

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 243/Rjt/2022  
Assessment Year 2012-13**

Gopallal Ramprasad Kabra, Jamnagar PAN: AGYPS8467P (Appellant)	Vs	The ITO, TDS-3, Jamnagar (Respondent)
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**Assessee by: Shri Mehul Ranpura, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 06-02-2023  
Date of pronouncement : 15-02-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2012-13, arises from order of National Faceless Appeal Centre (NFAC), Delhi dated 16-08-2022, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:

Sr. No.	Grounds of Appeal	Tax effect relating to each Ground of appeal (see note below)
1	<i>The grounds of appeal mentioned hereunder are without prejudice to one another.</i>	
2	<i>The ld. 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. 16,32,300/- by alleging that the appellant is liable for making TCS, which he failed to make either TCS or to file Form no. 27C to concerned CIT within prescribed time limit. The tax liability confirmed is totally unjustified on facts as also in law and may kindly be deleted.</i>	16,32,300/-
3	<i>The ld. CIT(A) erred in law as also on facts in confirming charging of interest u/s. 206C(7) of the Act at Rs.12,40,548/-. 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.</i>	12,40,548/-
	<i>Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.</i>	
	<i>Total tax effect</i>	28,72,848/-

3. The brief facts related to this case are that the assessee is engaged in the business of trading of non-ferrous metal scrap. During the course of proceedings before ITO-TDS, he held that the assessee was liable to collect tax at source (TCS) to the tune of ₹ 16,32,29,90/-, but has not collected TCS on such sale in terms of section 206C of the Act. Accordingly, the ITO held

that the assessee is in “assessee default” and determined the amount of TCS liability at ₹ 16,32, 300/- and interest thereon at ₹ 12,40,548/-.

4. Before Ld. CIT(Appeals), the assessee contended that assessee was not liable to collect TCS for the reason that the items sold by the assessee was not “scrap” within the definition of clause (b) of Explanation to section 206C section of the Act for the reason firstly, the items sold by the assessee was not an outcome of any manufacturing activity and secondly, the items sold were very much usable for the buyers, and were used for subsequent manufacturing. Accordingly, the assessee was not liable to collect tax at source. Another issue before Ld. CIT(Appeals) was that assessee argued that AO erred in imposing the liability of tax collection at source on the assessee despite the fact that he has furnished Form 27C before CIT(TDS)-Jamnagar on 28-08-2015 i.e. before the date of passing order by ITO-TDS indicating that the scrap sale was to specified buyers and it was done complying with the provisions of section 206C(1A) of the Act. Therefore, since the ITO-TDS did not consider Form 27C, which was furnished before him during the course of TCS proceedings and before passing of order under section 206C(6) and 206C(7) of the Act, the ITO(TDS) has erred in facts and in law in imposing liability to collect tax at source and imposing consequential interest.

4.1 However, Ld. CIT(Appeals) rejected the arguments of the assessee on the ground firstly that in view of the decision of ITAT Rajkot in the case of Bharti Auto Products, section 206C fastens liability on the seller of scrap for collection of tax at source, however, there is no requirement that such a

seller should himself generate scrap from manufacture of mechanical workings of material undertaken by him. Accordingly, Ld. CIT(Appeals) held that assessee was a dealer engaged in sale of “scrap” and was liable to collect TCS on such sale. On the other contention of the assessee that the assessee had furnished Form 27C with CIT(TDS)- Jamnagar and the same was also furnished to the ITO-TDS during the course of TCS proceedings, but he failed to consider the same, Ld. CIT(Appeals) held that form 27C has to be filed with the designated authority-CIT(TDS) within 7 days of the end of the month in which the sale of scrap is sold by the assessee. Since the assessee, had not submitted form 27C within the time prescribed and was submitted before the designated authority after an undue delay, the same was not liable to be considered. Accordingly, Ld. CIT(Appeals) dismissed the appeal of the assessee with the above observations.

5. Before us, the counsel for the assessee submitted that the assessee had submitted form 27C before CIT (TDS)-Jamnagar before the passing of order by ITO-TDS and the same was not considered by the ITO-TDS while passing the order imposing liability to collect tax at source on the assessee under section 206C(6) and 206C (7) of the Act. Further, the counsel for the assessee submitted that the Ld. CIT(Appeals) did not take into consideration the Gujarat High Court decision in the case of *Siyaram metals* 71 taxmann.com 204 (Gujarat) and also the decision rendered by the jurisdictional Rajkot ITAT in the case of *G.K. Traders vs ITO* 143 taxmann.com 425 (Rajkot ITAT) which have held that where assessee-company sold scrap to various companies and failed to submit a statement in Form 27C comprising of buyer's declaration to prescribed authority in time,

since there was no limit provided in section 206C to make a declaration in Form 27C collected from buyers, delay in filing same would not be ground to deny benefit to assessee-company. In response, the Ld. DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

6. We have heard the rival contentions and perused the material on record. We observe that the assessee had duly obtained Form 27C, although belatedly from the buyers to whom goods were and the same was submitted before CIT (TDS)-Jamnagar. The aforesaid Form 27C was also sought to be submitted by the assessee before ITO-TDS during the course of TCS proceedings, however, the same was not considered by ITO-TDS, who proceeded to levy tax and interest in terms of section 206C(6) and 206C (7) of the Act. We observe that the jurisdiction Rajkot ITAT in the case of **GK traders vs ITO 143 taxmann.com 425 (Rajkot ITAT)** has held that where assessee-company sold scrap to various companies and failed to submit a statement in Form 27C comprising of buyer's declaration to prescribed authority in time, since there was no limit provided in section 206C to make a declaration in Form 27C collected from buyers, delay in filing same would not be ground to deny benefit to assessee-company. Further, the Gujarat High Court in the case of **CIT (TDS) vs Siyaram Metal Udyog (P.) Ltd[2016] 71 taxmann.com 204 (Gujarat)** has held that no time limit is provided in section 206C(1A) to make a declaration in Form 27C collected from buyers; mere minor delay in furnishing Form 27C would not make assessee liable for non-collection of TCS. In view of the above, in our considered view, since the assessee had furnished Form 27C before CIT

(TDS)-Jamnagar, though belatedly and had also sought to place the same on record during the course of TCS proceedings before the ITO (TDS), the same should have been considered by him at the time of passing of order. Accordingly, in the interests of justice, the matter is being restored to the file of ITO (TDS) take into consideration Form 27C furnished by the assessee and pass order in accordance with law.

7. In the result, the appeal of the assessee is being restored to the file of ITO (TDS) with the above directions. Accordingly, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15-02-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 15/02/2023**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot