

**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. 159 to 166/Jodh/2023
Assessment Years: 2011-12 to 2016-17**

Sh. Bheru Lal Garg, C-55, Laghu Van Upaj Mandi Krishi Upaj Mandi Ke Andar Udaipur, Rajasthan. [PAN: AGEPG3686L] (Appellant)	Vs.	Income Tax Officer, (TDS), Udaipur. (Respondent)
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Appellant by	Sh. Yogesh Pokharna, CA.
Respondent by	Ms. Nidhi Nair, Sr. DR

Date of Hearing	13.12.2023
Date of Pronouncement	15 .12.2023

ORDER

Per: Bench:

A batch of 08 (Eight) appeals of the same assessee are filed against the order of the Id. Commissioner of Income Tax (Appeals) NFAC, Delhi, [in brevity the 'CIT (A)'] order passed u/s 250 of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2011-12 to 2016-17. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-(TDS), Udaipur, (in brevity the AO) order passed u/s 206C (6) /206C (6A) and 206C (7) of the Act.

2. At the outset, we advert that all the appeals are common and have a same nature of fact. Therefore, all the appeals are taken together, heard together and disposed of together. Related to applicability of TCS on the forest product, ITA Nos. 159/Jodh/2023, 162/Jodh/2023 to 166/Jodh/2023 are quantum appeals and ITA 160/Jodh/2023 to 161/Jodh/2023 are the appeals related to penalty u/s 271CA of the Act. For the sake of convenience, **ITA No. 163/Jodh/2023** is taken as the lead case.

ITA No. 163/Jodh/2023

3. The assessee has taken the following grounds which are reproduced as below:

“1. That Learned CIT A has wrongly confirmed that the order passed under Section 206C(6A) is within time limit provided by the Act. The Order confirmed is beyond the time limit. Hence the Order passed under Section 206C(6A) is bad in law and be quashed.

2 That Learned CIT A has wrongly confirmed the TCS amount of Rs.3,25,225/-/- on account of TCS liability under 206C(6A) on Sale of Forest Produce. The order confirmed by the CIT (A) is without considering full facts of the case, providing full opportunity and considering facts and circumstances of the case. Hence

the order confirmed is bad in law and TCS liability determined be deleted.

3. That Learned CIT A has wrongly confirmed the levy of interest of Rs 3,21,972/- u/s 206C(7) on TCS amount of Rs 3,25,225/-/- to be Collected under 206C(6A) on Sale of Forest Produce. The interest levied is on time barred TCS demand created, without considering full facts of the case, providing full opportunity and considering facts and circumstances of the case. Hence the interest of Rs 3,21,972/-levied is bad in law and be deleted.

4 The appellant reserve his right to add or amend grounds of appeal.”

4. Brief fact of the case is that the assessee is a dealer of forest product other than Tendu Patta and Timber. As per the claim, the assessee is dealing the minor forest product and agricultural product in the nature of Mahua Oil, Puhad, Ambadi, Dolma Kanji, Ratanjot and the cattle feed (Bhusa and Khal) etc. and having total turnover in impugned financial year Rs. 2,60,18,001/-. The notice was initiated by the ld. AO and claimed that the assessee is defaulter for non-collecting of TCS @ 2.5% subject to certain exemption, by contravening section 206C of the Act. Accordingly, the assessee is defaulter u/s 206C(6A) of the Act. The assessee claimed that the assessee is not dealing with “tendu leaf” as per provision of

section 206C (1) of the Act. The assessee has claimed that the assessee is the dealer of minor forest product. But the ld. AO had rejected the assessee's plea and taken 50% of turnover as a defaulter of non-collecting of tax. Therefore, the tax was levied amount to Rs.3,25,225/- @ 2.5% on 50% of the turnover i.e., 1,30,09,000/-. The ld. AR also agitated that all the assessment are completed beyond four years, so, the entire assessment order is barred by limitation. Both the legal and the factual grounds are challenged before the ld. CIT(A). But the ld. CIT(A) had passed a speaking order by considering all the grounds of the assessee and upheld the assessment order. Being aggrieved assessee filed an appeal before us.

5. The ld. AR for the assessee filed the written submissions which are kept in the record. The ld. AR first argued the nature of products. The ld. AR claimed that the assessee is a dealer of minor forest product which is not coming under the purview of section 206C of the Act. The ld. AR further argued that the assessee is individual capacity running the business as whole seller and trader at Krishi Upaj Mandi Savina, Udaipur and dealing in sale of agricultural and forest product. So, the proceeding initiated by the ld. AO dated 06.04.2018 u/s 206C(6A) r.w.s. 206C(7) for failure of collecting of TCS on forest product is not justified.

5.1 The ld. AR further argued that the “minor forest product”, is never be explained in Income Tax Act or under General Clauses Act or Forest Act for any other Judicial Interpretation.

5.2 The ld. AR further relied on a submission that the ld. AO led foundation of his addition on notification issued on 14.09.2015 in which the State Forest Department exempted the movement of minor forest produce by the Gram Sabha or other authorities or other authorized person by the Gram Sabha within the schedule area subject to other provision of Rajasthan Panchayatiraj Rule 2011 and other notification issued by the Agricultural Department is included the produce as Krishi Product “Agricultural Product” but both the notification are not served the purpose for explanation of “Minor Forest Product”. This product are total a converted into an agricultural product. The question is that whether the “Minor Forest Product” are not covered in Income Tax Act, so, application of section 206C(6A) is bad in law.

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

“11. In view of the above, and after consideration of all the facts and material on record, in the absence of any meaningful

and worthwhile submissions/documentations even during the instant appellate proceedings in this case, I am constrained to Dismiss all the Grounds of Appeal taken by the Appellant. It is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr No. 3791 of 2013 (O&M) dated 01.05.2014] and in the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant the addition of TCS default of Rs 3,25,225/- and interest thereon Rs.3,21,972/- totalling Rs.6,47,197/- by the Assessing Officer is upheld.”

7. We heard the rival submission and considered the documents available in the record. The dispute between parties is related to nature of product on which the section 206C will be applicable or not. On the one hand, the assessee claimed that the assessee is not dealing with the product which are mentioned u/s 206C(1). Rather, the dealing of “Minor Forest Product” is not at all attracted the provision of section 206C. Here we are annexing the list of products covered U/s 106C(1) of the Act.

“206C. ²[(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by

any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

³[TABLE

<i>Sl. No.</i>	<i>Nature of goods</i>	<i>Percentage</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(i)</i>	<i>Alcoholic Liquor for human consumption</i>	<i>One per cent</i>
<i>(ii)</i>	<i>Tendu leaves</i>	<i>Five per cent</i>
<i>(iii)</i>	<i>Timber obtained under a forest lease</i>	<i>Two and one-half per cent</i>
<i>(iv)</i>	<i>Timber obtained by any mode other than under a forest lease</i>	<i>Two and one-half per cent</i>
<i>(v)</i>	<i>Any other forest produce not being timber or tendu leaves</i>	<i>Two and one-half per cent</i>
<i>(vi)</i>	<i>Scrap</i>	<i>One per cent.]</i>
⁴² <i>[(vii)</i>	<i>Minerals, being coal or lignite or iron ore</i>	<i>one per cent.]</i>

The categorically the ‘minor forest product’ and ‘forest product’ has difference in their nature. Such as, Minor Forest products (MFPs) are all the products obtainable from the forests other than wood and timber. They comprise products of vegetable and animal origin, such as grasses, bamboos, canes, tans, dyes, oils, gums, resins, fibres, flosses, leaves, drugs, spices, poisons, edible products, and animal products. On the other hand, forest products include both timber and non-timber products. The major forest products comprise pulpwood, sandalwood, social forestry that

includes fuel and timber. The minor forest products include items such as tamarind, curry leaf, tendu patta, gallnut, cane, soapnut, tree moss, and now bamboo as well

The Id. AO had relied on the State Notification on 27.10.2014. But there is no ambiguity that the seller of forest product is required to collect tax on forest produce. But the “Minor Forest Product” are the product are not covered under the Income Tax Act u/s 206C (1), sl no-(v) which is not liable to collect tax at source. We find that there is no ambiguity in the “Minor Forest Product” which are not at all liable to collect tax u/s 206C. In our considered view, we set aside the appeal order and the addition made by the Id.AO is quashed.

7.1 In the result, the appeal of the assessee is allowed.

I.T.A. Nos. 160 to 161/Jodh/2023

8. The aforesaid appeals are the quantum in nature. As we already allowed the appeal on factual ground and the appeal is in favour of the assessee. So, the legal issue for limitation for completion of assessment are only for academic purpose and has not been required for adjudication.

8.1. As the quantum appeal is not sustained the order of penalty U/s 271CA is infructuous.

Accordingly, the appeal of assessee bearing ITA No. **160 & 161/Jodh/2023** are allowed.

9. As our observation in the **ITA No 163/Jodh/2023** *ismutatis mutandis* applicable to **ITA Nos. 159/Jodh/2023, 162/Jodh/2023** and **ITA 164 to 166/Jodh/2023** and will be followed accordingly.

10. In the result, the appeals of the assessee bearing **ITA Nos. 159/Jodh/2023 to 166/Jodh/2023** are allowed.

Order pronounced in the open court on 15.12.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

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

True Copy
By Order