आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.194 & 195/Ind/2020

Assessment Years: 2011-12 & 2015-16

Ajit Lalwani
Indore
PAN:BPLAO2630F : Appellant

V/s
ACIT(TDS)
Indore : Respondent

Appellant by	Ms. Shalini Mehta, AR
Respondent by	Shri Harshit Bari, Sr. DR
Date of Hearing	04.08.2021
Date of Pronouncement	23.08.2021

O R D E R

PER MANISH BORAD, A.M

The above captioned appeals filed at the instance of the Assessee for Assessment Years 2011-12 & 2015-16 are directed

against the orders of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld. CIT], Indore dated 27.12.2019 & 27.01.2020 which are arising out of the order u/s 271CA of the Income Tax Act 1961(In short the 'Act') dated 30.08.2018 framed by ACIT-(TDS), Indore.

The Assessee has raised following grounds of appeal in ITANos.194/Ind/2020:

> *1.That the Learned CIT(A) erred in confirming penalty levied uls 271 CA of the Income Tax Act amounting to Rs.15,88,428/-. That on the facts and in the circumstances of the case, the penalty levied is wrong, bad in law and is prayed to be deleted.*
> *2.That the Learned CIT(A) erred in confirming penalty levied uls 271 CA of the Income Tax Act without considering the fact that the appellant has complied with all the conditions specified in proviso to Sec 206C(6A). That on the facts and in the circumstances of the case, the penalty levied is wrong, bad in law and is prayed to be deleted.*
> *3.That the Ld CIT(A) erred in confirming the penalty levied uls 271 CA of the Income Tax Act even when there was a reasonable cause on the part of the assessee for non collection of tax at source and even when most of the payees have provided Form 27BA as also evident from the order passed uls 206C(6A) I 206C(7) dated 31.03.2017.*
> *4.The Ld CIT(A) erred in confirming the penalty levied uls 271 CA of the Income Tax Act even when the penalty order passed uls 271 CA was barred by limitation.*
> *5.The appellant craves leave to add, to alter, amend, modify, substitute, delete and I or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arises.*

The Assessee has raised following grounds of appeal in ITANos.195/Ind/2020:

> *1. That the Learned CIT(A) erred in confirming penalty levied uls 271 CA of the Income Tax Act amounting to Rs.2,09,800/-. That on the facts and in the circumstances of the case, the penalty levied is*

wrong, bad in law and is prayed to be deleted.

2. That the Learned CIT(A) erred in confirming penalty levied uls 271 CA of the Income Tax Act without considering the fact that the appellant has complied with all the conditions specified in proviso to Sec 206C(6A). That on the facts and in the circumstances of the case, the penalty levied is wrong, bad in law and is prayed to be deleted.

3. That the Ld CIT(A) erred in confirming the penalty levied uls 271 CA of the Income Tax Act even when there was a reasonable cause on the part of the assessee for non collection of tax at source and even when most of the payees have provided Form 27BA as also evident from the order passed uls 206C(6A) I 206C(7) dated 31.03.2017.

4. The Ld CIT(A) erred in confirming the penalty levied uls 271 CA of the Income Tax Act even when the penalty order passed uls 271 CA was barred by limitation.

5. The appellant craves leave to add, to alter, amend, modify, substitute, delete and I or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arises.

2. Though the assessee has raised various grounds of appeal for both the years but the effective grounds relates to levy of penalty u/s 271CA of the Act at Rs.15,88,428/- and Rs. 2,09,800/- for A.Ys. 2011-12 & 2015-16 respectively, confirmed by Ld. CIT(A) which was levied by the Ld. AO for violation of provisions of section 206C of the Act.

3. Brief facts of the case commonly applicable for both years under appeal are that the assessee is an individual running business namely M/s. Jain Spat. Assessee is liable to collect tax at source on the purchase of Iron and Steel scrap. Assessee failed to collect tax and deposited on due date. Subsequently, assessee

has deposited tax collected at source and also paid the interest levied of such late deposit. To this extent there is no dispute at the end of revenue. Assessee has also provided form No. 27BA duly certified by a Chartered Accountant in support of its contention that the parties from whom tax was collected are duly assessed to tax and has reflected the alleged sum liable to TCS in their regular return of income. However, this submission and documentary evidences placed by assessee could not find any favour from both the lower authorities.

