

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**ITA No. 361 & 362/Jodh/2019  
(ASSESSMENT YEAR- 2018-19 & 2019-20 )**

M/s. Bhilwara Agro Auto Services Pvt. Ltd., Near Jodhras Chauraha Mahindra Showroom, Ajmer Road, Bhilwara <b>(Appellant)</b>	Vs	ITO TDS Bhilwara  <b>(Respondent)</b>
<b>PAN NO. AABCB 0042M</b>		

<b>Assessee By</b>	Shri Gautam Chand Baid, CA
<b>Revenue By</b>	Ms. Nidhi Nair, JCIT-DR
<b>Date of hearing</b>	18/01/2023
<b>Date of Pronouncement</b>	18/01/2023

**ORDER**

**PER: B. R. BASKARAN, AM**

The assessee has filed this appeal challenging the orders passed by Ld CIT(A), Ajmer and they relate to the assessment years 2018-19 and 2019-20. The assessee is aggrieved by the decision of ld CIT(A) in confirming the demand raised in these two years upon the assessee u/s 206C(6)/206C(7) of the Act for non-collection of tax at source.

2. The facts relating to the issue are discussed in brief. The assessee is an authorized dealer of vehicles of M/s Mahindra and Mahindra Ltd. The ITO(TDS) noticed that the assessee has sold vehicles having value exceeding Rs.10.00 lakhs to persons without collecting tax at source @ 1% of the value of sales as per the requirement of sec. 206C(1F) of the Act. The said section reads as under:-

*“Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to one per cent of the sale consideration as income tax.”*

Hence the ITO initiated proceedings u/s 206C of the Act and raised a demand of Rs.1,77,738/- and Rs.82,129/- in AY 2018-19 and 2019-20 respectively. The assessee could not succeed in the appeals filed before Ld CIT(A) and hence the assessee has filed this appeal before us.

3. The Ld A.R submitted that the assessee has sold these vehicles to other dealers only. By placing reliance on a Circular no.22/26 dated 8<sup>th</sup> June, 2016 issued by CBDT, wherein the CBDT had clarified that the provisions of 206C(1F) shall not apply to sale of vehicles by a manufacturer to its dealer, the Ld A.R contended that the provisions of sec.206C(1F) shall apply only when the vehicle is sold to a retail customer and not applicable when the vehicle is sold by a dealer to another dealer.

4. The Ld D.R, however, submitted that the concession given by the CBDT extends only to the sale by a manufacturer to its dealer. She submitted that the scope of circular cannot be extended.

5. We agree with the submissions made by Ld D.R. Accordingly, the bench expressed the view that the above said contentions of the ld A.R cannot be accepted. Then the Ld A.R put up an alternative contention stating that the assessee should be given benefit of the provisos to sec. 206C(6A) of the Act.

The said section reads as under:-

“(6A) If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

**Provided** that any person responsible for collecting tax <sup>92</sup>*[in accordance with the provisions of sub-section (1) and sub-section (1C)]*, 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:

**Provided further** that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.”

The Ld A.R submitted that the assessee shall comply with the provisos to sec. 206(6A) if an opportunity is given.

6. We heard Ld D.R on this alternative contention and perused the record. In our view, in the interest of natural justice, the assessee may be provided with one more opportunity to present its case before the AO. Accordingly, we set aside the orders passed by Ld CIT(A) in both the years under consideration and restore all the issues to the file of the AO. The assessee is also directed to furnish before the AO all the documents in order to avail the benefit given under the provisos to sec. 206C(6A) of the Act.

7. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open Court on 18/01/2023

**Sd/-**

(Dr. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

**Sd/-**

(B. R. BASKARAN)  
ACCOUNTANT MEMBER

Dated : 18/01/2023

*\*Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench