

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos. 51 to 54/Rjt/2023  
(Assessment Years: 2013-14 to 2016-17)

Shri Babulal Miyaram Gadri, Shed No.427, GIDC Phase-II, Dared, Jamnagar-361005	Vs.	Income Tax Officer, TDS -3, Jamnagar
[PAN No.ANHPG8759L]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Mehul Ranpura, A.R.
<b>Respondent by:</b>	Shri Sanjeev Ranjan, Sr. DR
<b>Date of Hearing</b>	27.07.2023
<b>Date of Pronouncement</b>	04.08.2023

ORDER

**PER BENCH:-**

These bunch of appeals have been filed by the same assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short Ld. CIT(A)), National Faceless Appeal Centre (in short “NFAC”), Delhi in Order No. ITBA/NFAC/2/250/2022-23/1048209250(1) vide order dated 23.12.2022 passed for Assessment Years 2013-14 to 2016-17.

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

**Assessment Year 2013-14:-**

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

2) *The ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [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.2,45,595/- 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.*

3) *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.1,69,461/-. 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.*

4) *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."*

**Assessment Year 2014-15:-**

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

2) *The ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [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.1,96,470/- 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.*

3) *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.1,11,988/-. 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.*

4) *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."*

**Assessment Year 2015-16:-**

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

2) *The ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [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.1,53,961/- 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.*

3) *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.55,426/-. 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.*

4) *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."*

**Assessment Year 2016-17:-**

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

*2) The ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [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.1,34,006/- 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.*

*3) 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.32,161/-. 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.*

4) *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."*

3. Since common issues are involved for all the years under consideration, all these appeals are being disposed of by way of a common order.

4. The brief facts of the case are that during the course of proceedings under section 206C of the Act, the AO observed that the assessee is engaged in the business of sale of “scrap”. The AO was of the view that assessee is liable for collection of TCS within the provisions of section 206C of the Act and subsequently liable for filing statement in Form 27EQ within the prescribed time. On verification of the records, the AO observed that the assessee has not collected TCS to the tune of ₹ 2,45,595/- on sale of scrap of ₹ 2,45,59,583/- for financial year 2012-13 relevant to assessment year 2013-14. The assessee had also not filed statement in Form 27EQ for the assessment year under consideration. The assessee was called to furnish documentary evidence, however, the assessee did not appear before the assessing officer during the course of TCS proceedings. Accordingly, the assessing officer held that the assessee is in default for no collecting such TCS amounting to ₹ 2,45,595/-. Further, the assessee was also held to be liable to pay interest on such TCS within the provisions of section 206C(7) of the Act.

5. In appeal, the assessee submitted that the assessing officer did not give sufficient time to produce the necessary certificates since he was required to pass order in a hurried manner. The assessee submitted that the provisions of section 206C are not applicable in the assessee’s case for the reason that the goods have been sold to a person who is engaged in “manufacturing” and therefore, the same is exempted by section 206C(1A)

of the Act and assessee has also collected Form 27C in this respect, which he wanted to furnish.

6. However, Ld. CIT(Appeals) observed that assessee has not complied with required under section 206C of the Act. Firstly, the assessee has not collected the tax and secondly, in case tax was not collectable, the assessee has not obtained Form 27C as per requirements under the relevant section. The Ld. CIT(Appeals) observed that Form 27C is required to be filed with the designated authority, CIT (TDS), within 7 days of the end of the month in which the sale of scrap i.e. item liable for TCS is sold by the assessee. However, the assessee has not filed Form 27C within the aforesaid timelines with the designated authority. The assessee could produce Form 27C only subsequently appellate stage, which is very late. Accordingly, Ld. CIT(Appeals) dismissed the appeal of the assessee with the following observations:

*“4.1 I have gone through the facts of the case, grounds of appeal and submissions made in this regard. Briefly the facts of the case are that in F.Y. 2012-13 i.e. A.Y. 2013- 14. The assess on is engaged in business of "Scrap and is covered under the provisions of sec 206C that states that every person being a seller shall at the time of debiting the amount payable to the buyers account of the buyer collect from the buyer a sum equal to the percentage specified in the table given in that section. Thus, there was a legal requirement on the appellant being involved in the business of sale of "Scrap" and is a specified seller under section 206C As per the provisions of Sec 206C(3) person has to prepare and submit a statement in Form*

*27EQ to the prescribed income tax authority within the time prescribed in Rule 31AA of the Income Tax Rules 1962. On verification of the records it is seen that assessee has not collected TCS to the tune of Rs 2,45,595/- on sale of scrap of Rs 2,45,59,583/- for the FY 2012-13 relevant to AY 2013-14. Assessee has also not filed statement in form 27EQ for the year under consideration. Assessee also did not furnish form 27C which is a pre requisite in case tax is not collected by the seller from the buyer. The appellant could produce the form 27C only subsequently at appellate stage that is very late.*

*4.2 Thus, the assessee appellant has not complied with the requirement of the sec 206C. Firstly, it had not collected the tax and secondly in case tax was not deductible. It had not obtained form 27C as per requirements of that section. Thus, apparently there is non-compliance that led to the framing of order u/s 206C by the AO vide order dtd. 20.12.2017. The appellant is aggrieved and has stated that the AO did not give sufficient opportunity of being heard and even did not issue any effective show cause notice.*

*4.3 The other submission of the assessee is that the sec. 206C is not applicable in his case due to the reasons that the goods has been sold to the seller who are the manufacture and the same is the exempted by sec. 206C(1A) of the Act and he has collected form 27 C in this respect.*

*4.4 Form 27C (required to be filed as per the Rules 37C corresponding to Sec 206C(1)(a)) were filed much after the due date. It is relevant to mention here that Form 27C has to be filed with the designated authority [CIT(TDS)] within 7 days of end of month in which the sale of scrap (item liable for TCS) is sold by the appellant. Since the appellant has not filed Form 27C within the time and were not submitted before the designated authority and it is additional evidence produced before this office under rule 46A which is reproduced as under:-*

*.....*

*4.6 As the appellant has not complied with the requirements of Sec.206C(1A) therefore he cannot escape from the responsibility entrusted upon him of collecting tax at source. The appellant on the other hand has contested this issue and has submitted certain case laws wherein it was held that submission of form 27C is a procedural aspect and a minor delay in the submission of the same will not render the appellant ineligible for exemption from TCS as contemplated u/s.206C(1A).*

*The Government has introduced his TCS Provisions so as to ensure that taxes get collected in a timely manner from the transactions which would otherwise escape the tax net. But while introducing theses provision it has also given room for non-applicability of such provisions provided the conditions mentioned therein are complied with. In Sec.206C it is the responsibility of the parties to the transactions to make sure that they fall within the*

*conditions of eligibility if they intend to not collect tax at source. That precondition is that they should fill up Form 27C as per the time line given in Rule 37C within 7 days of end of the month [in which the transaction takes place] the same has to be submitted to the designated authority. The relevant rule is given below for ready reference:-*

*.....*

*4.6 The very fact the form 27C has to be submitted after the end of the month clearly draws a time line of compliance of the conditions envisaged in the section 206C r.w.r 37C. Therefore, it cannot be said that it is a mere procedural lapse if form 27C is not filed in time. Though some High Court have held that no time lines are contained in section 206C, the department has not accepted those decisions. Revenue has moved the Hon'ble Supreme court on this aspect and the SLP of the department has been admitted before the Supreme Court in CIT(TDS) Vs Siyaram Metal Udyog Pvt. Ltd. [2017] 78 Taxman.com 157(SC). It needs to mentioned here that the case of Adishankara spinning mills was actually decided the issue whether cotton waste would constitute scrap or not. The question of form 27C late filing was not specifically entertained. A decision can be a precedent on the issue that it decides. In any case those high court decisions would not apply in the case of the appellant because there is an inordinate delay in filing the form whereas in the decision cited the delays were minor.”*

7. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the counsel for the assessee submitted that the assessment order was passed in a very hurried manner and even during appellate proceedings, Ld. CIT(Appeals) has not taken cognizance of the relevant Forms 27C which was placed on record. The counsel for the assessee placed reliance on various decisions which have held that furnishing of Form 27C is a procedural requirement and it would be suffice in case the assessee is able to produce the same at a subsequent stage as well. Accordingly, it was submitted by the counsel for the assessee that the procedural lapse should not attract the aforesaid tax liability.

8. In response, Ld. DR placed reliance on the observations made by Ld. CIT(Appeals) and the AO in their respective orders.

9. We have heard the rival contentions and perused the material on record. In the instant case, the assessee has submitted that the scrap was sold to manufacturers and the sale was not for trading purposes but was made to “manufacturers”, from whom Form 27C / Form 27BA was duly obtained, though, there was delay in obtaining the same. In the case of **Chandmal Sancheti v ITO 72 taxmann.com 237 (Jaipur - Trib.)**, the ITAT has held that no time limit has been prescribed for furnishing Form No.27C by the buyer to the seller, hence, delay in filing declaration shall not be a ground to deny benefit of declaration to assessee. In the case of **CIT v. Adisankara Spinning Mills (P.) Ltd. [2014] 362 ITR 233/49 taxmann.com 273/226 Taxman 44 (Mag.)(Mad.)**, the High Court in Para 2 of the order held as under:-

*"As far as the second question is concerned, the Tribunal has noted in paragraph 3 that the assessee had obtained Form 27C from the buyers of the cotton waste. In the course of the appellate proceedings, the same was also filed before the assessing authority by applying the provisions of section 154 of the Act. The Tribunal held that the assessee having filed the statutory form, viz., Form 27C, the technical breach was liable to be condoned by following the decision of this court in the case of CIT v. A.N. Arunachalam [1994] 208 ITR 481/75 Taxman 529 (Mad.). Therefore, we do not find any scope to entertain the said question."*

10. In the case of **CIT (TDS) v. Siyaram Metal Udyog (P.) Ltd. [2016] 71 taxmann.com 204/240 Taxman 578 (Guj.)**, the AO made addition on the ground that the assessee had breached section 206C of the Income-tax Act, 1961 in case of sale of scrap and that the assessee had not submitted Form 27C comprising of the buyer's declaration to the Commissioner of Income-tax in time. The Tribunal held that there is no dispute about the fact that the assessee has belatedly submitted relevant Form No. 27C collected from its buyers. The same were placed on record before the Assessing Officer itself who declined to accept the same in view of delay in submission thereof. There is no issue qua genuineness of these Forms. The co-ordinate Bench decision of Tribunal in case of Bharti Metals already holds that such a belated submission of relevant Form is a procedural lapse only. The Revenue is unable to point any distinction on facts or law therein.

Thus, addition with the aid of section 206C could not be made. The High Court held as under:-

*"In terms of the explanation clause (aa) any person who purchases the goods in retail sale for personal consumption would not be included within the definition of term 'buyer'. It is therefore, that under sub-section (1A) of section 206C, calculation of tax under sub-section (1) would not be made, if the buyer furnishes to the person responsible for the tax a declaration in writing in prescribed form declaring that the goods in question are to be utilized for the purposes of manufacturing process or producing articles or things or for the purpose of generation of power and not for trading purposes. The declaration to be made in sub-section (1A) of section 206C thus would enable the revenue authorities to, as and when the need so arises make proper verifications. This sub-section itself does not provide for any time limit within which, such declaration is to be made. The time limit, of course, would be found in Rule 37C of Income-tax Rules, 1962. The main thrust of sub-section (1A) of section 206C thus is to make a declaration as prescribed, upon which, the liability to collect tax at source under sub-section (1) would not apply. When there was no dispute about such a declaration being filed in a prescribed format and there was no dispute about the genuineness of such declaration, mere minor delay in filing the said declaration would not defeat*

*the very claim. The Tribunal therefore, viewed such delay liberally and in essence held that there was substantial compliance with the requirement of filing the declaration."*

11. In the case of **Karnataka Forest Development Corpn. Ltd. v. ITO, (TDS) [2015] 62 taxmann.com 59/70 SOT 167 (Bang.-Trib)**, the ITAT observed as below:-

*"Section 206C(1A) mandates that any person responsible for collecting tax under section 206C(1) need not do so if he obtains a declaration from the buyer that he is purchasing the goods for use in manufacturing, processing or producing articles or things. It does not say that such declaration has to be obtained at the very same moment when a sale is affected. A reading of sub-section (1B) clearly brings out this since obligation of the assessee to file a copy of the declaration arises only when the declaration is furnished to him by the buyer. The point of reference is furnishing of declaration by the buyer and not the month or date on which sale is affected by the assessee. Even if it is considered that there is a breach on the part of the assessee in not obtaining the declaration from the buyer the moment a sale was affected, and in filing it before the CCIT or CIT, as the case may be, a similar breach was considered to be only technical and one that could be condoned by Hon'ble Madras High Court in the case of Adisankara Spg. Mills (P.) Ltd. Thus, assessee could not have*

*been deemed as one in default under section 206C(6D) of the Act or liable for interest under section 206(7)."*

12. In the case of **K.P.G. Enterprise v. ITO 49 taxmann.com 509 (Ahmedabad - Trib.)**, the ITAT held that Assessee company could not be treated as assessee in default for not collecting TCS from its buyers from whom assessee had received declaration as per section 206C(1A). Further, ITAT held that where buyers had paid tax on their income and such income had been assessed after taking into consideration purchases made from assessee, tax could not be again collected from assessee on non-collection or short-collection of TCS. The relevant para of the judgment are reproduced as under:-

*'15. We find that section 206C (1A) reads as under:—*

*"Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is ITA No. 2384/A/2012 K.P.G. Enterprise, Bhavnagar AY 2010-11 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 utilized for the purposes of manufacturing, processing or producing articles or things [or for the purposes of generation of power] and not for trading purposes."*

*A perusal of the aforesaid provision shows that the assessee is not legally obliged to collect the TCS from a buyer who furnishes a declaration to the assessee to the effect that the purchases made by such buyer are to be utilized for the purposes of manufacturing, processing or producing articles or things or for purposes or generation of power and not for trading purposes. Thus, in a case where such a declaration is furnished by the buyer to the seller, the seller is not obliged to collect TCS from such buyer and consequently the seller assessee cannot be treated as an assessee in default in respect of not collecting TCS from such buyer. We find that the Commissioner of Income-tax (Appeals) upheld the treatment of assessee as assessee in default in respect of those parties from whom the assessee already received declaration in Form 27C on the ground that such declaration was not furnished by the assessee to the Chief Commissioner or Commissioner as required by the provisions of section 206C(1B) of the Act.*

13. In the case of **Eid Mohammad Nizamuddin v. ITO 116 taxmann.com 579 (Jaipur - Trib.)**, the ITAT held for availing benefit of not collecting tax at time of sale of goods aimed for specified purposes, a verified declaration in prescribed Form should be provided by buyers to seller; however, no time limit is prescribed for furnishing such declaration. Section 206C(7) provides that, if a person responsible for collecting TCS does not collect tax or fails to pay it, he will be liable to pay interest for

period till its payment; however, where his buyer has furnished return of income and paid tax, he will not be deemed to be an assessee in default and interest shall be payable for period till filing of return by such buyer. There is no mandatory requirement to pay any interest under section 206C(7) as part of certification in Form 27BA and information as to whether assessee has already paid interest or not has to specify in Form 27BA and it is only an information seeking requirement and not such a requirement in absence of which certification in Form 27BA will be invalid. Therefore, where Forms 27BA and related declarations from buyers were reviewed and examined by Commissioner (Appeals) and he provided relief to assessee firm, same was to be upheld.

14. In the case of **G.K. Traders v. ITO 143 taxmann.com 425 (Rajkot - Trib.)**, the ITAT 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.

15. Accordingly, in the light of the aforesaid decisions, we are of the considered view that the liberal view needs to be taken in case the sale of scrap has been made to a manufacturing concern, which would be using such scrap in its manufacturing process and not for trading purposes, once such buyer has furnished the requisite form 27C in respect of such purchases. However, in the instant facts it is noted that the Department has not analysed / verified the requisite forms/evidence to support the

contention of the assessee that the sale was made to manufacturing concerns and there was no requirement to collect tax at source in respect of such sales, which constituted almost 95% of such sales. Accordingly, in the interest of justice, the matter is being restored to the file of the assessing officer to verify the request documents / Forms to see if the assessee has obtained the request Forms 27C and 27BA etc. and to allow credit for the same in case the same were available with assessee before the assessment got concluded.

16. In the result, the matter is being restored to the file of the Ld. Assessing Officer with the aforesaid directions.

17. In the result, the appeal of the assessee is allowed for statistical purposes.

18. Since, same facts and issues for consideration are involved for assessment years 2014-15, 2015-16 and 2016-17 as well, the matter for these aforesaid years is also restored to the file of the Ld. Assessing Officer for carrying out the necessary verification.

19. In the result, the appeal of the assessee is allowed for all the year under consideration for statistical purposes.

**This Order pronounced in Open Court on**

**04/08/2023**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 04/08/2023  
*TANMAY, Sr. PS*

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

**TRUE COPY**

ITA Nos.51to54/Rjt/2023  
Shri Babulal MIyaram Gadri vs. ITO  
Asst.Years –2013-14 to 2016-17

- 18 -

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot