IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH,JODHPUR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. Nos. 20 to 22/Jodh/2017
Assessment Years.: 2008-09 to 2010-11

Sh. Mohd. Javed Belim, C/o Rajendra Jain, Adv. 106, Akshay Deep Complex 5th B Road, Sardarpura, Jodhpur. [PAN: AEMPB0363H] **(Appellant)**	**Vs.**	Asstt. Commissioner of Income Tax, (TDS),Jodhpur. **(Respondent)**

Appellant by	**Smt. Raksha Birla, CA.**
Respondent by	**Sh. Laxman Singh Gurjar, Sr. DR**

Date of Hearing	**20.11.2023**
Date of Pronouncement	**06.12.2023**

ORDER

Per:Bench:

A batch of three (03) appeals of the same assessee were filed against the order of the ld. Commissioner of Income Tax (Appeals) -1, Jodhpur, [in brevity 'the CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity 'the Act'] for A.Ys. 2008-09 to 2010-11. The impugned orders were emanated from the

order of the ld. Asstt. Commissioner of Income Tax (TDS), Jodhpur, (in brevity the AO) order passed u/s 206C (6A), r.w.s. 206C(6) 206C(7) of the Act.

2. At the outset, all the appeals of the same assessee have common issue and same nature of fact. Accordingly, we have taken all the appeals together, heard together and disposed of together for the sake of convenience. **ITA No. 20/Jodh/2022** is taken as lead case.

<u>ITA No. 20/Jodh/2022</u>

3. The assessee has raised the following grounds which are as under:

> *"1] That on the facts & in the circumstances of the case, the order passed by the Id CIT (A) is bad in law and bad in facts and also against the principle of naturaljustice.*
>
> *2] That on the facts & in the circumstances of the case the Id CIT (A) grosslyerred in holding the assessee "as assessee in default" and sustaining the demandof Rs. 1336475/- u/s 206C(6) & 206C(7).*
>
> *3] That on the facts & in the circumstances of the case the Id CIT(A) erred inholding that the entire sales made by the assessee is covered u/s 206C of theAct.*

4] That on the facts & in the circumstances of the case the Id CIT(A) erred inconfirming the action of the AO in respect of fastened the liability on the assessee u/s 206C of the Act.

5] That on the facts & in the circumstances of the case the Id CIT (A) ought to have quashed the order of the AO passed under section 206C(6A) and 206C(7) of the Act.

6] That on the facts & in the circumstances of the case the Id CIT (A) ought to have issuing the direction not to treat the assessee in default for non collection of TCS on sale of scrap in respect of those buyers who have paid tax due on the returned income or provided form no. 27BA.

7] That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing."

4. The brief fact of the case is that the assessee is a trader of scrap,firewood and iron material. A survey was conducted in business premises of the assessee and it is found that assessee had not deducted the TCS by contravening section 206C of the Act, against the sale of scrap. The revenue has treated as "assessee in

default" and fixed the demand amount to Rs.13,36,475/- u/s 206C(6) and 206C(7) of the Act, for non-collecting of TCS u/s 206C. The assessment was completed, and entire turnover was taken as sale of scrap and treated as "assessee in default" and created demand of Rs.7,50,404/- and Rs.5,86,071/- u/s 206C (6) and 206C (7) of the Act. The assessee claimed that the assessee had collected the certificates in Form 27BA under Rule 37J of the Income Tax Rules 1962aginst the sales covered U/s 206C r.w.s. 206C(6A) of the Act. The other sales related to firewood and iron material are not attracted the TCS u/s 206C of the Act as per the assessee. Being aggrieved assessee filed an appeal before the ld. CIT(A). But remained unsuccessful. Being aggrieved assessee filed an appeal before us for judicious consideration.

5. The ld. AR vehemently argued and filed written submission which are kept in the record. The ld. AR first invited our attention in sale report for the year 2007-08 which is reproduced as below:

Month End	27-BA SCRAPE SALES	FIRE WOOD	IRON MATERIAL	Grand Total
Apr-07	16,65,912.00		76,27,366.46	92,93,278.46
May-07	22,30,635.50	42,660.00	69,46,183.00	92,19,478.50
Jun-07		76,875.00	22,37,427.00	23,14,302.00
Jul-07		2,21,088.00	25,56,299.00	27,77,387.00
Aug-07	6,03,114.50	1,30,200.00	17,43,539.00	24,76,853.50
Sep-07	52,63,356.00	1,21,800.00	41,33,194.10	95,18,350.10
Oct-07		4,40,460.00	25,20,396.87	29,60,856.87
Nov-07		1,95,485.00	29,51,616.00	31,47,101.00
Dec-07	23,00,020.00	66,925.00	47,93,108.92	71,60,053.92
Jan-08	35,92,400.00	50,110.00	42,01,551.00	78,44,061.00
Feb-08	22,13,406.80	24,180.00	40,52,533.00	62,90,119.80
Mar-08	8,96,820.00	34,680.00	1,11,07,020.95	1,20,38,520.95
Grand Total	1,87,65,664.80	14,04,463.00	5,48,70,235.30	7,50,40,363.10

6. The ld. AR further invited our attention in judicial pronouncement of the coordinate bench of the ITAT, Jodhpur in case of **Sh. Nemi Chand Jain vs. ACIT, (TDS) ITA No. 08/Jodh/2017 to 13/Jodh/2017 date of pronouncement 13/09/2017**. The ld. AR has drawn our attention in relevant paragraph 9 of the order, the relevant para is reproduced as below:

> *"9. On due consideration of the facts and submissions and on consideration of the relevant provisions, it emerges that the expression of scrap is defined under cl. (b) of the explanation to s. 206C to mean waste and scrap from manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up and other reasons. On plain reading of the said expression it is evident that any material which is usable as such would not fall within the ambit of the expression "scrap" as envisaged under cl. (b) of the*

Explanation to s. 206 C . But it is also correct that the assessee is a trader, and for which such material purchased by him is a trading goods, and whatever goods have been purchased by him is ultimately sold. This is a goods purchased by him and sold to various parties. In this definition, the important words used in the definition of scrap are "waste and scrap", "from manufacture" and "which is". The words "waste and scrap" are one item. Thereafter, the word used is "from" the manufacture or mechanical working of material. It would mean that the waste and scrap being one item should arise from the manufacture or mechanical working of material. It is, therefore, necessary to read "waste and scrap" together which are generated out of manufacturing process of the assessee. The word "waste and scrap" should have nexus with the manufacturing or mechanical working of material. Thereafter, the words used are "which is" definitely not usable The word "is" as used in this definition of the scrap is meant for singular item i.e., "waste and scrap". The words "which is" denote singular item and thus the singular item would be waste and scrap. The words "waste and scrap" thus cannot be read differently. In the case of the appellant the scrap sold by the assessee is not connected with manufacture or mechanical working of material. Further, the details of various parties was also submitted indicating who are regular income tax assessee.

We also find that the contention of the appellant that once the respective parties had also included such income in their returns, the assessee cannot be held to be assessee in default which view is well supported by the decision in the case of Hindustan Coco Cola Beverages P. Ltd. v. CIT reported in (2007) 293 ITR (SC) 226 which approved the finding that there could be no recovery of the tax alleged to be in default once again from the appellant considering that deductee had ahead}-paid taxes on the amount received from the deductor. The same principle is also enumerated in Circular No. 275/20l/95-IT(B) dated January 29,1997, issued by the Central Board of Direct Taxes, which states that no demand visuali2ed under section 201(1) of the Income-tax Act should be enforced after the tax deductor has satisfied the office-in-charge of TDS, that taxes due have been paid by the deductee-assessee. Similar view has been expressed by Hon'ble Rajasthan High Court in the case of CIT v. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (2006) 287 ITR 354 (Raj.) and CIT V/s Eli Lilly & Company (India) (P) Ltd. & Ors. (2009) 223 CTR (SC) 20, Thus in view of such facts, we hold that the assessee cannot be held to liable for collection of tax at source u/s 206C in relation to the trading activity carried on by them and the demand raised against the assessee u/s 206C and interest thereon is directed to be deleted.

10. The issue being identical in all the appeals for A.Y. 2009-10 to A.Y. 2013-14, and therefore in view of above, the same demand so raised against the assessee.

11. All the appeals of the assessee are therefore treated as allowed."

6.1 The ld. AR argued that the assessee is not " assessee in default" so, assessee is not eligible for collecting TCS u/s 206C related to sale of firewood and iron material which is amount to Rs.14,04,463/- and Rs.5,48,70,235.30 respectively. Related to turnover amount to Rs.1,87,65,664.8/- the assessee is already covered by Form No. 27BA under Rule 37J of the rule. Accordingly, the entire addition should be deleted.

7. The ld. DR vehemently argued and relied on the order of the revenue authorities. The ld. DR invited our attention in appeal order para 7 which is reproduced as below:

"7. The appellant has placed reliance on the decision of ITAT Ahemdabad in the case of Navine Flourine International Ltd. v ACIT 14 ITR (Trib) 481 (Ahd) for the contention that where a trader sells scrap he is not liable to collect tax at source as it is not scrap but stock in trade for him. However, special bench of the Hon'ble ITAT, Rajkot in the case of Bharti Auto Products Vs. CIT 157 TTJ 0001

(Rajkot)(SB) has decided the issue in favour of the department and held that Section 206C fastens liability on a seller of scrap for collection of tax at source, however, there is no requirement that such a seller should himself generate scrap from manufacture or mechanical working of materials undertaken by him and therefore even the trader of scrap is liable to make TCS. The facts of this case were that the assessee imported brass scrap arid sold it without collecting tax at source, the assessee's case was that the brass scrap sold by him was not generated from the manufacture or mechanical working of material and therefore, it was not 'scrap' within the meaning of Explanation (b) to section 206C, the Assessing Officer rejected the assessee's explanation, he held that since the assessee had failed to collect the tax at source as required by section 206C(6) on the sale of scrap made by him to various dealers, he was liable to pay certain amount under section 206C(6) alongwith interest under section 206C(7), the Commissioner (Appeals) upheld the order of the Assessing Officer. The Hon'ble Special Bench held as below:

Section 206C as originally enacted did not provide for collection of tax at source on sale of scrap. By the Finance Act 2003, "scrap" has been included and placed in the Table in sub-section (1) of section 206C as a result of which every seller (as defined in Explanation (c) to section 206C) of scrap is required to collect tax at the rate of 1 per cent at the time of debiting 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.

The liability of a seller to collect tax at source in terms of section 206C is absolute unless requisite declaration from the buyer is obtained and a copy thereof is delivered to the Chief Commissioner or Commissioner in terms of the provisions of sub-section (1A) and (IB) of section 206C. [Para 19]

The provisions of section 206C have been enacted to ensure collection of taxes from persons carrying on particular trades in view of peculiar difficulties experienced by the revenue in the past in collecting taxes from them. Section 206C thus seeks to prevent evasion of taxes. It therefore, needs to be construed strictly and in a manner that seeks to achieve the purpose for which it has been enacted. [Para 21]

Explanation (b) to section 206C defines 'scrap' as 'waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons'. It is evident that the word 'scrap' occurs twice in the said definition. It is first used as a term which is sought to be defined and which includes 'waste' also and thereafter the word 'scrap' is used again in the expression 'scrap from the manufacture or mechanical working of materials'.

The said definition is in two parts. Its first part, i.e., 'waste and scrap

from the manufacture or mechanical working of materials', refers to what would constitute 'scrap' while its second part, namely, 'which is definitely not usable as such because of breakage, cutting up, wear and other reasons' refers to the characteristics which a material has to possess in order to fall in the category of 'scrap'.

The second part of definition, being integral part of the definition, also throws light on the scope and ambit of the term 'scrap' and, therefore, needs to be taken into consideration while interpreting the first part of the definition of 'scrap'. [Para 24]

The first part of the definition, namely, 'waste and scrap from the manufacture or mechanical working of materials' seeks to cover both 'waste' as well as 'scrap

from the manufacture or mechanical working of materials'. In the absence of any definition of the term 'waste' in the Act, one has to turn to its meaning as it is understood in common parlance.

In common parlance, 'waste' is understood as something unusable or unwanted material. According to the Concise Oxford Dictionary, 'waste' is something which has been 'eliminated or discarded as no longer useful or required'. 'Scrap', on the other hand, represents something which is left over after the greater part has been used or consumed. 'Scrap' thus refers to the incidental residue derived from certain types of manufacture, which is recoverable without further processing.

It is in this context that the words 'from the manufacture or mechanical working of materials' qualify the preceding word 'scrap' and not 'waste'. The definition of 'scrap' as given in Explanation (b) is not limited to scrap from the manufacture or mechanical working of materials alone but extends to cover 'waste' also. Therefore, the scope of the term 'scrap' as defined in Explanation (b) cannot be interpreted so as to restrict its application to scrap from the manufacture or mechanical working of materials alone.

While 'waste' covers everything that is unusable or has been discarded as no longer useful as such, 'scrap' covers everything that arises from the manufacture or mechanical working of materials. By its very nature, 'waste' is a term of wider import while 'scrap' is narrower in its scope. [Para 25]

The first part of the definition of 'scrap' in Explanation (b) refers not only to scrap from the 'manufacture' but also to 'mechanical working of materials'. Both the phrases, namely, manufacture and mechanical working of materials differ in their meaning and content. [Para 26]

'Mechanical working of materials' refers to physical operations on materials. It signifies physical operations to bring about physical change to which the material is subjected in order to change its shape, properties or structure. In order to fall in the definition of 'scrap', it is not necessary that the same should occur in the course of

manufacture; it can also occur in the course of mechanical working of materials, i.e., in the course of physical operations on materials.

Thus, both the operations/processes, namely, the manufacture and mechanical working of materials, can give rise to scrap. Any article or thing arising from the physical operations on materials which is not usable as such would therefore fall in the category of 'scrap'.

As stated earlier, the second part of the definition, i.e., 'which is definitely not usable as such because of breakage, cutting up, wear and other reasons' also throws light on the scope of the term 'scrap' in as much as it seeks to define the characteristics of scrap. In order to constitute 'scrap', the article or thing must not be usable as such because of breakage, cutting up, wear and other reasons. The use of the words "other reasons" in the second part of the definition of 'scrap' is significant.

In order to constitute 'scrap', what is contemplated by Explanation (b) is the non-usability of materials as such, which could even be for a reason other than breakage, cutting up and wear. The phraseology employed in Explanation (b) shows that the term 'scrap' has been defined in wide terms so as to include both (i) waste, and (ii) scrap from the manufacture or mechanical working of materials.

However, both of them have been used as one phrase, i.e., as 'waste and scrap from the manufacture or mechanical working of materials', for the second part of the definition and, therefore, both of them

should definitely be not usable as such because of breakage, cutting up, wear or other reasons. [Para 26]

It was submitted by the assessee that the use of the word 'and' in the expression 'waste and scrap from the manufacture or mechanical working of materials' suggests that both of them, namely, waste and scrap, must arise from the manufacture or mechanical working of materials and that waste per se cannot be scrap unless it, like scrap, also arises from the manufacture or mechanical working of materials.

It is correct that the word 'and' in the said expression joins both the words, namely, (i') waste; and (ii) scrap from the manufacture or mechanical working of materials and to that extent they constitute one phrase, i.e., 'waste and scrap from the manufacture or mechanical working of materials' and that is why the words "which is" have been used as link between the first part and second part of the definition.

However, the word 'and' in the said phrase has been used to enlarge the scope of 'scrap', which is sought to be defined by Explanation (b) to section 206C, so as to cover both, i.e., waste as well as scrap from the manufacture or mechanical working of materials. If the legislative intent was to exclude waste from the definition of 'scrap', it could have easily done so by not including the 'waste' in the definition of 'scrap'. [Para 27]

The Hon'ble CBDT has clarified this issue vide circular in F. No. 275/86/2011 -IT(B) dated 18.05.2012, the relevant portion of the said circular is reproduced as below:

"Representations were received from certain Associations of Old Iron Scrap Dealers cum Traders alleging wrong interpretation of law regarding applicability of provisions of Section 206C of the Income Tax Act 1961 in their case.

The Income Tax Act, 1961 as per Section 206C requires a seller of goods of specified nature (defined in the Act and includes scrap) to collect Tax at source at specified percentage of the receipt from the buyer and deposit the same in the Government account. The term scrap is clearly defined in the explanation to this section and there is no requirement that the goods to be eligible for scrap should be produced/manufactured by the seller itself. Further the term buyer is also defined in the same Explanation and means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the specified nature.

Thus a buyer is not restricted to a person who buys the specified goods in an auction or tender and thus includes a buyer in the retail sale of specified goods as well. As per Taxation Laws (Amendment) Act 2003, w.e f. 08-09-2003, if a buyer in the retail sale of such goods buys it for personal consumption and furnishes before the seller such

declaration in prescribed Form 27C, then the Seller is not liable to collect tax on the same.

Thus all Sellers of Scrap, within the meaning of Section 206C, including those trading in scrap are liable to collect tax at source from the buyers of such scrap. However if the buyer declares by furnishing Form 27C before the seller its purpose for obtaining such goods being manufacturing/processing/producing articles and not trading purpose then the seller is exempted from collecting such tax from such buyer.

It may be added that Sellers as defined in the explanation to Section 206C only are liable to collect tax at source. It may further be added the Act as per section 206C (9) allows any buyer to approach the Assessing Officer for obtaining a certificate of lower rate of collection of TCS."

8. It is quite obvious that the provisions of section 206C have been enacted to ensure collection of taxes from persons carrying on particular trades in view of peculiar difficulties experienced by the Revenue in the past in collecting taxes from them. Section 206C thus seeks to prevent evasion of taxes. It therefore needs to be construed strictly and in a manner that seeks to achieve the purpose for which it has been enacted. Reasons for inserting section 206C in the Income-tax Act have been explained in Circular No.525 dated 24.11.1988 issued by the Central Board of Direct Taxes as under:

"1. Considerable difficulty has been felt in the past in assessing income of persons who take contracts for sale of liquor, forest produce, etc. It has been the . Department's experience that for taking such contracts, firms or associations of persons are specifically constituted and very often no trace is left of them or their members after the contract has been executed. Persons have also been found to have taken contracts in 'benami' names by floating undertakings or associations for short periods. Since tax is payable in the assessment years on the incomes of the previous years, the time by which the incomes from such sources become assessable, such persons become untraceable. Moreover, at the time of assessment years in these cases, either the accounts are not available or they are mostly incorrect or incomplete. Thus, even if assessments could be made on ex parte basis, it becomes almost impossible to collect the tax found due, either because it becomes difficult to establish the identity of the persons and trace them or because of the fact the persons in whose names contracts were taken are men of no means. With a view to combating large scale tax evasion by persons deriving incomes from such business, the Finance Act, 1988 has inserted a new section 44AC to provide for determination of income in such cases. Further, with a view to facilitating collection of taxes from such assessees, the Finance Act, 1988 has inserted a new section 206C to provide for collection of such tax at source."

Considering the legal provisions and authoritative judicial precedents as discussed above, I find no force in the contention of the appellant that he being a trader, the provisions of Section 206C of the Act are not applicable to him. Section 206C of the Income-tax Act fastens liability on a seller of scrap for collection of tax at source, there is no requirement that such a seller should himself generate scrap from the manufacture or mechanical working of materials undertaken by him.

Taking a holistic view of the legal provisions and definitions given therein, it is held that the assessee was required to collect TCS on sale of scrap made by him and as he failed to do so, the AO was perfectly justified in treating him as "assessee in default" in respect of the tax which he failed to collect from buyers and interest thereon.

Considering the factual & legal position as discussed in preceding paras, it is held that the appellant failed to comply with the provisions of Section 206C of the Act and therefore is liable for tax & interest u/s 206C(6) and 206C(7) of the Act. The AO has rightly created demands on account of tax and interest at Rs.7,50,404/- and Rs.5,86,071/- totaling to Rs.13,36,475/-for A.Y. 2008-09 which is upheld. The ground Nos.1&2 raised by the appellant regarding these issues are dismissed.

9. In the result, the appeal is dismissed."

8. We heard the rival submission and considered the documents available in the record. In F.Y. 2007-08, related to impugned assessment year we can categorize

the sale in three components. The sale to scrap which is covered Rule 37J and the Form 27BA is duly filed which are annexed in **APB page 8 to 40** and also the list of purchase providing declaration that they have shown purchases from the assessee in their books of account, **APB pages 41** and also list of purchased providing declaration that they have shown purchased their assessee in the books of account alongwith the copy of declaration and copy of return filed in **APB pages 42 to 73**. The Rule 37J is substituted by the IT (Second Amdt.) Rules, 2013, w.e.f. 19-2-2013. Prior to its substitution, rule 37J, as inserted by the IT (Eleventh Amdt.) Rules, 2012, w.e.f. 12-9-2012, read as under:

> *"37J. Form for furnishing certificate of accountant under first proviso to sub-section (6A) of section 206C.—The certificate from an accountant under first proviso to sub-section (6A) of section 206C shall be furnished in Form No. 27BA."*
>
> The application of Rule 37J of the Rule r.w.s. 206C(6A) of the Act is curative in nature and is applicable to this impugned assessment year.

We relied on the order of Coordinate Bench of ITAT Jodhpur which is respectfully covered the order of Hon'ble Supreme Court in the case of **Hindustan Coca Cola Beverage Pvt. Ltd. vs. CIT (2007) 293 ITR 0226 (SC)**. The purchaser already declared the sale in their turnover so this sale amount of Rs.1,87,65,664.8/- as per

the certificates enclosed. So, the assessee can get the immunity as per Provision U/s 206C(6A) of the Act by providing the prescribed from 27BA.

8.1 In argument the assessee filed the balance sheet and tax audit report which are from **APB page 2 to 57**. On perused the said documents the assessee has divergent business activities. The ld. DR relied on the order of the **Sh. Kamal Kumar Vs. ITO In ITA 1023/JP/2019 date of pronouncement 23.07.2020** the character of the material is not devoid of TCS. The ld. DR placed that the sale of iron material is the part of scrap and which is purely covered u/s 206C of the Act. The ld. DR has drawn our attention in relevant paragraph of the order of ITAT-Jaipur which are reproduced as below: -

> *"6. We have considered the written submissions as submitted by the assessee and arguments of ld. DR. We have also carefully perused the order passed U/s 206C(6A)/(7) of the IT Act. There is no dispute that the assessee purchased scrap material from the railways which was subjected to TCS and the said material was again sold by the assessee to various parties who were stated to be traders as well as consumers of the scraped without collecting the tax at source by the assessee. Therefore, the AO initiated the proceedings for holding the assessee in default U/s 206C(6A)/(7) of the Act. The First contention of the assessee is that the material sold by the assessee which was*

purchased from the railways in the auction does not fall in the definition of scrapas provided in clause (b) of Section 206C of the Act. For ready reference we quote clause (b) of explanation to Section 206C as under:- “"scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;” For the purpose of Section 206C of the Act the scrap has been defined as waste and scrap from the manufacture or mechanical working of material which is definitely not usable because of the reason of breakage, cutting, wear and other reasons. The scrap sold by the railway was certainly not usable due to its breakage or wear and tear and it was also subjected to TCS for which the assessee has not raised any objection. Once the assessee has accepted the goods purchased from the railway as scrap and allowed the TCS then the resale of the same goods by the assessee will not part take a different character. Therefore, in view of the undisputed fact that what was purchased by the assessee is scarp subjected to TCS then the resale of the same material is also be treated as scrap and there is no scope of reclassification of the these goods at the time of sale. Therefore, we do not find any merits or substance in the contention of the assessee. The decisions relied upon by the assessee are on specific facts of those cases and therefore, would not help the case of the assessee.”

8.2 On perusal of the orders the issue was never be discussed or material was never placed related to the nature of goods sold by the assessee the amount of Rs.14,04,463/- for sale of firewood and amount of Rs.5,48,70,235.30/- for sale of iron material. There is no doubt the assessee had sold the goods covered U/s 206C of the Act. But the assessee is claiming immunity by Provision of Section 206C(6A) of the Act. We respectfully consider all the orders of the Hon'ble Apex Court and the High Court which is already covered by the Coordinate Bench of ITAT Jodhpur in the case of **Nemi Chand Jain** (supra). But the character of the material was not ascertained by any of the authorities as claimed by the assessee.

8.3 We note that the ld. AO has considered the sale on the basis of the spot verification. However, now the assessee has also claimed other sales are not covered U/s 206C of the Act like sales of firewoods and iron materials. Also, the issue U/R 37J read withForm 27BA isremainedun-touched by the revenue authorities. Since, this is a factual aspect of the matter and needs proper a verification.

8.4 We remit back the matter to the file of the ld. AO to verify the issues under purview of section 206C and in the light of above discussion. Needless to say, the

assessee should get a reasonable opportunity of hearing in the set aside proceeding and should allow to file the evidence if required during the proceeding.

9. As noted at the beginning of this order, the facts and issue in all these appeals are common. So,our observations qua in **ITA No.20/Jodh/2017** is, *mutatis mutandis*, equally applicable **to ITA No.21/Jodh/2017 and ITA No. 22/Jodh/2017** are also.

10. In the result, all the appeals of the assessee bearing ITA Nos.**20 to 22/Jodh/2017** are allowed for statistical purposes.

Order pronounced in the open court on 06.11.2023

Sd/-	Sd/-
(Dr. M. L. Meena) **Accountant Member**	**(ANIKESH BANERJEE)** **Judicial Member**

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The DR, I.T.A.T.

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By Order