4. Aggrieved assessee is in appeal before this Tribunal against the alleged levy of penalty u/s 271CA of the Act confirmed by ld. CIT(A). Ld. counsel for the assessee vehemently argued referring to following written submissions:-

> *7.It is pertinent to reproduce the provisions of proviso of sub-section 6A of section 206C as under:*
>
> > *«Provided that any person responsible for collecting tax [in. accordance with the provisions of sub-section (1) and sub-section (1 C)j, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee-*
> >
> > *(i) has furnished his return of income under section 139;*
> >
> > *(ii) has taken into account such amount for computing Income In such return of income; and*
> >
> > *(iii) has paid the tax due on the income declared by him in*

such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.))

8.From the above, it is clear that the First Proviso is inserted in subsection (6A) of section 206C to ensure that there is no loss to the Revenue, i.e., (i] the buyer has furnished his return of income u/s 139, (ii) the buyer has taken into account such sum on which tax was required to be collected at source uls 206C for computing income in such return of income, (iii) the buyer has paid the tax due on the income

declared by him in such return of income, (iv) the payer, i.e., the person responsible for collecting the tax at source u/s 206C, has furnished a certificate in Form No. 27BA confirming the aforesaid. Further, this proviso is to provide relief to the collector of tax at source from the consequences of non/ short deduction collection of tax at source and to that extent it is a beneficial provision. This view was also held by the Special Bench of Rajkot Tribunal in the case of Bharti Auto Products Vs. CIT (2013) 27 ITR 611.

9.Further, from the perusal of the certificates issued by the Chartered Accountant in Form 27BA makes it clear that the assessee has fully complied with and established requirement of law in substance. In the certificate, it is categorically mentioned that the buyer has filed the return u/s139, included purchases into its account while preparing ROT and paid the due taxes. Also, the Ld. AO in the entire order passed u/s 206C (6A)/206C(7) has not at all denied that the appellant has not complied with the requirement prescribed in proviso to S.206C(6A) whereas on the contrary the AO after considering the Form 27BA Wed by the appellant give the benefit of the proviso to S.206C(6A).

10.It is also submitted that the Chartered Accountant who signed the certificate is all expert upon which even the legislature has reposed confidence. If the expert has certified certain facts in a particular manner then the same is objected only when there is cogent evidence to negate the claimed state of affairs. In the present case, neither the Ld. CIT(A) nor the Addl. CIT (TDS) brought on record any evidence which proves any contrary facts.

11.The ld. CIT also erred in holding that the appellant has failed to make any effort to prove that the dcductee has filed ROI whereas the facts is that the appellant has duly filed the copy of acknowledgement of return of income along with Form 2713A before the AO therefore the contention of Ld. CIT(A) is wrong and uncalled for.

In view of the above, it is clear that the mere filing of Form

> *27BA is sufficient compliance of proviso of sub section 6A of section 206C of the Act. Also, the appellant not only filed the Form 27BA but also filed the copy of acknowledgement of return of income to prove that the buyer has filed the return of income and paid the due taxes therefore there is no loss to the revenue and the assessee should not be considered as assessee in default. Therefore, question of levying penalty does not arise in the present case.*

5. Per contra ld. Departmental Representative (DR) supporting the orders of both lower authorities.

6. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred and relied by the ld. counsel for the assessee, in the instant of two appeals assessee has challenged the levy of penalty u/s 271CA of the Act for the violation of provisions of section 206C of the Act.

7. We find that the assessee has furnished copy of form 27BA along with copy of Income Tax return of the parties in these cases where the assessee failed to collect tax at source at the time provided under the Act. It is not in dispute before us that later on the assessee had paid the demand of tax collected at source and interest levied thereon. The assessee is only aggrieved with the penalty levied u/s 271CA of the Act. Before us reference was

drawn to the proviso to section 206C sub-section (6A) of the Act which reads as follows:

> *«Provided that any person responsible for collecting tax [in. accordance with the provisions of sub-section (1) and sub-section (1 C)j, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee-*
>
> *(i) has furnished his return of income under section 139;*
>
> *(ii) has taken into account such amount for computing Income In such return of income; and*
>
> *(iii) has paid the tax due on the income declared by him in such return of income,*
> *and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.)*

8. With reference to the above proviso in case an assessee files the details in form 27BA certified by Chartered Accountant stating that the buyer or licensee or lessee has furnished the return of income u/s 139 of the Act, after taking into account such amount for computing income in such return of income and has paid the tax due on income declared by him in such return of income and once assessee fulfills this condition it will not be treated as the assessee is in default and thus would be precluded from the levy of penalty u/s 271CA of the Act.

