

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

BEFORE SHRI SANJAY ARORA, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No. 889/Coch/2022
(निर्धारण वर्ष / Assessment Year: 2010-11)

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आयकर अपील सं/ I.T.A. No. 890/Coch/2022
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं/ I.T.A. No. 891/Coch/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)

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आयकर अपील सं/ I.T.A. No. 927/Coch/2022
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं/ I.T.A. No. 930/Coch/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. St. Alphonsa Timbers & Traders (Pvt.) Ltd. Kundannoor, Maradu (PO), Ernakulam-682304.	बनाम/ Vs.	ITO (TDS) Kochi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMCS9963M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri S. Rajeev, (Adv)	
Revenue by:	Smt J. M Jamuna Devi, (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 15/05/2023

घोषणा की तारीख /Date of Pronouncement: 19/05/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeal preferred by the assessee company against the order of the Ld. CIT(A)/NFAC of ITA. No. 889/Coch/2022 to ITA. No. 891/Coch/2022 dated 22.08.2022 for AY. 2010-11, AY. 2011-12 & AY. 2014-15 respectively. And ITA. No.927/Coch/2022 & 930/Coch/2022 dated 05.09.2022 for AY. 2011-12 and AY. 2014-15.



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First of all, we will deal with ITA. No. 889 to 891/Coch/2022 since the issues are common, we will take up appeal for AY. 2010-11 as the lead case and the result of which will be followed for other two appeals ie. ITA No. 890/Coch/2022 for AY. 2011-12 and ITA. No.891/Coch/2022 for AY. 2014-15.

2. Brief facts of the case as noted by the Ld. CIT(A) is that the assessee is a private limited company engaged in the business of wholesale import and sale of timbers. The AO on spot verification of the business premises of the company, noted that the assessee had failed to collect tax under section 206C of the Income Tax Act, 1961 (hereinafter “the Act”), while selling timber. The AO passed an order u/s 206C(1)/206C(7) of the Act on 25.11.2014, raising a total demand of Rs.1,97,702/- [Rs.1,23,808/- on account of non-collection of TCS under section 206C of the Act while selling timber being 1% of total sales of Rs.1,23,80,897/- during F.Y. 2009-10 & Rs.73,894/- as Interest u/s 206C(7) of the Act thereon]. Aggrieved, by the action of AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of the AO. So, the assessee has preferred these appeals before us.

3. The main grievance of the assessee against the action of Ld. CIT(A) is non-consideration/omission on the part of Ld. CIT(A) not to consider Form no. 27C (Declaration form from purchasers filed as per section 206C(1A) of the Act) despite the assessee pointing out the decision of the Tribunal in the case of M/s. Hill Wood Timbers Vs. ITO (TDS), Kozhikode in ITA No. 118 to 120/Coch/2017 dated



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11.09.2017 and ITAT Bengaluru Bench in the case of Lekshmi Saw Mills Vs. ITO, Bengaluru in ITA. No. 685 to 690/Beng/2013 dated 21.05.2014. According to Ld. AR, the Ld. CIT(A) erred in not admitting and considering the additional evidence i.e. declaration Form No. 27C [*refer Rule 37C of the Income Tax Rules, 1962 (hereinafter "the Rules")*]. Therefore, he pleads that since the assessee has filed the declaration Form, the same has to be examined by the authorities to resolve the issue.

4. Per contra, the Ld. DR supporting the action of the Ld. CIT(A) does not want us to interfere with the order of the Ld. CIT(A).

5. We have heard both the parties and perused the records. We note that the assessee claims to be an importer of timber from overseas and was found to be not collecting (TCS) while selling the timber in retail. As per section 206C of the Act, the assessee being the seller of certain items of goods [*viz Alcoholic Liquor, forest produce, scrap etc.*] specified in the Table given u/s 206C of the Act, ought to have collected the prescribed percentage of Tax from the buyers; and since timber also figures as an item in the Table [*viz forest timbers obtained in forest lease as well as obtained by any mode*], and AO on spot verification was able to find out that assessee was not collecting the tax from buyers of timber as contemplated u/s 206C(1) of the Act, has passed the order u/s 206C(1)/206C(7) of the Act. However, according to assessee, even though it was true that it was not collecting tax from the buyers of timber, but it has filed the declaration Form 27C instead of collecting tax (TCS) as envisaged under sub-section (1A) of



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section 206C of the Act. So the controversy is that even though assessee has filed Form 27C from the buyers as provided u/s 206C(1A) & Rule 37C, the Ld. CIT(A) has not considered the same while adjudicating the validity of the action of AO. So the first question is whether filing of declaration in Form 27C from buyers will relieve the assessee from the obligation to collect TCS; and if so, whether there is any time limit prescribed under the statute to deliver the same to the authorities. It is noted that sub-section (1) of section 206C, casts an obligation on the part of seller of goods/items [specified in the Tables given in that section 206C of the Act] to collect from the buyer percentage of tax as specified in the Table while making the sale of those items. But the seller need not collect the Tax (TCS) if he fulfills the conditions given in sub-section (1A) of section 206C of the Act. Sub-section (1A) of section 206C of the Act is a notwithstanding provision to that of sub-section (1) of section 206C of the Act, which exempts the buyers from collecting TCS, if he furnishes from buyer a declaration in writing in the prescribed form (i.e. Form 27C of the Act as per Rule 37C) stating that the goods are being utilized for the purpose of manufacturing, processing or producing article or things and not for trading purposes. After collecting the Form 27C (Declaration form) from the buyers, the seller has to deliver it to the Ld. PCIT or Commissioner specified in section 206C(1B) of the Act “*on or before the 7th day of the month next following the month in which the declaration is furnished to him*”. In this context, it would be



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gainful to reproduce the relevant provision i.e. to section 206C of the Act which reads as under: -

“Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

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 the 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:

Sr. No.	Name of goods	Percentage
1	2	3
(i)	Alcoholic Liquor for human consumption	One per cent
(ii)	Tendu Leaves	Five per cent
(iii)	Timber obtained under a forest lease	Two and one-half per cent
(iv)	Timber obtained by any mode other than under a forest lease	Two and one-half per cent
(v)	Any other forest produce not being timber or tendu leaves	Two and one-half per cent
(vi)	Scrap	One per cent
(vii)	Minerals, being coal or lignite or iron ore	One per cent

Provided that every person, being a seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or 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 the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the



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percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.

(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.

(1B) The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the 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.**”

6. In the light of the aforesaid provision of law, the assessee/seller of timber having not collected Tax (TCS) in this case claims to have produced Form No. 27C declaration as per Rule 37C of the Rules, albeit before the Ld. CIT(A); and contends that since it has produced the Form 27, the assessee is not liable for deducting TCS as per section 206C(1) of the Act and resultantly cannot be treated as an assessee in default as per section 206C(6A) of the Act. We find that as per section 206C of the Act a seller of goods (specified in the Table of that section) has to collect tax (as specified in the Table in that section)



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while making the sale. The seller need not collect the tax, if the buyer is able to furnish Form 27 r.w. Rule 37C to the seller (i.e. assessee in this case) and the seller need to submit it before the Ld. PCIT/Commissioner as specified therein as per sub-section (1B) of section 206C of the Act. Before us, the assessee claims to have filed Form 27 as prescribed under sub-section (1A) of section 206C of the Act, which exempts him from collecting the tax at source and his grievance is that the Ld. CIT(A) has not considered it. We do not countenance this action of Ld. CIT(A). It is true that assessee did not collect tax at source (TCS) while effecting sales of timber. But he has provided the Form 27 given by the buyers which is as per sub-section (1A) of section 206C of the Act. Therefore, it need to be examined as per law by Ld CIT(A). The only aspect which needs to be seen is whether there is any period of limitation/time given in the statute for filing of Form 27 as the law stood at the relevant period in these appeals. We note that sub-section (1B) of section 206C of the Act, is not properly worded/drafted and in this regard we note that the time limit mentioned in section 206C(1B) of the Act is “*on or before the 7th day of the month next following the month in which the declaration is furnished to him*”. Therefore, this Tribunal in the case of M/s. Hill Wood Timbers (supra) held as under: -

“As regards the time limit mentioned for furnishing Form No. 27C declaration [Section 206C(1B) of the Act], we are of the view that in order to get the benefit u/s 206C(1A) of the Act, filing of Form No. 27C declaration as mentioned under Rule 37C of the Income Tax Rules is mandatory, however, the time for furnishing the



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declaration before the CIT or Principal CIT is only directory. In taking the above stand, we are fortified by the view taken by the Bangalore Bench of the ITAT in the case of Lakshmi Saw Mills Vs. ITO in ITA. Nos. 685 to 690/Bang/2013 (order dated 21/03/2014). Moreover, the wording in section 206C(1B) is furnishing for Form No.27C declaration on or before the seventh day of the next following month in which the declaration is furnished to the assessee. In the instant case, as stated in the preceding paragraphs, the assessee had filed W.P. before the Hon'ble High Court that it was not liable for TCS under the provisions of section 206C of the Income Tax Act and therefore, the matter was sub-judice. In the light of the above factual background, Form No. 27C declarations, needs first to be examined by the AO and he shall forward the same to Principal CIT or CIT as the case may be. The AO to examine the declaration which has been verified and countersigned by the Chartered Accountant stating that the buyers of timber from the assessee had duly paid the taxes on the same. The AO after examining Form 27C declarations and declarations countersigned by the Chartered Accountant, shall take a decision in accordance with law after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly. Therefore appeals of the assessee are allowed for statistical purposes.”

7. Therefore, in the light of the aforesaid discussion and following the decision of the Co-ordinate Bench in the case of M/s. Hill Wood Timber (supra), the impugned order is set-aside and issue restored to AO, who shall examine the Form No. 27C declaration filed by the assessee as to the correctness of the same; and meanwhile the



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declaration Form No. 27C to be forwarded to the Ld. PCIT/Ld. CIT in accordance to law and examined as to whether it fulfill the condition given in Rule 37C [declaration verified and countersigned by the Chartered Accountant stating that the buyers of timber from the assessee had duly paid the taxes on the same]. The AO after examining Form No. 27C to pass an order to accordance with law after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly. Therefore, for statistical purposes, ITA. No.889 to 891/Coch/2022 are allowed.

Coming to next ITA Nos.927 & 930/Coch/2022

8. At the outset, the Ld. AR pointed out that these appeals are preferred by assessee against the penalty levied u/s 221 of the Act by the AO and confirmed by the Ld. CIT(A), taking note of the default on the part of assessee or deeming the assessee to be an assessee on default in making payment of tax collected as TCS u/s 206C of the Act for AY. 2010-11 and AY. 2014-14. Since we have already set aside the orders passed u/s 206C(1)/206C(7) of the Act pertaining to the assessee for AY. 2010-11 and AY. 2014-14 back to the file of the AO for considering the declaration Form no. 27C, the penalty levied for default in making payment u/s 221 of the Act cannot be sustained on the principle that when the foundation goes, the super-structure falls. Therefore, the same are set aside.



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9. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on this 19/05/2023.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Cochin; Dated : 19/05/2023.
Vijay Pal Singh, (Sr. PS)

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Trichur.
4. The CIT, Cochin.
5. The DR, ITAT, Cochin.
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Asst. Registrar/ITAT, Cochin