

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos: 43 & 44/Chny/2023
निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16

M/s. Sri Jayabharath Timber
Depot,
Tenkasi Road, Piranoor Border,
Shencottah,
Tirunelveli – 627 809.

[PAN: ABIFS-1499-L]

(अपीलार्थी/Appellant)

Income Tax Officer,
v. TDS Ward,
Tirunelveli.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. N.V. Lakshmi, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 20.02.2023

घोषणा की तारीख/Date of Pronouncement

: 24.02.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 16.11.2022 and pertains to assessment years 2014-15 & 2015-16.

2. The assessee has more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, grounds of appeal filed for assessment year 2014-15 are reproduced as under:

"Ground 1

The order of the Ld. Commissioner of Income Tax (Appeals) is against the facts and circumstances of the case, and also against the legal provisions and also against the principles of natural justice.

Ground 2

The Ld. Commissioner of Income Tax(Appeals) erred in dismissing the appeal and upholding the order of the assessing officer that, the appellant is liable for tax and interest Under section 206C read with 201 and 201(1A) of the Income Tax Act.

Ground 3

The Assessing officer erred in holding that the assessee has failed to collect Tax under section 206C and the Ld. Commissioner of Income Tax (A) erred in confirming the said order. The Ld. CIT(A) failed to appreciate that in view of the sale of timber made by appellant for manufacturing and article of things and not for trading purposes, the appellant was not liable to collect Tax at source.

Ground 4

The Ld. Commissioner of Income Tax (Appeals) erred in considering form 27C filed by the appellant is substantiate its claim that the timber sold by it where only for the purpose of manufacturing or article.

Ground 5

The Ld. CIT erred in holding that, that form 27C are not genuine and the sales reflected in the documents are not reliable at all.

Ground 6

The Ld. Commissioner of Income Tax (Appeals) erred in not admitting the evidence in the form of form 27C on the purported ground that, the said form 27Cs are not genuine.

Ground 7

The Ld. CIT (Appeal) ought to have appreciated that, the sales of appellant are duly reflected in his accounts and that the purchasers have also duly accounted for the same. The CIT (A) erred in rejecting the evidence as not genuine without any examination of the customers of the appellant.

Ground 8

The Ld. CIT (A) failed to appreciate that there is no time limit for obtaining the form 27C from the customer but prescribed time limit only for submission of the same by the assessee to Department. Further, even if there is any delay in filing by the assessee, the same does not lead to liability under section 206C.

Ground 9

The Ld. Commissioner of Income Tax (Appeal) failed to appreciate that, the appellant is not an assessee in default particularly when it has received the form 27C from the purchasers.

The appellant craves the leave of the Hon'ble Tribunal to aduse such additional grounds as may be required in support of its submission that it is not liable for collecting tax at source."

3. The brief facts of the case are that, the appellant Shri. Jayabharath Timber Depot, engaged in the business of import and sale of timber. The appellant business premises was inspected by the Department on 16.06.2015 and at the time of inspection, it was noticed that for the assessment years 2014-15 & 2015-16, the appellant had not collected and deposited TCS as required u/s. 206C(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") from the buyer to whom

timber was sold. During the course of assessment proceedings, the AO noticed that the assessee neither collected TCS as required u/s. 206C of the Act, nor obtained Form 27-C from the parties as required u/s. 206C(1A) of the Act. Therefore, computed short collection of TCS and relevant interest u/s. 206C(7) of the Act and determined tax payable at Rs. 93,748/- for assessment year 2014-15 and Rs. 2,69,687/- for assessment year 2015-16.

4. The assessee carried the matter in appeal before the first appellant authority, but could not succeed. The Ld. CIT(A), for the reasons stated in their appellant order dated 16.11.2022, rejected arguments of the assessee and sustained additions made by the AO towards short computation of TCS and relevant interest. The assessee carried the matter in further appeal before the tribunal, and the tribunal vide their order dated 24.07.2019, remitted the issue back to the file of the AO for verification and pass order in accordance with various claims made by the assessee including Form 27-C filed during the course of appellant proceedings. During the remand proceedings, the AO observed that the assessee neither complied with provisions of section 206C(1) of the Act, nor

206C(1A) of the Act. Therefore, opined that Form 27C filed subsequent to date of assessment cannot be considered and thus, levied short collection of TCS and interest thereon, as per section 206C(1) of the Act. The relevant findings of the AO are as under:

On final hearing posted on 04.12.2015, the Director Shri Praveen Patel along with Representative Shri N. Appadurai appeared furnished the details of sales and Form 27C. They stated that no Form 27C obtained at the time of sale and these were obtained from the purchaser only after sales, which clearly violate the Sec.206C of Income tax Act, 1961. Hence the assessing officer has passed the order by raising the default amount of Rs.38428/-along with interest u/s 201(1)/201(1A) of Rs.13066/-.

In this regard, the assessee company files appeal against the order passed by this office before the Commissioner of Income Tax (Appeals) Madurai and the same was dismissed. Subsequently the assessee company preferred appeal before Income Tax Appellate Tribunal, Chennai and the same has been remitted back to the assessing officer for redo fresh assessment.

Consequently, the case has been reposted for hearing on various dates. In response the authorized representative Shri. P .Selvaraj,CA appeared and furnished the details in connection with the submission of Form No.27C for non-collection of Tax.

In view of provisions of section 206C says that Sec.206C (1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of nature specified in column 2 of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as Income tax:

SI.NO	Nature of goods	Percentage
(i)	Alcoholic Liquor for human consumption	One percent
(ii)	Tendu leaves	Five per cent
(iii)	Timber obtained under a forest lease	Two and one-half per cent
(iv)	Timber obtained by any a forest lease	Two and one-half per cent
(v]	Any other forest produce tendu leaves	Two and one-half per cent
(vi]	Scrap	One percent

(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(Form 27C) and verified in the prescribed manner to the effect that the goods referred to in Column (2) of the aforesaid Table are to be utilized for the purposes of manufacturing, processing or producing articles or things and not for trading purposes.

According to the purview of section 206C(1), the deductor has evidently failed to collect tax from the purchaser at the time of sale of timber and also in purview of section 206C(1A) the assessee did not obtain any Form 27C from the purchaser at the time of sale. If the declaration in Form No.27C obtained at the time of sale, obsoletely the assessee was not liable to collect tax at source according to the sub section 1A of the section 206C. But Form No.27C obtained from the purchaser after the sale is completed. Hence the assessee has clearly failed to comply with the section 206(1) of I.T Act, 1961. After verification of books of accounts and sales details, it is found that the assessee has to be treated as defaulter for an amount of Rs.49179/- being 2.5% of sale value of Rs.1967162/-.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has filed detailed written submissions on the

issue, which has been reproduced in para 3 of page 6 to 11 of Ld. CIT(A) order. The sum and substances of arguments of the assessee before the CIT(A) are that, there is no time limit prescribed for filing of Form 27-C and even if said Form has been filed during the course of assessment proceedings, the AO is required to admit and decide the issue. The Ld. CIT(A), after considering relevant submissions of the assessee and also taken note of various facts rejected arguments of the assessee and sustained additions made by the AO towards computation of TCS and relevant interest u/s. 206C of the Act. The Ld. CIT(A), had also rejected alternate claim made by the assessee in light of Form no. 27BA, on the ground that said Form needs to be filed electronically before the end of relevant financial year. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee, submitted that there is no time limit prescribed for filing Form 27C and in case the assessee had made available said Form to the Assessing Officer before completion of assessment, the AO is required to consider and decide the issue. In this case, the assessee has filed Form no. 27C obtained from the buyer and proved that

there is no requirement of recovery of TCS on sale of various products. She, further submitted that the assessee had also filed Form no. 27BA, in terms of section 206C(1B) of the Act and Rule 37J(1) of Income-tax Rules, 1962, from an accountant to prove that said buyer have filed a return of income and said Form has been filed in paper form. However the CIT(A), by considering CBDT notification no. 12/2016 dated 08.12.2016, rejected Form 27BA filed by the assessee on the ground that said Form has not been filed in a prescribed manner. Therefore, she submitted that the Id. CIT(A) erred in sustaining additions made by the AO towards short collection of TCS and interest thereon. In this regard, she relied upon the decision of Hon'ble High Court of Madras in the case of CIT vs Adisankara Spinning Mills (P) Ltd [2014] 362 ITR 233 (Mad). She had also relied upon the decision of Hon'ble High Court of Gujarat in the case of CIT vs Siyaram Metal Udyog (P) Ltd [2016] 289 CTR 649 (Gujarat).