9. Though in the instant case the assessee has deposited TCS and interest thereon subsequently but even in cases where tax is not collected but the assessee furnishes the form 27BA of the Income Tax Rules, then also assessee is not held liable to have violated the provisions of section 206C. Our this view is supported by finding of Coordinate Bench Ahmedabad in the case of *ACIT vs. Bansal Ship Breakers P. Ltd. in ITANo.1945/Ahd/2017* dated 20.03.2019. The relevant extract of the order is reproduced below:

> *3. With the assistance of the ld.representatives, we have gone through the record carefully. The assessee at the relevant time was engaged in the business of ship breaking. A survey under section 133A of the Act was carried out at the business of premises of the assessee- company on 17.9.2013. According to the AO, the assessee was required to collect taxes on the sale of scrap at the rate of 1% from the buyer at the time of sale as per section 206 of the Act. According to him, the assessee failed to collect such taxes, and therefore, he raised a demand under section 206C(6A) r.w.s 206C(7) and 206C(7) of the Income Tax Act. Dissatisfied with the demand, the assessee carried the matter in appeal before the ldCIT(A). It has raised two fold submissions. In the first fold of contention, it submitted that the sales made by the assessee were not considered as scrap material, rather these were identifiable useful products, which have been extracted from the ship. On those sales, the assessee was not required to collect tax. It relied upon the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Priya Blue Industries Ltd., (2016) 65 taxmann.com 206 (Guj).*

In the second fold of contentions, it was submitted that section 206C(1A) mandates that any person responsible for collecting taxes under section 206C(1) was not required to collect such taxes if a buyer who is resident in India and such buyer furnishes to the person responsible for collecting taxes a declaration in writing that such material will be utilized for the purpose of manufacturing process or ITA No.1945/Ahd/2017 producing article or things and it will not be used for trading purposes. Thus, on the strength of this clause, the assessee has submitted before the ld.CIT(A) that it has submitted required details in Form no.27BA/27C. The ld.CIT(A) accepted both fold of contentions and deleted the demand.

4. For adjudication of this issue, we deem it pertinent to take note of section 206C(1A) of the Act, which reads as under:

".....

(1A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes."

5. A perusal of the above would indicate that it mandates any person responsible for collecting taxes under section 206(1) need not to do so if he obtains a declaration from the buyer that he is purchasing the goods for re-use in manufacturing process or producing article or things. It does not say that such declaration has to be obtained at the very same moment when sale is effected. In the present case, the assessee has submitted declaration before the AO in requisite forms. The ld.First

Appellate Authority has appreciated this aspect and the finding recorded by the ld.CIT(A) reads as under:

"5.5 The appellant has also argued that as the buyers of such goods have furnished declaration that the goods shall be used for the purpose of manufacturing / processing / producing articles or things and not for trading and they have given a declaration u/s.206C(IA) of the I. T. Act, ITA No.1945/Ahd/2017 1961 & therefore, the provisions of Sec.206C are not applicable in respect of items sold to them. I have gone through the contents of the paper book filed by the appellant and also the remand report obtained during the course of the appellate proceedings. The appellant has submitted that the buyers of such goods have furnished declaration that the goods shall be used for the purpose of manufacturing / processing / producing articles or things and not for trading and they have given a declaration u/s,206CC(IA) of the I. T. Act, 1961 & therefore, the provisions of Sec.206C are not applicable in respect of items sold to them. If the appellant has received declarations in form no. 27C/27BA, he is clearly under no obligation to collect tax at source and to pay the same to the credit of government. The AO has raised the objection in his order as to whether at the time of collecting the sale receipt from the scrap sales made whether the declaration in Form 27C/27BA were available with the appellant or not.

As mentioned by the AR of the appellant above, this issue is directly covered by the ratio of the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Valibhai Khanbhai Mankad, as reported at (2013) 216 Taxman 18. After considering all details provided by the appellant and the judicial pronouncements on the subject, it is noticed that the Form 27C produced by the appellant may be considered and the assessee may not be treated as 'assessee-in-default' for non collection of TCS from the manufacturer buyers. In the case of Karnataka Forest Development Corpn. Ltd. v. Income-tax Officer, TDS Ward, Davangere IT Appeal Nos. 1144 to 1146 (Bang.) of 2014 [AY 2009-10 to 2011-12]

dated April 17, 2015, Hon'ble ITAT Bangalore Bench 'C' decided on the similar issue as under;

" Section 206C(1A) mandates that any person responsible for collecting tax under section 206C(1) need not do so if he obtains a declaration from the buyer that he is purchasing the goods for use in manufacturing, processing or producing articles or things. It does not say that such declaration has to be obtained at the very same moment when a sale is affected...........

Recently, Hon'ble High Court of Gujarat in tax appeal No. 519 of 2016 Tax Appeal No.526 of 2016 Commissioner of Income Tax (TDS)....AppelIant(s) Versus Siyaram Metal Udyog Pvt Ltd.....Opponent(s) in its order dated 27/06/2016 concluded as under:

ITA No.1945/Ahd/2017 "....................... if the buyer furnishes to the person responsible for the tax a declaration in writing in prescribed form declaring that the goods in question are to b e utilized for the purposes of manufacturing processor producing articles or things or for the purpose of generation of power and not for trading purposes. The declaration to be made in subsection (IA) of section 206C thus would enable the Revenue authorities to, as and when the need so arises make proper verifications. This subsection itself does not provide for any time limit within which such declaration is to be made........... "

After considering all the facts of the case and the judicial pronouncement by the Higher Authorities including jurisdictional High Court of Gujarat, it is concluded that there is no dispute that the delay in filing such forms with the office of the Department [cannot revive the liability of collection of tax at source with retrospective effect and the 27C produced by the appellant may be considered.

6. In his order itself , the ITO TDS-1 himself has pointed out the judgment of special Bench of IT AT in the case of Bharti Auto Products which refers to the amendments in law permitting filing of Form

> *No.27BA/ 27C is to be treated as retrospective in nature. He further has acknowledged the fact that since the details furnished in this forms prove about the due taxes having already been paid by the respective buyers the same will also be covered by the ratio of the judgment of the Hon'ble Supreme Court in the case of Hindustan Cocacola Beverage Ltd. (2007) 293 ITR 226. As the appellant has submitted Form 27C/27BA from the parties in question, the default computed by the AO is to be deleted. In view of above discussion, it is noticed that there is no violation of the provisions of section 206C of the Act in view of either the sale of specified products being that of non-excisable, non-scrap products, or the same being against receipt of declarations in prescribed form number 27C/27BA. The AO is directed to delete the demand raised based on the default due to non availability of Form 27C at the time of assessment. Accordingly, the appeal is allowed."*
>
> *6. On due consideration of the facts and findings, we are of the view that the ld.CIT(A) has appreciated the facts in right perspective and rightly held that the assessee was not required to collect taxes at sources when sales were made as required under section 206C. We do not find ITA No.1945/Ahd/2017 any error in the order of the ld.CIT(A), hence, appeal of the Revenue is devoid of any merit. It is rejected.*

10. Examining the facts of the instant case, in light of the above decision we find that the case of the assessee is on a much better footing as tax collected at source is deposited, interest levied thereon have also been deposited and form 27BA of the IT Rules certified by Chartered Accountant containing all the details as required in the proviso to section 206C(6A) of the Act have been fulfilled. We therefore find no justification in the action taken by

the Ld. AO of levying penalty u/s 271CA of the Act by treating the assessee in default. Accordingly, the penalty levied at Rs. 15,88,428/- for A.Y. 2011-12 & Rs.2,09,800/- for A.Y. 2015-16 are deleted. Effective grounds raised by the assessee on the issue of levy of penalty u/s 271CA of the Act are allowed.

11. In the result, Assessee's appeals in ITANo.194 & 195/Ind/2020 are allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 23.08.2021.

Sd/-	Sd/-
(RAJPAL YADAV)	(MANISH BORAD)
VICE PRESIDENT	ACCOUNTANT MEMBER

दिनांक /Dated : 23.08. 2021
Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore