

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1023/JP/2019
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Pramod Kumar Jain Prop. M/s JKMK Steel, 400/23, Lal Kothi, Kaiser Ganj, Ajmer.	बनाम Vs.	The ITO, TDS, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARPJ5142P/JDHPO6656G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Miss. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 01/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 03/07/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 13.05.2019 of Id. CIT(A), Ajmer arising from the order of the Assessing Officer passed U/s 206C(6A)/206C(7) of the IT Act for the assessment year 2017-18. The assessee has raised the following ground:-

"1. The Commissioner of Income Tax (Appeals) grossly erred in law and on facts in confirming the order passed U/s 206C(6A)/206C(7) by Income Tax Officer TDS, Ajmer.

2. None appeared on behalf of the assessee however, the assessee has submitted a letter dated 22.01.2020 which is on record along with written submission and requested that the appeal of the assessee may be decided by considering the written submission of the assessee.

3. The hearing of this appeal was concluded through video conference in view of the prevailing situation of COVID-19 pandemic. The assessee is dealing in scraped material and has purchased railway scrap in auction which was subjected to TCS U/s 206C(1) of the Act. The Railway while receiving the payment from the assessee has also collected tax at source. The assessee sold the scrap to various buyers without collecting tax at source as required U/s 206C of the Income Tax Act. The Assessing Officer initiated the proceedings for holding the assessee as default in respect of non collection of tax in terms of Section 206C(6A)/(7) of the Act. Accordingly, the AO passed the impugned order dated 23.03.2018 whereby the assessee was hold as assessee in default and liability U/s 206C(6A) of the Act was determined at Rs. 2,55,540/- and interest as per Section 206C(7) of the Act of Rs 97,651/- was also charged. The assessee challenged the action of the AO before the Id. CIT(A) and contended that the provisions of Section 206C are not applicable in the case of the assessee as the material

purchased by the assessee from the railways in auction which was subsequently sold to various parties does not fall in the ambit of definition of scrap as provided in clause-(b) of Explanation to Section 206C of the Act. The assessee also disputed the correct amount of old material sold by the assessee during the year under consideration and contended that a some of the goods sold by the assessee which was considered by the AO as scrap were not the old iron goods but it is new iron goods. The Id. CIT(A) confirmed the order of the Assessing Officer passed U/s 206C(6A)/(7) of the Act holding the assessee in default for not collect tax at source.

4. Before us, the assessee in the written submission as reiterated its contentions that the assessee is a trader of old iron goods as well as new iron goods. The trading in all iron goods mainly consist of old material purchased from the railway. The sales have been made by the assessee to other traders and sellers. The assessee has contended that since the material purchased by the assessee from the railway in the auction is not generated in the manufacturer or mechanical working process and therefore, does not fall in the definition of scrape as in provided clause-(b) of explanation to Section 206C of the Act. Hence, the assessee has contended that the provisions of Section 206C are not

applicable. In support of his contention, he has relied upon the decision of Hon'ble Gujarat High Court in case of Priya Blue Industries (P) Ltd 381 ITR 210 as well as decision of Ahmedabad Bench of the Tribunal in case of Navine Fluorine International Limit vs. ACIT, TDS in ITA No. 1213 and 1214/Ahd/2010 . Reliance was also placed on the decision of Rajkot Bench of the Tribunal in case of Nathulal P. Lavati vs ITO 65 DTR 133. Alternatively, the assessee has submitted that the AO while passing the impugned order has not excluded the sale of new iron goods to the extent of Rs. 1,88,60,145/- and therefore, to that extent the liability of the assessee is not justified. The assessee has filed certain sales bills in support of the contention that some of the sales which were considered by the AO as scrap sale in fact is sale of new goods.

5. On the other hand, the Id. DR has submitted that the Assessing Officer has clearly given the details of the old goods as well as new goods in the assessment order itself. The Assessing Officer has also pointed out that during the spot verification the assessee himself has identified the sale of new goods and marked with "N" in the ledger account. The entire ledger has been reproduced by the AO in the assessment order. Thus the claim of the assessee that the AO has

considered the sale of new goods as sale of scrap while passing the impugned order U/s 206C(6A)/(7) of the Act is contrary to the fact of assessee's own admission during the spot verification. The Id. DR has further contended that when the railway itself sold this material as scrap material and collected the tax at source while accepting the payment from the assessee then the assessee cannot reclassify goods at the time of sale of the said scrap purchase from the railway. She has relied upon the order of the authorities below.

6. We have considered the written submissions as submitted by the assessee and arguments of Id. DR. We have also carefully perused the order passed U/s 206C(6A)/(7) of the IT Act. There is no dispute that the assessee purchased scrap material from the railways which was subjected to TCS and the said material was again sold by the assessee to various parties who were stated to be traders as well as consumers of the scraped without collecting the tax at source by the assessee. Therefore, the AO initiated the proceedings for holding the assessee in default U/s 206C(6A)/(7) of the Act. The First contention of the assessee is that the material sold by the assessee which was purchased from the railways in the auction does not fall in the definition of scrap

as provided in clause (b) of Section 206C of the Act. For ready reference we quote clause (b) of explanation to Section 206C as under:-

“scrap” means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;”

For the purpose of Section 206C of the Act the scrap has been defined as waste and scrap from the manufacture or mechanical working of material which is definitely not usable because of the reason of breakage, cutting, wear and other reasons. The scrap sold by the railway was certainly not usable due to its breakage or wear and tear and it was also subjected to TCS for which the assessee has not raised any objection. Once the assessee has accepted the goods purchased from the railway as scrap and allowed the TCS then the resale of the same goods by the assessee will not part take a different character. Therefore, in view of the undisputed fact that what was purchased by the assessee is scarp subjected to TCS then the resale of the same material is also be treated as scrap and there is no scope of re-classification of the these goods at the time of sale. Therefore, we do not find any merits or substance in the contention of the assessee. The decisions relied upon by the assessee are on specific facts of those cases and therefore, would not help the case of the assessee.

7. As regards the contention of the assessee that some of the sales considered by the AO as scrap was actually sale of new goods. We note that the Assessing Officer has considered the sale on the basis of the spot verification. However, now the assessee has also placed certain sale bills in support of his contention that the sales to the extent of Rs. 1,88,60,145/- is sale of new iron goods and not scrap. Since, this is a factual aspect of the matter and needs proper a verification. Therefore, we set aside on this issue to the record of the Assessing Officer for verification of the same by considering the evidence filed by the assessee and then decide the same. Needless to say the assessee be given an appropriate opportunity of hearing before passing the fresh order on this issue.

In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 03/07/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03/07/2020.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी /The Appellant- Shri Pramod Kumar Jain, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO,TDS, Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1023/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार /Asst. Registrar