

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 591, 592 & 593/JP/2023
निर्धारण वर्ष/Assessment Years : 2016-17, 17-18 & 18-19.

Shri Manoj Kumar Jain Prop. M/s. Balaji Re-Rolling Mills, C/o Kalani & Company, Chartered Accountants, 5 th Floor, Milestone Building, Gandhinagar Turn, Tonk Road, Jaipur.	बनाम Vs.	The Income Tax Officer, TDS, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABLPJ 8154 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA

राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 01/11/2023

उदघोषणा की तारीख / Date of Pronouncement: 19/12/2023

आदेश / ORDER

PER BENCH :

These appeals by the assessee are directed against the three separate orders dated 01.08.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act, 1961 for the assessment years 2016-17, 2017-18 & 2018-19. The assessee has raised the following grounds :-

ITA NO. 591/JP/2023 AY 2016-17 :

1. The Id. CIT (A), NFAC has erred on facts and in law in dismissing the appeal by holding that assessee is not interested in pursuing the appeal as no reply is submitted in support of grounds of appeal filed ignoring that assessee in response to notice dated 02.06.2023 has filed

written submission in support of its grounds of appeal on 08.06.2023 which is not considered by Id. CIT (A).

2. The Id. CIT (A), NFAC has erred on facts and in law in upholding the order of AO determining the liability of Rs. 3,17,777/- u/s 206C r.w.s. 201(1)/201(1A) even when assessee has furnished declaration in Form No. 27C. He has further erred in not providing opportunity to submit certificate from accountant in Form No. 27BA while upholding the order of AO.
3. The Id. CIT (A), NFAC has erred on facts and in law in upholding the order of AO in imposing TDS liability of Rs. 8,140/- u/s 201(1) and interest of Rs. 2,523/- u/s 201(1A) on account of non deduction of tax at source on interest payment of Rs. 81,399/- to M/s. Bajaj Finance Ltd. by not considering the proviso to section 201(1) of the Act.
4. The applicant craves to alter, amend and modify any ground of appeal.
5. Necessary cost be awarded to the assessee.

ITA NO. 592/JP/2023 AY 2017-18 :

1. The Id. CIT (A), NFAC has erred on facts and in law in upholding the order of AO determining the liability of Rs. 1,30,679/- u/s 206C r.w.s. 201(1)/201(1A) even when assessee has furnished declaration in Form No. 27C. He has further erred in not providing opportunity to submit certificate from accountant in Form No. 27BA while upholding the order of AO.
2. The Id. CIT (A), NFAC has erred on facts and in law in upholding the order of AO in imposing TDS liability of Rs. 14,851/- u/s 201(1) and interest of Rs. 3,119/- u/s 201(1A) on account of non deduction of tax at source on interest payment of Rs. 1,48,509/- to M/s. Bajaj Finance Ltd. by not considering the proviso to section 201(1) of the Act.
3. The applicant craves to alter, amend and modify any ground of appeal.
4. Necessary cost be awarded to the assessee.

ITA NO. 593/JP/2023 AY 2018-19 :

1. The Id. CIT (A), NFAC has erred on facts and in law in upholding the order of AO determining the liability of Rs. 1,30,679/- u/s 206C r.w.s. 201(1)/201(1A) even when assessee has furnished declaration in Form

No. 27C. He has further erred in not providing opportunity to submit certificate from accountant in Form No. 27BA while upholding the order of AO.

2. The applicant craves to alter, amend and modify any ground of appeal.
3. Necessary cost be awarded to the assessee.

Ground No. 1 for the A.Y. 2016-17

The Ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal by holding that assessee is not interested in pursuing the appeal as no reply is submitted in support of grounds of appeal filed ignoring that assessee in response to notice dt. 02.06.2023 has filed written submission in support of its grounds of appeal on 08.06.2023 which is not considered by Ld. CIT(A).

2. The brief facts of the case are that the assessee is a scrap dealer. A spot verification was conducted at the business premises of assessee on 04.09.2018 where it was found that assessee has sold scrap to various dealers without collecting tax at source and has not received Form No.27C as required u/s 206C(1) of the Act till the date of spot verification. Accordingly ITO(TDS) raised demand us 201(1)/201(1A) for non collection of tax at source for AY 2016-17 to 2018-19. Aggrieved by the assessment order, the assessee preferred appeal before Id. CIT (A). Before the Id. CIT (A), the assessee filed written submission. The NFAC decided the appeals of assessee for AY 2017-18 & 2018-19 vide order dated 01.08.2023 after considering the submission of assessee but for AY 2016-17 he decided the appeal on the same date by stating that assessee has not filed any submission in support of ground of appeal and thus the appeal of assessee is liable to be dismissed.

3. Before us, the Id. A/R of the assessee submitted that in response to the notices issued, assessee has filed the written submission along with Form No.27C on 08.06.2023, copy of acknowledgment is placed on record, but the NFAC passed the order without considering the same. Further, when the NFAC is deciding the appeals for AY 2017-18 & 2018-19 on the same date and the facts for all the 3 years are common, it is incorrect on part of NFAC to state that the conduct of assessee shows that assessee is no more interested in pursuing the appeal though at the same time deciding the issue on merit.

In view of above, it is prayed that the appeal of assessee, in the interest of justice, be decided on merit instead of setting aside the appeal to Id. CIT(A).

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have the rival contentions, perused the material on record and gone through the orders of the revenue authorities. We note that assessee has filed written submission on 08.06.2023 but the Id. CIT (A) has not considered the same. Further, on the same issue the Id. CIT (A) has decided the appeal for AY 2017-18 and 18-19 on merit on the same date. The ground relating to all the three years are common. Therefore, in the interest of justice, we proceed to decide the remaining grounds in this appeal on merit along with the ground raised in AY 2017-18 and 18-19 in the foregoing paras.

Ground No. 2 for AY 2016-17 and
Ground No. 1 for AY 2017-18 & 18-19.

The Id. CIT(A), NFAC has erred on facts and in law in upholding the order of AO determining the liability of following amount u/s 206C r.w.s. 201(1)/201(1A) even when assessee has furnished

declaration in Form No.27C. He has further erred in not providing opportunity to submit certificate from accountant in Form No.27BA while upholding the order of AO.

<i>AY</i>	<i>Amount</i>
<i>2016-17</i>	<i>Rs.3,17,777/-</i>
<i>2017-18</i>	<i>Rs.1,30,679/-</i>
<i>2018-19</i>	<i>Rs.2,46,209/-</i>

6. The brief facts of the case are that the ITO(TDS) at Page 6 & 7 of his order held that assessee sold scrap to various parties but has not collected tax at source. Further, he has not obtained prescribed Form No.27C from the buyer as same were not found during spot verification nor submitted such form during spot verification. He accordingly raised demand u/s 201(1) & 201(1A) of the Act r.w.s. 206C & 206C(7) of the Act. In appeal, the Ld. CIT(A) in all the orders at Para 4 to 4.5 particularly at Para 4.3 & 4.4 held that assessee has not produced Form No.27C at the time of spot verification though the same was submitted during the proceedings before ITO(TDS) but the same is not submitted before the appropriate authority prescribed under Rule 37C within the prescribed time. Thus it cannot be treated as compliance of section 206C(1A). Further, assessee has not shown any reasonable cause for delay in obtaining Form 27C which is of more than 2 years. This apart assessee has not complied with proviso below to sub-section 6A of section 206C where assessee is not treated as assessee-in-default if he furnishes certificate from an accountant in Form No.27BA certifying that such buyer has furnished return of income u/s 139, has taken into account transaction for computing the income and has paid the due taxes. Accordingly he dismissed the appeal of assessee.

7. Before us, the Id. A/R of the assessee submitted that there is no dispute that assessee has belatedly collected the declaration in Form No.27C and has filed the same before ITO(TDS). Therefore, the question is that if such declaration is not filed to the prescribed authority within the prescribed time, can the liability of TCS be fastened on the assessee. This issue has since been decided by the various Courts and Tribunal where it is held that even if the declaration is not furnished in time, no liability u/s 206C(6A)/206C(7) can be fastened on the assessee. For this, reliance is placed on the following cases:-

CIT Vs. Adisankara Spinning Mills (P.) Ltd. (2014) 362 ITR 233 (Mad.) (HC)

In this case, the High Court at 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."

CIT(TDS) Vs. Siyaram Metal Udyog (P.) Ltd. 240 Taxman 578 (Guj.) (HC)

In this case 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 Form27C 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."

Karnataka Forest Development Corporation Ltd. Vs. ITO, TDS 2015 ITL 1007 (Bang.) (Trib.)

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).

Chandmal Sancheti Vs. ITO (2016) 160 ITD 313 (Jaipur) (Trib.)

The relevant Para 10 of the order reads as under:-

10. We have heard the rival contentions of both the parties and perused the material available on the record. In our view, the appeal is continuation of the assessment proceedings and even if the declaration is filed by the assessee at the appellate stage in the prescribed format by disclosing all information as

contemplated under Form 27C r/w r. 37 of the Rules, the benefit of declaration should be given to the assessee. The learned AO/CIT(A) should extend the benefit of declaration to the assessee. Rule 37 though is couched in the mandatory language by using the word "shall" but r. 37 has not given the consequences of not filing the declaration within time. In our view, the consequences of failure to file the declaration in the requisite format as mentioned in the Rules should be provided by the IT Act and not by the Rules. The Rules, in our opinion, cannot extend or restrict the provisions of the Parent Act. The Rules are framed by the legislature by exercising its power under the Act and therefore, any penalty provision by way of the exclusion of declaration benefit and submission of the declaration belatedly should be provided by the Act and the Rules. The provision of sub-s. (1A) of s. 206C, in our view, does not provide the consequences of the delayed filing of the declaration. Though it provides that it is to be filed on or before the 7th day of the next following month in which declaration is furnished to him. Therefore, though there is delay in issuing the declaration by the buyer, the assessee cannot be penalized or deprived from the benefit of the declaration given by the buyer. The only duty cast upon the seller is to submit declaration in the following month in which the declaration is received. No time-limit has been provided by the statute on the buyer to submit the declaration in Form 27C. In view thereof, the ground is required to be allowed. In the light of above, we deem it appropriate to remand the matter back to the file of the AO with direction to verify whether the declaration has been filed by the assessee in the requisite form and what will be the effect of filing of this declaration on the calculation of the TCS under s. 206C of the Act. It is, however, again clarified that the delay in filing the declaration shall not be a ground to the AO to deny the benefit of the declaration to the assessee. In view thereof, the ground No. 2 of the appeal is allowed for the statistical purposes only.

G.K. Traders Vs. ITO (2023) 198 ITD 72 (Rajkot) (Trib.)

The relevant Para 5 of the order reads as under:-

5. We have heard the rival contentions and perused the material on record. In the case of CIT (TDS) v. Siyaram Metal Udyog (P.) Ltd. [2016] 71 taxmann.com 204/240 Taxman 578 (Gujarat High Court), 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, the Gujarat High Court held that addition with the aid of section 206C could not be made. In the case of CIT vs. Chhaganbhai K

Sanghani, [2018] 94 taxmann.com 459 (Gujarat High Court) held that where in case of assessee, a dealer in scrap, AO levied interest and tax in terms of section 206C(7) on account of non-collection of tax source, in view of fact that assessee had submitted certificates provided by buyers under sub-section (1A) if section 206C before appellate authorities, impugned order passed by A.O. was to be set aside. Further, Jaipur ITAT in the case of ChandmalSancheti [2016] 72 taxmann.com 237 (Jaipur-Trib.) held that no time limit is provided in section 206C(1A) to make a declaration in Form 27 collected from buyers; hence delay in filing declaration shall not be ground to deny benefit of declaration to assessee. In light of the above judicial precedents on the subject, in the interests of justice, we are restoring the matter to the file of the Ld. Assessing Officer to decide the issue de novo after giving due opportunity of hearing to the assessee to present his case on merits.

The Ld. CIT(A) has referred to the decision of Hon'ble ITAT, Chennai Bench in case of Sri Jayabharath Timber Depot Vs. ITO 150 Taxmann.com 360 where declaration in Form 27C was not obtained within a reasonable time and Form No.27BA was collected after lapse of 7 years. However, in the present case the assessee has obtained & filed declaration in Form No.27C to ITO(TDS) within a reasonable time. In any case where the ITAT, Jaipur Bench has taken a favourable view, then the decision of ITAT, Chennai Bench would not apply. The decision of ITAT, Delhi Bench in case of Divisional Forest Officer Vs. ITO(TDS) 57 Taxmann.com 238 where it was held that furnishing of Form No.27C by the buyer has to be construed as mandatory only support the case of assessee in as much as assessee has filed Form No.27C to ITO(TDS). The SLP granted against Gujarat High Court decision in case of Siyaram Metal Udyog (P.) Ltd. would not mean that decision of High Court is overruled. Hence, in view of the decision referred in Para 3 above, ITO(TDS) be directed not to levy tax u/s 206C(1) and interest u/s 206C(7).

It is submitted that first proviso to section 206C(6A) provides that seller should not be deemed to be in assessee in default in respect of tax if buyer has

furnished the return u/s 139, has taken into account such income for computing his total income, has paid the due taxes and furnishes the certificate in Form No.27BA. This legal position has been accepted by NFAC, however, it has not provided any time to the assessee to obtain Form No.27BA from the accountant and to furnish the same to ITO(TDS). Therefore, the assessee be given an opportunity to furnish Form No.27BA to ITO(TDS).

In view of above, demand raised u/s 206C(1)/ 206C(7) be directed to be deleted.

8. On the other hand, the Id. D/R supported the orders of the revenue authorities.

9. We have the rival contentions, perused the material on record and gone through the orders of the revenue authorities. We find that there is no dispute that assessee has belatedly collected the declaration in Form No. 27C and filed the same before ITO TDS. Rule 37C provides that the same is to be submitted before the prescribed authority within the prescribed time. Therefore, the question to be answered in this ground is that if such declaration is not filed to be prescribed authority within the prescribed time, can the liability of TCS can be fastened on the assessee. This issue is no more res integra. In the various cases relied on by the assessee, supra, we find that Hon'ble Madras High Court, Hon'ble Gujarat High Court and ITAT Bangalore Bench, Jaipur Bench and Rajkot Bench have held that even if there is a breach on the part of the assessee in not obtaining the declaration from the buyer, the moment the sale is effected and in filing it before the CCIT or the CIT, such breach is to be considered only technical which is liable to be condoned in as much as the main thrust of sub-section 1A of section 206C 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 delay in filing the said declaration would not defeat the very claim. The Id. CIT (A) has referred to the decision of Hon'ble ITAT Chennai Bench where form No. 27C was not obtained within a reasonable time and form no. 27BA was collected after lapse of 7 years which is not the facts of the present case. In any case, since the decision of Madras High Court and Gujarat High Court and that of ITAT Jaipur Bench is in favour of the assessee, we are inclined to accept the contention of the assessee and thus this ground in all the three years is allowed.

Ground No. 3 (AY 2016-17) & Ground No. 2 (AY 2017-18):

The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in imposing TDS liability as under on account of non deduction of tax at source on interest payment of following amount to M/s Bajaj Finance Ltd. by not considering the proviso to section 201(1) of the Act.

AY	Interest paid	TDS u/s 201(1)	Interest u/s 201(1A)
2016-17	Rs.81,399/-	Rs.8,140/-	Rs.2,523/-
2017-18	Rs.1,48,509/-	Rs.14,851/-	Rs.3,119/-

10. The brief facts of the case are that the ITO(TDS) without any discussion in the order has stated that on payment made to M/s Bajaj Finance Ltd. tax has not deducted at source and therefore raised demand under sections 201(1) & 201(1A). On appeal, the Id. CIT (A) NFAC at Para 4.6 of his order observed that assessee made interest payment to M/s Bajaj Finance Ltd. without TDS for which no specific contention is made by the assessee. Accordingly it confirmed the order of ITO(TDS).

11. Before us, the Id. A/R of the assessee submitted that assessee has raised finance from M/s Bajaj Finance Ltd. against which it has taken advance cheque for payment of installment. The installment includes the interest amount on which tax is liable to be deducted u/s 194A but since advance cheque was already given, there is no occasion for the assessee to deduct tax at source. However, it is an undisputed fact that M/s Bajaj Finance Ltd. is regularly filing its return of income and therefore, the ITO (TDS) be directed to confirm this fact from M/s Bajaj Finance Ltd. or alternatively allow the assessee an opportunity to file Form 26A, i.e. certificate from accountant under first proviso to section 201(1) of the Act.

12. On the other hand, the Id. D/R supported the orders of the revenue authorities.

13. We have the rival contentions, perused the material on record and gone through the orders of the revenue authorities. We note that assessee arranged finance from M/s. Bajaj Finance Ltd. against which installment cheques which includes the interest amount was given in advance and thus the assessee has no occasion to deduct tax at source. We also note that M/. Bajaj Finance Ltd. is a regular income tax assessee and, therefore, ITO TDS may confirm this fact from M/s. Bajaj Finance Ltd and allow the assessee an opportunity to file certificate from accountant in Form 26A Under 1st Proviso to section 201(1) of the Act. Thus this ground is allowed for statistical purposes.

14. In the result, appeals of the assessee are disposed off accordingly.

Order pronounced in the open court on 19/12/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Manoj Kumar Jain, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO TDS Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 591, 592 & 593/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar