

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

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

ITA Nos. 125 to 127/Jodh/2021
(ASSESSMENT YEARS- 2011-12 to 2013-14)

Sarda Devi Chechani K-37, Vasant Vihar, Sector-5, Udaipur.	Vs	ITO, TDS, Udaipur
(Appellant)		(Respondent)
PAN NO. ADUPC 1485 C		

(Virtual hearing)

Assessee By	Shri Sharwan Kumar Gupta- Adv.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	11/07/2023
Date of Pronouncement	23/08/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

These are three appeals filed by the assessee against the orders of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] all dated 05.10.2021 for the assessment years 2011-12 to 2013-14 respectively.

2. At the outset of hearing, the Bench observed that there is delay of 16 days in filing of the appeal by the assessee for which the ld. AR of the

assessee filed an application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

“1. In this connection it is submitted that the applicant is a regular IT assessee. In this case the TDS assessment u/s 206C(6A)/206C(7) was completed for A.Y. 2011-12 on dated 29.03.2021 by raising the demand of Rs.43,229/- u/s 206C(6A)/206C(7) Against which the assessee has filed the appeal before the Id. CIT(A) who has decided the appeal and passed the order on dt. 05.10.2021 which was served not served upon the assessee physically. However the same was sent on the email ID on 05.10.2021. Hence the appeal was to be filed on or before 04.12.2021 but the same could be filed till 04.12.2021 and is being filed by delay of about 9-10 day.

2. The reason of late filing was that as the notices or orders was sent on the email id and the assessee has asked to the counsel for necessary action. Some days later the local counsel after seeing the matter has asked to the assessee to come in the office for discussion and filling the appeal and advised to engage the counsel at Jaipur. However due to by one and other reasons in the family as firstly Deepawali festival thereafter due to the fear of Covid-19 and now Omicron I could not contacted or go to Jaipur for the purpose of filling the appeal. Now some days before our local counsel has contacted to the counsel at Jaipur, regarding the matter and after discussion and after advise of the advocates he asked to prepare the appeal. Because there is fews days delays and there was bonafide mistake and communication gapes.

Thereafter our counsel has prepared the appeal or documents on 13.12.2021 and signed by me.

Due to all this reason the appeal could not be filed within time. In support of these contention an affidavit of the Legal Heir is enclosed.

3. It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:

"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits. The expression sufficient cause employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.

4. The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy(1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Others 118 ITR 507.

That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(All), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.

5. The Hon'ble Jaipur Bench of ITAT has also condoned the delay in the case of Ganesh Himalaya Pvt.Ltd. v. ACIT 22 Tax World 415 (JP) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Holigans, particularly when on the similar points in the earlier four years, the appeals were filed in time.

In the instant case also, the appeal could not be filed in time because of the above time taking a various process which were bonafide and was a sufficient cause and there was no melafide intention.

6. Recent Decision of Apex Court: in a recent decision, the apex court have again reiterated that the expression "sufficient cause" should

receive a liberal construction. The Hon'ble court have also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC).

Prayer: In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned.”

To this effect, the assessee has filed an affidavit as to the condonation of delay in filing the appeal.

3. During the course of hearing, the ld. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

4 We have heard the contention of both the parties and perused the materials available on record. The prayer as mentioned above by the assessee for condonation of delay of 16 days has merit for the reason that there was complete lockdown in Jaipur on account of COVIND-19 and all the offices including the office of assessee's consultant were closed and we concur with the submission of the assessee. Thus the delay of 16 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme

Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. Since, the facts of all the cases are identical, we have heard these cases together and passing the order together. The facts and grounds are taken from the folder of Sarda Devi Chechani in ITA No. 125/Jodh/2021 and this case is taken as lead case.

6. The assessee has raised the following grounds of appeal:-

“1. The impugned order u/s 206C(6A)/206C(7) dated 29.03.2019 as well as the notices for the same are bad in law, illegal, invalid and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

2.1 Rs.21.295/-: The Id. CIT(A) or NFAC erred in law as well as on the facts of the case in sustaining the demand of Rs.21,295/- u/s 206C(6A) on account of short or non collection of TCS on the sale of forest produce 'Phuwar treating alleging the assessee in default also erred in considering the material or evidences in their true perspective and sense. Hence the demand so raised/imposed by the AO and sustained by the CIT(A) is totally contrary to the provisions of law and facts on the record and hence the additions may kindly be deleted in full.

2.2 Rs.21.934/-: The Id. CIT(A) or NFAC erred in law as well as on the facts of the case in sustaining the charging of interest of Rs. 21,934 u/s 206C(7) on account of short or non collection of

TCS of Rs. 21,295/- u/s 206C(6A) on the sale of forest produce 'Phuwar'. The interest so charged by the AO and sustained by the ld. CIT(A) or NFAC is totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.

3. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

7. The ld. AR for the assessee has raised additional ground which is reads as under:-

“1. The impugned order u/s 206C(6A)/206C(7) dated 29.03.2019 as well as the notices for the same are bad in law, illegal, invalid and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.”

8. Brief facts of the case are that the assessee is the proprietor of M/s Arun Enterprises, which is engaged in the business of trading of minor forest produce and other commodities. The AO passed an order u/s 206C(6A) & 206C(7) on 29.03.2019 holding the assessee as ‘deemed to be an assessee in default’ u/s 206C(6A) in respect of TCS (Tax Collection at Source) amounting to Rs.21,295/- which she failed to collect and deposit to the Government account in respect of sales of forest produce 'Phuwar of Rs.8,51,806/- made during the year as per

the provisions of section 206C(1) and levying interest of Rs.21,934/- u/s 206C(7) in respect of the said default.

9. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee, dismissed the appeal of the assessee by giving following findings on the issue: -

“8. I have carefully considered the facts of the case, the impugned order u/s 206C(6A) & 206C(7) and the written submissions of the appellant. As the appellant is engaged in the business of sale of forest produce through her proprietary concern M/s Arun Enterprises, she is required to collect tax at source (TCS) at 2.5% on the amount of said sales and deposit the same in the Government account as per the provisions of section 206C(1) of the Act. The AO therefore issued a notice to the appellant on 16.03.2018 and subsequent dates calling for relevant details. The appellant furnished the relevant details vide reply dated 17.09.2018. On examination of the same, the AO noticed that the appellant made sales of 'Phuwar to the tune of Rs.8,51,806/- during the year, which attracted the provisions of section 206C(1) being 'forest produce' as notified by the State Government of Rajasthan. However, the AO found that no TCS was collected and deposited by the appellant in respect of the same.

9. In this regard, the appellant explained to the AO that no TCS was collected in view of the exception provided in section 206C(1A), since the buyer of the said forest produce utilised the goods for the purposes of manufacturing, processing or producing articles/things and not for trading purposes. The appellant stated that she has now furnished copy of declaration of the buyer to the said effect in Form 27C to the AO. However, it was observed by the AO that the appellant wrongly

furnished Form 27C pertaining to the subsequent FY 2011-12 instead of the F.Y 2010-11 relevant to the assessment year under consideration. The AO noted that no Form 27C has been furnished in respect of the assessment year under consideration.

10. Since the appellant made sales of Phuwar to the tune of Rs.8,51,806/- which attracted the provisions of section 206C(1) and she did not comply with the said provisions for collecting TCS on such sales, the AO held that the appellant is deemed to be an assessee in default u/s 206C(6A) in respect of TCS of Rs.21,295/- which she failed to collect from the buyer and deposit in the Government account. The AO also charged interest of Rs.21,934/- in respect of the said default in accordance with provisions of section 206C(7) of the Act. The AO raised aggregate demand of Rs.43,229/- in the order u/s 206C(6A) & 206C(7).

11. The contentions advanced by the appellant against the said order of the AO are found to be untenable on careful examination. The provisions of TCS u/s 206C of the Act are meant to protect the interest of revenue with regard to the tax liability of the buyers of the specified goods. The sellers of such goods are therefore required to collect TCS at the prescribed rates and deposit in the Government account and the said tax collected at source is given credit to the buyer in his tax assessment by treating the same as tax payment made on behalf of the buyer. The TCS has no relation whatsoever to the tax liability of the seller in respect of his/her income chargeable to tax. Moreover, the appellant has not furnished any evidence to prove that the buyer has filed its return of income for the assessment year under consideration and paid the taxes due on the income disclosed therein after taking into consideration the purchases made from the appellant. In view of these reasons, the contention of the appellant that there is no loss to the revenue on account of non-collection of TCS by her since the relevant sales have been duly credited in her books which have been audited by a Chartered Accountant is held to be irrelevant and untenable.

12. As regards the contention of the appellant that she had no obligation to collect TCS in view of furnishing of declaration by the buyer in Form 27C, as required u/s 206C(1A) for availing exemption from TCS, it is considered that the same is also untenable. The appellant did not furnish the Form 27C issued by the buyer to the AO during the proceedings u/s 206C(6A). She furnished the Form 27C pertaining to the subsequent financial year and not the Form 27C pertaining to the previous year relevant to the assessment year under consideration, as stated by the AO in his order. The appellant furnished copy of Form 27C issued by the buyer M/s Satguru Gum Industries (to whom entire sales of Phuwar of Rs.8,51,806/- were made during the year) during the appellate proceedings. The said Form 27C is found to be issued on 05.04.2018. Contrary to what has been stated by the AO in his order, the appellant claimed that the said Form 27C was furnished to the AO during the proceedings u/s 206C(6A). The appellant was therefore requested to furnish evidence in support of the said claim vide notices dated 16.02.2021, 23.04.2021, 27.05.2021, 28.07.2021 and 04.09.2021 issued to the appellant. The appellant was also informed that in case the said Form 27C was not furnished to the AO during the proceedings u/s 206C(6A), she may file a petition for admission of additional evidence under Rule 46A of IT Rules along with justification for admission of the same. However, despite affording five opportunities, the appellant neither furnished evidence to show that the relevant Form 27C was submitted to the AO during the proceedings u/s 206C(6A) nor furnished a petition for admission of additional evidence. In view of this, Form 27C issued by the buyer on 05.04.2018 which was furnished by the appellant during the appellate proceedings and which constitutes additional evidence is not admitted under Rule 46A.

13. Notwithstanding the above, it is considered that even if the said Form 27C is admitted as additional evidence, it does not come to the aid of the appellant with regard to her liability to make TCS for the reasons mentioned hereinunder. The transactions of sales of Phuwar by the appellant to the buyer, which attracted the provisions of TCS u/s 206C(1) took place during the Financial Year 2010-11. Under the said provisions, the seller is required to collect the TCS at the prescribed

rates at the time of debiting the account of the buyer with the amount of sales or at the time of receipt of the sale consideration, whichever is earlier. However, if the buyer furnishes the declaration in Form 27C as per the provisions of section 206C(1A) r.w Rule 37C, there is no obligation on the seller to collect TCS. On a combined reading of the provisions of sections 206C(1) and 206C(1A) and Rule 37C, it can reasonably be construed that the declaration in Form 27C is required to be furnished by the buyer to the seller at the time of making the sale and debiting the amount to the account of the buyer or at the time of receipt of sale consideration, whichever is earlier, so that the seller can take an appropriate decision regarding the need to collect TCS or otherwise. Even if there is an oral request by the buyer to the seller at the time of making the sale not to collect TCS due to satisfaction of conditions laid down in section 206C(1A). the same needs to be followed up by furnishing of Form 27C to the seller at the earliest but not later than the date of payment of sale consideration to the seller, so that the seller has an opportunity to comply with the legal requirement to collect TCS in the event the buyer does not furnish Form 27C to him by then. However, if the Form 27C has not been furnished for several years after the completion of the relevant sale transactions and receipt of the sale consideration relating to them, as happened in the case of the appellant, it amounts to clear default in collecting TCS as per the provisions of section 206C(1) of the Act since the seller has no recourse to collect TCS at that time. Moreover, if the delay in furnishing Form 27C is long enough so that no action is possible under the provisions of the Act for the revenue to take necessary action in the cases of the buyers to initiate reassessment proceedings in their cases to collect the taxes due from them, it results in permanent loss of revenue to the Government. The Form 27C obtained by the appellant from the buyer in April 2018 in respect of sales made during F.Y 2010-11 is therefore required to be disregarded, even if the same is admitted as additional evidence. In view of the same, it is held that the provisions of section 206C(1A) for providing exemption from TCS are not applicable to the appellant in the facts of the case.

14. In view of the foregoing discussion, it is held that the appellant failed to collect TCS in respect of sales of Phuwar made during the previous year relevant to the assessment year under consideration as per provisions of section 206C(1) and that the appellant has been rightly treated by the AO as deemed to be an assessee in default in respect of the relevant TCS amount of Rs.21,295/-. It is consequently held that the appellant has been rightly charged interest u/s 206C(7) of Rs.21,934/- in respect of the said default. These grounds of appeal are accordingly dismissed.

15. In the result, the appeal is dismissed.”

10. Being aggrieved by the order of ld. CIT(A), the assessee is in appeal before us. Before us the ld. AR for the assessee submitted a detailed written submissions on the issue which are as under:-

“FACTS: 1. The brief facts of the case are that the assessee is a Prop. Of M/s Arun Enterprises is doing business of trading of minor forest produce & other commodities during the year under consideration. The ld. AO has noted that the assessee needs to collect/deposit the applicable TCS u/s 206C at the rate of 2.5% of the total sale of minor forest product.

2. The ld. DCIT Circle- TDS, Udaipur has issued the notice u/s 206C(6(A) rws 206C(7) of the I.T. Act. For. F.Y. 2010-11 to 2017-18 relevant to A.Y. 2011-12 to 2018-19 on dt. 16.03.2018 and called the details of the total minor forest product sold. Thereafter the case transferred to ITO TDS Ward Udaipur. The ld. AO has alleged that the assessee has filed the reply on dt. 17.09.2018 and filed the audit report, balance sheet, P&L account and copy of form 27C F.Y. 2011-12 but not filed for F.Y 2010-11.

3. The ld. AO has stated that Since the IT Act, 1961 or General Clauses Act, 1987 or Forest or any other Judicial interpretation does not define the meaning of forest produce so for the same the Forest Department Notification, Jaipur Sep. 2015 published in Rajasthan Gazzette Extraordinary dated September 21, 2015 and Agriculture Department Notification F. No. 10(2) Agri./Group-2/75 dt. 27.10.2014 of State of Rajasthan is taken as the base for the meaning of forest produce. Vide page 3-6 of the assessment order.

4. The ld. AO has stated that during the F.Y. 2010-11 assessee has made sale of forest produce “Phuwar” of Rs.8,51,806/-, which come in the meaning of forest produce as per the forest department and Agriculture department notification referred. The ld. AO has stated that since Phuwar falls under the category of Forest produce other than Timber and Tendu leaves and trading of the same attracts TCS @OF 2.5% as per Sec. 206C. Thus

TCS amount comes to Rs.21,295/-. Which is demand as tax u/s 206C(6)/206C(6A) of the Act. The ld. AO has also charged the interest of 1% PM on such tax demand u/s 206C(7) which calculated at Rs.21,295/-. Vide order dt. 29.03.2019 holding assessee as deemed to be an default.

POTION OF ALL THREE YEARS

F.Y	A.Y	ITA NO.	Sale	Demand U/s 206C(6)	Interest u/s 206C(7)	Total	
2010-11	2011-12	125/Jodh/2021	851806/-	21295/-	21934	43,229/-	
2011-12	2012-13	126/Jodh/2021	10098959/-	252474/-	229751/-	4,82,225/-	
2012-13	2013-14	127/Jodh/2021	3273595/-	81840/-	70374/-	1,52,164/	

5. Against this assessee has filed appeal before the Honble CIT(A). The assessee has filed WS and details by stating that

During the course of assessment proceedings, I have filed the Form 27C duly signed by the purchaser and which clearly mentions that purchase was done for further manufacturing of other products. In section 206C(1A) , it is clearly mentioned that if goods are to be sold for further manufacturing or processing and purchaser issues the Form, then there is no liability of TCS. In fact the form was duly filled and submitted to AO at the time of assessment. The AO has not considered the fact and created the demand which is liable to be quashed ab initio. I am hereby submitting the Ledger of the purchaser and copy of Form 27C for your kind consideration to prove the legitimacy of claim that the transaction is duly recorded and no tax revenue has been compromised. Looking to the scenario, I request you to please grant the relief and quash the demand.

A bogus demand of Rs.43,229/- u/s 206C has been created by the AO which in fact is not at all tenable as the assessee had already submitted the requisite Form No.27C at the time of assessment proceedings, which clearly exempt the liability of TCS if goods are to be used in manufacturing further. I am attaching the copy of Form 27C for your verification along with the copy of ledger buyer which reflects the entire transaction through banking channel and hence no tax has been sought to be evaded. Hence, I request you to quash the demand which AO has raised.

6. The ld. CIT(A) has confirmed the order of the ld. AO by stating that:

6.1 The TCS has no relation whatsoever to the tax liability of the seller in respect of his/her income chargeable to tax. Moreover, the appellant has not furnished any evidence to prove that the buyer has filed its return of income for the assessment year under consideration and paid the taxes due on the income disclosed therein after taking into consideration the purchases made from the appellant.

6.2 The Ld. CIT(A) has stated that the appellant did not furnish the Form 27C issued by the buyer to the AO during the proceedings u/s 206C(6A). She furnished the Form 27C pertaining to the subsequent financial year and not the Form 27C pertaining to the

previous year relevant to the assessment year under consideration, as stated by the AO in his order. The appellant furnished copy of Form 27C issued by the buyer M/s Satguru Gum Industries (to whom entire sales of Phuwar of Rs.8,51,806/- were made during the year) during the appellate proceedings. The said Form 27C is found to be issued on 05.04.2018. Contrary to what has been stated by the AO in his order, the appellant claimed that the said Form 27C was furnished to the AO during the proceedings u/s 206C(6A). The appellant was therefore requested to furnish evidence in support of the said claim and was also informed that in case the said Form 27C was not furnished to the AO during the proceedings u/s 206C(6A), she may file a petition for admission of additional evidence under Rule 46A of IT Rules along with justification for admission of the same. However, , the appellant neither furnished evidence to show that the relevant Form 27C was submitted to the AO during the proceedings u/s 206C(6A) nor furnished a petition for admission of additional evidence. In view of this, Form 27C issued by the buyer on 05.04.2018 which was furnished by the appellant during the appellate proceedings and which constitutes additional evidence is not admitted under Rule 46A.

6.3 The Id. CIT(A) has further stated that notwithstanding the above, it is considered that even if the said Form 27C is admitted as additional evidence, it does not come to the aid of the appellant with regard to her liability to make TCS for the reasons mentioned herein under. Under the said provisions 206C, the seller is required to collect the TCS at the prescribed rates at the time of debiting the account of the buyer with the amount of sales or at the time of receipt of the sale consideration, whichever is earlier. However, if the buyer furnishes the declaration in Form 27C as per the provisions of section 206C(1A) r.w Rule 37C, there is no obligation on the seller to collect TCS. On a combined reading of the provisions of sections 206C(1) and 206C(1A) and Rule 37C, it can reasonably be construed that the declaration in Form 27C is required to be furnished by the buyer to the seller at the time of making the sale and debiting the amount to the account of the buyer or at the time of receipt of sale consideration, whichever is earlier, so that the seller can take an appropriate decision regarding the need to collect TCS or otherwise. Even if there is an oral request by the buyer to the seller at the time of making the sale not to collect TCS due to satisfaction of conditions laid down in section 206C(1A), the same needs to be followed up by furnishing of Form 27C to the seller at the earliest but not later than the date of payment of sale consideration to the seller, so that the seller has an opportunity to comply with the legal requirement to collect TCS in the event the buyer does not furnish Form 27C to him by then. However, if the Form 27C has not been furnished for several years after the completion of the relevant sale transactions and receipt of the sale consideration relating to them, as happened in the case of the appellant, it amounts to clear default in collecting TCS as per the provisions of section 206C(1) of the Act since the seller has no recourse to collect TCS at that time. Moreover, if the delay in furnishing Form 27C is long enough so that no action is possible under the provisions of the Act for the revenue to take necessary action in the cases of the buyers to initiate reassessment proceedings in their cases to collect the taxes due from them, it results in permanent loss of revenue to the Government. The Form 27C obtained by the appellant from the buyer in April 2018 in respect of sales made during F.Y 2010-11 is therefore required to be disregarded, even if the same is admitted as additional evidence. In view of the same, it is held that the provisions of section 206C(1A) for providing exemption from TCS are not applicable to the appellant in the facts of the case.

Hence this appeal:

SUBMISSIONS:

1. Phuwar was not in the definition of agriculture produce:

1.1 At the very outset it is submitted that in the IT Act no definition of forest produce has been given and in the act nowhere it has been provided that the Phuwar comes in to the definition as admitted by the ld. AO himself vide page 2 para of the assessment order. According to the assessee and other general people Phuwar is the agriculture produce and is used in the Pashu Ahar (cattle feed) and also used in Coffee powder.

1.2 The ld. AO himself admitted and stated that “Since the IT Act, 1961 or General Clauses Act, 1987 or Forest or any other Judicial interpretation does not define the meaning of forest produce so for the same the Forest Department Notification, Jaipur Sep. 2015 published in Rajasthan Gazzette Extraordinary dated September 21, 2015 and Agriculture Department Notification F. No. 10(2) Agri./Group-2/75 dt. 27.10.2014 of State of Rajasthan is taken as the base for the meaning of forest produce”. Vide page 3-6 of the assessment order.

1.3 Thus first time in the year 2015 i.e on 14.09.2015 Phuwar has been defined as “minor forest produce” by the state Govt. . If before 14.09.2015 it was not falling in the definition of forest produce then how the ld. AO can expect from the assessee to collect the TCS. And even in the income tax act till date it has not define. If it is guided by the notification of the state Govt. then only after 14.09.2015 the assessee can be held to be liable to collect the TCS after 14.09.2015 not before it. And the retrospective effect of the same cannot be given when there is no default of the assessee and not in the act even the department was not having the definition of Phuwar being the forest produce. And the ld. AO has not brought any comparable case where action or notice has been issued before 14.09.2015 it. Here we would like to submit when the Revenue or Act itself not sure before it, then how the assessee can be blamed or deemed default.

1.4 While in sec. 206C definition of the other items has been given in absence of any definition of Phuwar being forest produce no assessee can be held to liable to collect the TCS from the retrospective effects when the transition has been completed before 6-8 years before. If there was any guidance, notification or definition at the time of selling the assessee could have collect the same at that time. And it is not possible to collect the same from them after many years. Hence a poor assessee should not be suffered when there was no default of him. When the farmers and other person who sold the Phuwar to the assessee stated these are agriculture produce and in all the Mandi or business places nowhere of the view that it is the forest produce. And a laymen cannot be expected that in future there shall be notification in this regard. Despite the notification of the state Govt. till date no definition in the IT act has been given.

2.1 Notice and order is time barred: It is submitted that the notice issued u/s 206C(6) & 206C(7) and order passed for A.Y. 2011-12 to 2013-14 i.e. F.Y. 2010-11 to 2012-13 is barred by the limitation Because the notice u/s 206C of the Act has been issued after the

end of four years from the financial year in which the default was allegedly committed. In the absence of any statutory time limit prescribed for passing such order under s.206C of the Act, such orders are required to be passed within a reasonable period of time and the AO cannot be permitted to pass such order of alleged default in compliance of TCS provisions under s.206C of the Act after unreasonable lapse of time. Thus the order for F.Y. 2010-11 to 2012-13 i.e A.Y. 2011-12 to 2013-14 passed under s.206C of the Act imposing tax and interest for alleged default is vitiated by lapse of time in this regard. It is an established legal position that wherever under the scheme of the Act with reference to some obligations, no time limit is prescribed for passing an order especially an order having penal consequences, the order must be passed by the authorities within a reasonable period of time. And Section 206C(6A) of the Act is silent on the time limit for passing the order for default committed under s. 206C of the Act, unlike corresponding Section 201(3) of the Act in respect of 'tax deduction at source'. The reference is made to the decision of the Honble Bench in *Raymond Woollen Mills Ltd. Vs. ITO 57 ITD 536 (Mum)*; *CIT vs. Hutchison Essar Telecom Ltd. (2010) 323 ITR 230 (Del)*; *NHK Japan Broadcasting Corporation 305 ITR 137 (Del)*; *State Bank of India vs. ACIT 106 ITD 589 (Mum)* for the proposition that a period of four years was perceived as reasonable time limit by such judicial precedents. Thus such order under s. 206C of the Act cannot be passed after the expiry of four years from the end of the relevant financial year where default has been allegedly committed.

2.2 On this proposition we would like to draw your honor kind attention toward a recent and direct decision of the Honble Ahmedabad Bench in the case of Adani Enterprises v/s DCIT TDS in ITA No. 1805/Ahd/2017 dated 09.07.2019 Wherein it has been held that

“ We notice that no time limit has been prescribed for passing order u/s.206C of the Act . The CIT(A) has assumed that in the absence of statutory time limit provided, the provisions of Section 201(3) of the Act providing time limit for deduction of tax at source can be parallelly adopted for the purposes of viewing what is reasonable time. We do not see much force in such presumption especially in the matter of limitation. The limitation prescribed under one provision of the Act cannot be applied straightway to some other provisions of the Act. The legislature, in its wisdom, inserted subsection (3) under s. 201 of the Act by the Finance (No.2) Act , 2009 w.e.f . 2010 proposing time limit for passing orders under s.201 of the Act with reference to tax deduction at source. However, no such limitation provision has been enacted with regard to tax collection at source as provided in Section 206C till date. Under the circumstances, where no time limit has been prescribed by the statute for passing order in respect of default in collection of tax at source, a guidance can be possibly obtained from judicial precedents laying down a reasonable time limit as implicit for imposition of levy of tax at source. We notice that the judicial precedents cited on behalf of the assessee have read a period of four years to be reasonable time limit. Needless to say, the liability of the Collector of tax on behalf of the Government (assessee herein) is a vicarious liability and cannot be allowed to remain hanging on his head for all times to come where the department decides not to take action either by proceedings under s.206C of the Act or by making assessment on the deductee. The show cause notice in the instant case has been issued after five years from the end of the relevant FY 2008-09. Thus, in the absence of statutory time limit prescribed for passing order with reference to collection of taxes, we follow the suit and read reasonable

time limit to be four years from the end of the financial year for passing the order under s.206C in tune with the judicial precedents in *NHK Japan Broadcasting Corporation 305 ITR 137 (Del)* and *CIT vs. Hutchison Essar Telecom Ltd. (2010) 323 ITR 230(Del)*.

10. With reference to obligations towards TDS provisions, the Hon'ble Bombay High Court in *DIT(Inv.) vs. Mahindra & Mahindra Ltd. 365 ITR 560 (Bom.)* concerning AY 1998-99 ruled that limitation period would apply to TDS orders under s.201/1A of the Act even though no time limit was prescribed under the Act at the relevant time. The Hon'ble High Court observed that time limit would be three years from the end of the financial year which seemed to be reasonable period as accepted under s.153 of the Act, though for completion of assessment proceedings. However, a greater period of four years for commencement or initiation of proceedings was given by the Hon'ble Delhi High Court in *NHK Japan Broadcasting Corporation(supra)* and *Hutchison Essar Telecom Ltd (supra)*. In view of the judicial fiat available in this regard which is beneficial to the assessee *qua* the time period prescribed for deduction of tax at source in Section 201(3) of the Act, we would give primacy to the judicial precedents in the absence of express statutory provision towards time limit in respect of obligation attached to Section 206C of the Act.

11. We accordingly set aside the order of the CIT(A) and direct the AO to not treat the assessee as assessee in default under s.206C of the Act. Consequently, the liability imposed towards tax and interest under s.206C of the Act is quashed.

2.3 Directly Covered Matter : This issue is directly covered by the decision of this Honble Bench in the case of *Gupta & Mahindra Tractors vs. ITO (TDS) (2018) 54 CCH 0116 Jaipur Trib* Held: *Tribunal noted that the coordinate bench of the Tribunal in the case of ITO vs. Eid Mohammad Nizamuddin (supra) has considered the issue of limitation for passing the order where the Statute does not provide any limitation for such order in para 6 as under, time limit for completing the assessment as per Section 153(1)(a) is two years from the end of the assessment year in which the income was first assessable which was considered as reasonable period for passing the order U/s 201(1)/201(1A) of the Act. The Hon'ble High Court has turned down the contention of limitation provided U/s 147/148 of the Act and hence, it was observed that three years would be a reasonable period as prescribed by Section 153 for completion of proceedings. However, since the Tribunal in a series of decisions had taken a view that the period within which the order U/s 201(1)/201(1A) shall be passed would be four years and therefore, the Hon'ble High Court has refrained from disturbing the view taken by this Tribunal. ITO vs. Eid Mohammad Nizamuddin(Followed)*

Tribunal found that the similar view has been taken by the Hon'ble Andhra Pradesh High Court in the case of CIT Vs. U.B. Electronics Instruments Ltd. Thus, a consistent view has been taken by the various Hon'ble High Courts on this issue that when no limitation is provided in the statute then a period of four years is considered as reasonable for passing the order U/s 201(1)/201(1A) of the Act. The provisions of Section 206C of the Act are analogous and a measure for compliance of collection of tax at source as a similar measure for compliance of deduction of tax at source is provided U/s 201 of the Act. The

department has accepted those decisions and consequently brought amendment to the provisions of Section 201 and thereby provided the limitation for passing the orders U/s 201(1)/201(1A) of the Act which was inline with the view taken by the Hon'ble High Courts on this issue. Accordingly, the liability of tax collected at source is also a vicarious liability of the assessee to assist the department in the measure to avoid any possibility of tax avoidance by the persons with whom the specific transactions have been entered into by the assessee. Hence, applying the reasonable period of limitation as four years within which the Assessing Officer could pass the order U/s 206C(6)/206C(7) of the Act, Tribunal held that the impugned order passed by the Assessing Officer on 30/3/2016 is beyond the said reasonable period of limitation and consequently is invalid being barred by limitation. Accordingly, Tribunal quashed the impugned order passed U/s 206C(6)/206C(7) of the Act.” CIT Vs. U.B. Electronics Instruments Ltd. (2015) 371 ITR 314 (AP)(Followed)

Thus there are series of decisions of Hon'ble High Courts on this issue wherein it was held that when no limitation provided for initiating the action by the AO and passing the order under the particular provisions of the Act, then a reasonable time limit for such action is 4 years from the end of the relevant financial year. Further, after the decisions of the Hon'ble High Courts on this issue, the legislatures have amended the provisions of section 201 of the Act and thereby provided the limitation of 2 years and 4 years respectively in specific cases for passing the order under section 201(1)/201(1A) of the Act. Having regard to the binding precedents as well as amended provisions of the Act, the impugned order passed by the AO is barred by limitation as it was after 4 years from the end of the financial year under consideration. Accordingly, Tribunal held that the impugned order passed under section 201(1)/201(1A) of the Act is invalid being barred by limitation. Hence the same is quashed. Since we have quashed the impugned order, therefore, Tribunal did not propose to go into the other grounds raised by the assessee in this appeal.

Also refer a recent decision of Honble ITAT Delhi Bench in the case of District Magistrate Collectorate, Bijnor v/s ITO TDS in ITA No. 7985/Del/2019 dt. 24.03.2023.

POSTION OF AL THE THREEE YEARS

F.Y	A.Y	ITA NO.	Order was to be passed	Date of order Passed	
2010-11	2011-12	125/Jodh/2021	31.03.2015	29.03.2019	
2011-12	2012-13	126/Jodh/2021	31.03.2016	29.032019	
2012-13	2013-14	127/Jodh/2021	31.03.2017	11.12.2019	

2.4 Thus in view of the above settled legal position the notices as well as the order passed for F.Y. 2010-11 to 2012-13 relevant to A.Y. 2011-12 to 2013-14 is illegal invalid and void ab intio and liable to be quashed.

2.5 Further we have to submit that it is it is the settled legal position that to remove the undue hardship and considering the decision of supreme Court in case of CIT Vs. Vegetable Products Ltd. 88 ITR 192 (SC) where it is held that when two views are possible on an issue, the view in favour of the assessee has to be preferred. And also many High court also held the same.

3. Purchasers are IT assessee and paid tax: Further all the persons to whom sale were made has paid the taxes on their returns and the ld. AO may kindly be directed to verify the ITR of the persons to whom assessee has made sale if they have shown the sale by the assessee in their trading or profit & loss account as purchase and paid tax. Then no demand can be raised in the case of the assessee u/s 206C(6)and 206C(7). As per the settled legal position of law in the case Hindustan Coca Cola Beverage Pvt. Ltd. v/s CIT 293 ITR 226 followed in Children's Education Society v/s DCIT & Anr 34 DTR 145(Ker)- and other cases.

4. Alternatively and without prejudice to above further as stated that during the course of assessment proceedings, assessee has filed the Form 27C duly signed by the purchaser and which clearly mentions that purchase was done for further manufacturing of other products. In section 206C(1A), it is clearly mentioned that if goods are to be sold for further manufacturing or processing and purchaser issues the Form, then there is no liability of TCS. In fact the form was duly filled and submitted to AO at the time of assessment. The AO has not considered the fact and created the demand which is liable to be quashed ab initio. During the course of appellate proceedings before the ld CIT(A) assessee submitted the Ledger of the purchaser and copy of Form 27C vide Paper book to prove the legitimacy of claim that the transaction is duly recorded and no tax revenue has been compromised. And the ld. CIT(A) has stated that the assessee has not filled the same but now it is the settled legal position by the Honble Courts and Tribunal that even the same is filled in appellate proceeding the same has been allowed and even the Honble Court is also given the opportunity to the assessee to file fresh before the ld. AO and allowed the same.

On this preposition kindly refer Gopalla Ramprakash Kabra v/s ITO TDS-3, Jamnagar in ITA No. 243/Rkt/2022 dt. 15.02.2023.

5. In view of the above submissions the demand so raised may kindly be deleted.”

11. Per contra, the ld. DR relied upon the orders of the ld. CIT(A).

12. We have heard the both parties and perused the materials available on record. The Bench noted that the ld. AR of the assessee submitted that contesting ground no. 2, the assessee has filed the Form 27C duly signed by the purchaser and which clearly mentions that purchase was done for further manufacturing of other products. In section 206C(1A), it is clearly mentioned that if goods are to be sold for further manufacturing or processing and when purchaser issues the Form, then there is no liability of TCS. In fact the form was duly filled and submitted to AO at the time of assessment. Further, we observed that the AO has not verified the fact and created the demand which is liable to be quashed ab initio. Even during the appellate proceedings before the ld. CIT(A), the assessee has submitted that the Ledger of the purchaser and copy of Form 27C vide Paper book to prove the legitimacy of claim that the transaction is duly recorded and no tax revenue has been compromised. The ld. CIT(A) without application of mind blindly upheld findings of the ld. AO. Further, the ld. AR for the assessee before us submitted the written submission and paper books contained of page 1 to 21 along with case law in support of his contentions. From the records we observed that the assessee has submitted ledger of the purchaser and the copy

of Form 27C vide paper book to prove the legitimacy of claim that the transaction is duly recorded and no tax revenue has been compromised in this aspect. Based on the evidences so given and we see no finding on that aspect of the matters. We remand back the issue to the file of the AO to verify the copy of form 27C with the ledger account of the purchaser with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing to the assessee, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO. Thus the appeal of the assessee is allowed for statistical purposes.

14. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

15. The Bench feels that the fact in the case in ITA No. 126 & 127/Jodh/2021 is exactly the similar to the fact ITA No. 125/Jodh/2021 and therefore, it is not imperative to repeat the fact in ITA No. 126 &

127/Jodh/2021. The decision taken by us in ITA No. 125/Jodh/2021 shall apply mutatis mutandis to ITA No. 126 & 127/Jodh/2021.

In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 23/08/2023

**Santosh*

Copy to:

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

Assistant Registrar
Jodhpur Bench