action vitiated by lapse of time, it is also the case of assessee that liability to collect TCS under s.206C of the Act cannot be enforced against the assessee on account of collectee having paid taxes due on income arising from such transaction.

9. We shall deal with aspect of limitation first as it paves the way for enabling the AO to pass statutory order under s.206C of the Act. We notice that no time limit has been prescribed for passing order under s.206C of the Act. The CIT(A) has assumed that in the absence of statutory time limit provided, the provisions of Section 201(3) of the Act providing time limit for deduction of tax at source can be parallelly adopted for the purposes of viewing what is reasonable time. We do not see much force in such presumption especially in the matter of limitation. The limitation prescribed under one provision of the Act cannot be applied straightway to some other provisions of the Act. The legislature, in its wisdom, inserted subsection (3) under s. 201 of the Act by the Finance (No.2) Act, 2009 w.e.f. 2001 proposing time limit for passing orders under s.201 of the Act with reference to tax deduction at source. However, no such limitation provision has been enacted with regard to tax collection at source as provided in Section 206C till date. Under the circumstances, where no time limit has been prescribed by the statute for passing order in respect of default in collection of tax at source, a guidance can be possibly obtained from judicial precedents laying down a reasonable time limit as implicit for imposition of levy of tax at source. We notice that the judicial precedents cited on behalf of the assessee have read a period of four years to be reasonable time limit. Needless to say, the liability of the Collector of tax on behalf of the Government (assessee herein)

is a vicarious liability and cannot be allowed to remain hanging on his head for all times to come where the department decides not to take action either by proceedings under s.206C of the Act or by making assessment on the deductee. The show cause notice in the instant case has been issued after five years from the end of the relevant FY 2008-09. Thus, in the absence of statutory time limit prescribed for passing order with reference to collection of taxes, we follow the suit and read reasonable time limit to be four years from the end of the financial year for passing the order under s.206C in tune with the judicial precedents in *NHK Japan Broadcasting Corporation 305 ITR 137 (Del)* and *CIT vs. Hutchison Essar Telecom Ltd. (2010) 323 ITR 230 (Del)*.

10. With reference to obligations towards TDS provisions, the Hon'ble Bombay High Court in *DIT(Inv.) vs. Mahindra & Mahindra Ltd. 365 ITR 560 (Bom.)* concerning AY 1998-99 ruled that limitation period would apply to TDS orders under s.201/1A of the Act even though no time limit was prescribed under the Act at the relevant time. The Hon'ble High Court observed that time limit would be three years from the end of the financial year which seemed to be reasonable period as accepted under s.153 of the Act, though for completion of assessment proceedings. However, a greater period of four years for commencement or initiation of proceedings was given by the Hon'ble Delhi High Court in *NHK Japan Broadcasting Corporation(supra)* and *Hutchison Essar Telecom Ltd (supra)*. In view of the judicial fiat available in this regard which is beneficial to the assessee *qua* the time period prescribed for deduction of tax at source in Section 201(3) of the Act, we would give primacy to the judicial precedents in the absence of express statutory provision towards time limit in respect of obligation attached to Section 206C of the Act.

11. We accordingly set aside the order of the CIT(A) and direct the AO to not treat the assessee as assessee in default under s.206C of the Act. Consequently, the liability imposed towards tax and interest under s.206C of the Act is quashed.

12. In view of the aforesaid reasonings, we do not consider it necessary to look into the other lines of argument propounded on behalf of the assessee.

13. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on 09/07/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 09/07/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।