

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT**

*(Conducted Through Virtual Court)*

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.262/RJT/2019  
Asstt.Year : 2007-08**

Shri Falgun N. Sheth Prop. of Falgun Steel Traders 10-Mavdi Plot Gondal Road Rajkot. PAN : AEXPS 3307 M	Vs	ITO, TDS-2 Rajkot.
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(Applicant)	(Responent)
Assessee by :	Shri Mehul Ranpura, Id.AR
Revenue by :	Shri B.D. Gupta, Ld.DR

सुनवाई की तारीख/Date of Hearing : 31/08/2022

घोषणा की तारीख /Date of Pronouncement: 16 /11/2022

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-2, Rajkot (in short referred to as Id.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 26.9.2019 pertaining to the Asst.Year 2007-08.

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

1. *The grounds of appeal mentioned hereunder are without prejudice to one another.*

2. *The Id. Commissioner of Income Tax (Appeals) - 2, Rajkot [hereinafter referred to as the CIT(A)] erred in law as also on facts in confirming AO's action of determining tax liability of Rs.2,19,556/- by alleging that the appellant is liable for making TCS, which he failed to make. The tax liability confirmed is totally unjustified on facts as also in law and may kindly be deleted.*
3. *The Id. CIT(A) erred in law as also on facts in confirming charging of interest u/s.206C(7) of the Act at Rs.1,58,080/-. The interest levied on tax liability determined u/s.206C(6) is totally unjustified on facts as also in law and may kindly be deleted.”*

3. Brief facts of the case are that the assessee had sold scrap for Rs.2,19,55,691/- without making tax collection at source (TCS). As per the assessing officer (AO), the assessee was required to make TCS @ 1% of the scrap sold as per provisions of section 206C(1) of the Act. The AO accordingly treated the assessee as 'assessee-in-default' for not making TCS and determined liability of the assessee for non-collection of TCS under section 206C(6) of Rs.2,19,556/- and interest liability for late collection under section 206C(7) of the Act at Rs.1,58,080/-. Before the Id.CIT(A), the assessee contended that the scrap sold by the assessee, not being generated during any manufacturing activities of the assessee, did not qualify as scrap for the purpose of TCS under section 206C of the Act. The assessee contended that he was a trader in scrap which was obtained from ship breakers. This contention of the assessee was rejected by the Id.CIT(A) taking note of the decision of the Special Bench of the ITAT, Rajkot Bench in the case of M/s.Bharti Auto Products reported in (2013) 37 taxmann.com 37 (Rajkot Trib)(SB) holding that provisions of section 206C were applicable to sale of scrap whether it was generated from manufacturing process or whether it was purchased. The assessee further contended before the Id.CIT(A) that pursuant to the order of the ITAT, in the case of M/s.Bharati Auto Products (supra), the assessee had obtained declarations from 21 buyers of the scrap stating that the scrap sold to them was purchased for

manufacturing purposes, and hence was exempt from TCS as per section 206C(1A) of the Act, and had furnished the required certificates to the TDS, Range-1, Rajkot; that therefore, since it had had complied with requirement of section 206C(1A) of the Act for the purpose of claiming exemption from TCS, the assessee could not be treated as 'assessee-in-default' for not collecting tax at source on the scrap sold during the year. The ld.CIT(A) noted that the assessee had filed required declaration to the TDS, Range-1 only in January, 2019, while in the case of the assessee, assessment had been finalized in 2012. The ld.CIT(A) held that the said declarations therefore were in the nature of additional evidences and did not merit admission under Rule 46A of the IT Rules. He further noted that they were only in respect of part of the sales. Accordingly, he held that no cognizance could be taken of the said declaration. Rejecting both the contentions of the assessee, the ld.CIT(A) thereafter upheld the order of the AO holding the assessee to be 'assessee-in-default' with respect to TCS liability amounting Rs.2,19,556/- and interest liability amounting to Rs.1,58,080/- as per section 206C(6)/206C(7) of the Act. The relevant finding of the ld.CIT(A) at para 7 of his order is as under:

*"The brief facts of the case are that the assessee has sold scrap of Rs.2.19 crores without making the TCS. As per the Assessing Officer the assessee was required to make TCS at 1% as per provisions of section 206C(1). The Assessing Officer has treated the assessee as assessee in default for not making TCS and has determined liability of the assessee u/s 206C(6) and 206C(7) (TCS liability of Rs.2,19,556/-and interest liability of Rs. 1,58,0807-). The contention of assessee is that the said scrap is not generated during any manufacturing activities of the assessee. It is contended that the assessee is trader in scrap obtained from ship breakers.*

*It is noteworthy that the Honable ITAT, Rajkot (special bench) in the case of M/s Bharti Auto Product (supra) has held that the provisions of section 206C were applicable to sellers of scrap whether it was generated from manufacturing process or whether it was purchased. I thus find that the liability of assessee to make TCS has been upheld by ITAT, Rajkot. Therefore the contention of assessee that the assessee was not liable to make TCS is not tenable.*

*The assessee has also contended that pursuant to order Honable ITAT in case of M/s Bharti Auto Product he obtained declaration u/s 206C(1A) from 21 buyers seeking exemption from TCS involving sales of Rs.1.9 crores and furnished to TDS, Range-1, Rajkot I find that in the case of assessee the impugned assessment has been finalized on 28/03/2012 and the assessee has statedly filed the declaration in January 2019, that too only for part sales.*

*In my considered opinion the said declaration obtained after of assessment are in nature of additional evidences and do merit admission u/r 46A. Besides, admittedly such declarations been filed in respect of only part of the sale. Therefore -cognizance can be taken of the said declarations.*

*In view of the decision of Honable ITAT (special bench) Rajkot. The assessee is liable for making TCS and has failed to make the TCS. The impugned demand u/s 206C(6) and 206C(7) of the tax and interest respecting is justified. No interference is called for in the adtion of Assessing Officer. The grounds of appeals are rejected.”*

4. Before us the contention of the ld.counsel for the assessee was that the order passed by the AO under section 206C(6)/206C(7) of the Act was passed after considerable lapse of time. He pointed out that while the financial year involved in the present case in which the transaction of sale of scrap took place was F.Y 2006-07, the impugned order holding the assessee to be ‘assessee-in-default’ for non-collection of TCS, was passed after lapse of 5 years from the end of the financial year on 28.3.2012. He thereafter pointed out that the ld.CIT(A) thereafter took another seven years to pass the appellate order which was passed on 26.9.2019. The ld.counsel for the assessee contended that the order passed in the present case, in any case, was barred by limitation, having been passed five years after the end of the relevant financial year. His other contention before us was that the assessee having filed requisite declaration for exemption from tax collection at source, the ld.CIT(A) ought to have considered the same, and allowed the appeal of the assessee. He stated that the ld.CIT(A)’s contention that the assessee has delayed the filing of the requisite declaration of buyers had no bearing on the merits of the case, particularly, when it had been pointed out to the

ld.CIT(A) that declaration had earlier not been filed by the assessee since he harboured a belief that scrap sold by it did not qualify for TCS as per section 206C of the Act, and it was only after the decision of the Special Bench in the case of Bharti Auto (supra) ruling otherwise, the assessee sought recourse to the exemption provided by section 206C(1A) of the Act, and started collecting declaration from the buyers which were finally collected during the course of hearing before the ld.CIT(A) and filed the same in 2019 to the TDS, Range-1, Rajkot. He pointed out that all these declarations had been accepted by the Department and in view of the same, the assessee was entitled to exemption from the provision of TCS on the scrap sold to the buyers. He pointed out that while total sale of scarp amounted to Rs.2.19 crores, declarations had been collected by the assessee from 21 buyers including the sale of 1.90 crores which substantially covered most of the sales made by the assessee during the year.

5. The ld.DR on the other hand vehemently supported the order of the ld.CIT(A) stating that there was no limitation prescribed under the Act for passing of order under section 206C(6)/(7) of the Act holding the assessee to be in default. That therefore, there is no merit in the contention of the Ld.Counsel for the assessee that the impugned order passed was barred by limitation. As for the assessee's contentions that requisite declaration from the buyers had been filed by the assessee for claiming exemption from the TCS on sales made to these buyers, the ld.DR contended that it is not denied that these declarations were filed after lapse of considerable period of time ,that scrap sales were made in financial year 2006-07 pertaining to the Asst.Year 2007-08 while the declarations were filed in 2019 i.e. after lapse of at least 12 years. He pointed out that the purpose of timely filing of the declaration was for facilitating

verification of the claim of the buyers in the declaration that the scrap has been used by them for the purpose of manufacturing so as to enable the assessee to claim exemption from the provision relating TCS. In the present case, this declaration having been filed after lapse of 12 years, the entire purpose of filing of declaration was defeated and the Id.CIT(A) had therefore rightfully denied benefit of claiming exemption on account of such declaration filed as per provision of section 206C(1A) of the Act. The Id.DR vehemently supported order of the Id.CIT(A) in this respect.

6. We have heard rival contentions. We have also noted the chronology of events. As has been brought to our notice from the facts on record, the entire process of holding the assessee as 'assessee-in-default' for default in collecting TCS @ 1% on scrap sold during the year amounting to Rs. 2,19,55,691/- and the consequent appellate proceedings, has taken considerable period of time, the initial order holding the assessee as 'assessee-in-default' being passed after lapse of five years from the end of the relevant financial year and the appellate order being passed after a lapse of 12 years thereafter. These facts, we find, are relevant for deciding the issue on hand.

The position of law that on filing of necessary declaration from the buyers of scrap in the prescribed form declaring that scrap purchased by them is to be used for manufacturing purpose, the seller is exempt from the liability to collect TCS, is not disputed. The provision of section 206C(1A) brings out this position very clearly 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.*

7. In the present case, it is not disputed that the assessee did file the requisite declaration as per section 206C(1A) from buyers of scrap amounting to Rs.1,90,18,687/- out of total such sale of Rs.2,19,55,691/-. It is also a fact on record that these declarations were filed only in the year 2019 while the financial year to which the impugned transaction of sale of scrap related, is financial year 2006-07.

8. The plain reading of the provision of law as provided in section 206C(1A) of the Act would bring out there is no time line prescribed for filing of such declaration. Nothing to this effect has been brought to our notice by the ld.DR; nor is it his contention that these declarations have been filed beyond the time prescribed by law. Having said so, we find that the assessee has given a reasonable cause for delay in filing these declaration, pointing out that till the order passed by the Special Bench of the ITAT in case of Bharti Auto in 2013, the view of the ITAT in various decisions was that it is only in respect of the scrap generated by the assessee during their manufacturing activities, which are sold to other parties, on which TCS is required to be collected; that not all scrap would qualify for TCS but only scrap generated by the assessee in the manufacturing activities would qualify so. Therefore, the assessee harboured a *bona fide* belief that he was not required to collect TCS on the scrap sold by it, since it was not generated during the course of any manufacturing activities carried out by it but was sold as a trader of scrap. The assessee has contented that it was only subsequent to the decision of the Special Bench that the position of law in this regard became clear that all sorts of scrap qualified for TCS, and

therefore, on becoming aware of the decision, the assessee resorted to the alternative claim for claiming exemption from TCS by collecting declaration from the buyers that the scrap purchased by them was for manufacturing purposes, as per section 206C(1A) of the Act. No infirmity has been pointed out by the Revenue in respect of the explanation of the assessee.

Clearly, till the passing of the order holding the assessee to be an assessee in default in the present case u/s 206C(6)/(7), in the year 2012, the assessee's belief that it was entitled to exemption from TCS on scrap sold, was a valid belief in view of the various decisions of the ITAT on the definition of 'scrap' including only scrap as generated by assesses during manufacturing process and not that dealt with as trader of scrap. During the course of appellate proceedings before the Id.CIT(A), the assessee became aware of the decision of Special Bench of the ITAT holding otherwise. The order of the Id.CIT(A) reveals that the matter itself came up for hearing before him in the year 2019. By then the assessee had collected various declarations from the buyers u/s 206C(1A) for the purposes of claiming exemption from TCS, and filed it to the concerned TDS officers which was acknowledged as receipt by them also.

9. In view of the above facts that no limitation is prescribed in the Act for filing of declaration as required under section 206C(1A) of the Act, and the assessee having filed delayed declaration under a bona fide belief, we are not in agreement with the Id.CIT(A) that these declarations could not have been entertained by the Id.CIT(A). As noted above even the Revenue has considerably delayed action on its end. The assessee alone therefore cannot be held accountable and made to suffer for the delay at its end in filing the requisite declarations for claiming exemption from TCS. In our view, these

declarations, which have been acknowledged as received by the Department, ought to have been considered by the Id.CIT(A) for adjudicating the issue. The assessee having filed declarations relating to substantial portion of the sale of scrap in the present case, and noting the fact that the issue now has become very old with almost 15 years have been elapsed since financial year to which the issue relates , we are of the view that the assessee be given benefit of declaration filed by it, and be not held as 'assessee-in-default' for the tax not collected at source. Accordingly, interest charged on the same, amounting to Rs.1,58,080/- is also directed to be deleted.

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

**Order pronounced in the Court on 16<sup>th</sup> November, 2022 at Ahmedabad.**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 16/11/2022