7. The Ld. DR, on the other hand referring to the provisions of section 206C submitted that, every person, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such

amount from the said buyer, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, TCS as per rate specified in the said Act. He further submitted that, as per provisions of section 206C(1B), the person responsible for collecting tax under this section shall deliver or cause to be delivered to the concerned authorities, one copy of declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him. From the above provisions, it is very clear that the person being a seller either shall collect TCS as per the prescribed rate or file Form 27Cas prescribed in the Act. In this case, the assessee neither collects TCS, nor obtained prescribed Form. Therefore, the AO and Id. CIT(A) has rightly rejected arguments of the assessee and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee neither collected TCS from the buyer on specified goods at the time of sale or receipt of money from said buyer, nor obtained declaration in specified form as per section

206C(1A) of the Act. The assessee claims to have filed Form 27C as required u/s. 206C(1A) of the Act, at the time of assessment proceedings and argued that there is no time limit for filing said form and even in a case where said forms are filed before completion of assessment, the AO is required to consider the issue. We find that, as per provisions of section 206C(1) of the Act, every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer, collect from the buyer TCS as per prescribed rate and sell the goods specified u/s. 206C(1) of the Act. From the above, it is very clear that it is the duty of the seller to recover TCS at the time of sale or receipt of money or obtain declaration in Form 27C from the buyer of goods. Further, as per sub-section (1B) of section 206C, the person responsible for collecting tax under this section shall deliver or cause to be delivered to the concerned authorities, one copy of declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him. From the above, it is very clear that the person responsible for selling specified goods should collect TCS as prescribed under the Act or obtain

declaration in Form 27C and also submit said Form to the Principal Chief Commissioner or Chief Commissioner of Income-tax on or before the 7th day of the month next following the month in which the declaration is so furnished to him. In other words, even if declaration in Form 27C is not collected on the date of sale or receipt of money, but said Form should be obtained within the reasonable time and filed before the concerned authorities on or before 7th day of the month in which said Form is collected. Therefore, we are of the considered view that, the claim of the Id. Counsel for the assessee that there is no time limit prescribed for obtaining declaration Form 27C is not correct, and it cannot be obtained and furnished by the whims and fancy of the assessee. As regards various case laws cited by the assessee, including decision of Hon'ble High Court of Madras in the case of CIT vs Adisankara Spinning Mills (P) Ltd (Supra), we find that in all those cases, the assessee have collected declaration in Form 27C within the reasonable time, although the same was not collected at the time of sale and under those facts, the Courts came to the conclusion that filing of declaration Form no. 27C can be considered as technical breach, which can be considered. In the present case, the assessee could not even

obtain declaration in Form 27C within the reasonable time and claimed to have obtained said form at the time of assessment proceedings. Therefore, we are of the considered view, that there is no error in the reasons given by the AO and the CIT(A) to reject the claim of the assessee and made additions towards short collection of TCS and interest thereon.

9. Having said so, let us come back to the alternate plea of the assessee. The assessee has taken an alternate plea in the second round of proceedings before the CIT(A) and argued that the assessee is able to collect declaration in Form no. 27BA in terms of provisions of section 206C(6A) and rule 37J of I.T. Rules, 1962, where the Accountant has certified that the purchasers have filed the return of income. We find that first of all, the appellant has taken an alternate plea in second round of litigation in light of Form no 27BA from the Accountant, in terms of section 206C(1A) of the Act and rule 37J of IT Rules, 1962 dated 24.04.2021. In our considered view, as per provisions of section 206C(1A), and proviso provided therein, if the buyer has furnished his return of income u/s. 139(1) of the Act, and has taken into account such amount for computing income in such return of income

and has paid the tax due on the income declared by him in such return of income and also furnishes a certificate to this effect from an accountant in such form as may be prescribed, then the assessee shall not be treated as an assessee in default in respect of such tax. No doubt, if the buyer furnished a certificate from the accountant in terms of section 206C(6A) of the Act r.w.r. 37J(1) of the IT Rules, 1962, then the assessee shall not be treated as an assessee in default, but fact remains that said exercise should be done by the assessee within the reasonable time. In this case, the assessee claims to have obtained Form no 27BA on 24.04.2021, after seven years from the end of relevant assessment years in which default u/s. 206C(1) of the Act has been noticed. In our considered view, law can provide immunity to the assessee, in a case where it has acted in bonafied and within the reasonable time. Therefore, we are of the considered view that, there is no merit in alternate plea made by the Id. Counsel for the assessee, in light of Form 27BA obtained after a gap of seven years and thus, we reject alternate claim of the assessee.

10. In the result, appeal filed by the assessee for assessment year 2014-15 is dismissed.

ITA No: 44/Chny/2023 AY 2015-16:

11. The facts and issues involved in this appeal are identical to the facts and issues which we have considered in ITA No. 43/Chny/2023 for assessment year 2014-15. The reasons given by us in preceding paragraph no. 8 & 9 in ITA No. 43/Chny/2023 for assessment year 2014-15 shall *mutandis mutatis* apply to this appeal as well. Therefore, for similar reasons, we dismiss the appeal filed by the assessee.

12. In the result, appeals filed by the assessee for assessment years 2014-15 & 2015-16 are dismissed.

Order pronounced in the court on 24th February, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 24th February, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |