

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष  
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

**I.T.A. Nos. 852 to 854/Kol/2023**  
**Assessment Years: 2006-07 to 2008-09**

M/s Raoji Bhai Maganbhai And Company Forest  (PAN: AADFR 8577 Q)	Vs.	ITO, Ward-59(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	04.01.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.02.2024
For the Appellant/ निर्धारिती की ओर से	Shri Manoj Kataruka, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

These are the appeals preferred by the assessee against the order of the Ld. Ld. Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 19.06.2023 for the AYs 2006-07 to 2008-09.

2. In all the above appeals, the common issue raised by the assessee is against the order of Ld. CIT(A) confirming the imposition of tax by treating the assessee in default for non-collection of tax at source u/s 206C(6)/206C(7) of the Act.

3. First of all we will decide A.Y. 2006-07. Facts in brief are that the assessee is a registered partnership concern and is engaged in trading of tendu leaves. The AO found and observed that the assessee has not collected tax on sale of tendu leaves made to six parties aggregating to Rs. 41,63,024/-. Accordingly a show cause notice was issued as to why the assessee should not be treated as assessee in default for non-collection of tax u/s 206C of the Act. Besides, he was asked to furnish the evidences of filing of the copies of declarations in Form 27C in any received from the puyers before the prescribed authority. The assessee in response of the said letter dated 6.12.2008 submitted that the assessee is not first seller of the goods and as per Circular No. 660 dated 15.09.1993 of CBDT para no. 5, the assessee was not liable to collect tax at source on the sales of Tendu leaves and therefore the assessee should not be treated as a defaulter. However the plea of the assessee did not find favour with the AO and a tax demand of Rs. 3,01,819/- was slapped on the assessee on sale of tendu leaves of Rs. 41,63,024/- @ 5% u/s 206C(1) of the Act which comes to Rs. 2,08,151/- and Rs. 93,668/- on account of interest u/s 206C(7) @ 1% of vide order dated 26.12.2008 passed u/s 206C(6)/206C(7) of the Act.

4. The Ld. CIT(A) also dismissed the appeal of the assessee by holding that the assessee is involved in the trades in Tendu leaves and the provisions of section 206C of the Act were applicable as the tendu leaves were purchased from Government Undertaking i.e. Orissa Forest Development Corporation Ltd.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has been engaged in the sale of tendu leaves at the second stage whereas in the first stage the tendu leaves were sold on the Govt Undertaking. In our opinion the case of the assessee is covered by Circular No. 660 dated 15.09.1993 which provides that the no TCS is required to be deducted from the sales made at

second stage u/s Section 206C of the Act. However the findings of the Ld. CIT(A) state that that the Circular No. 660 dated 15.09.1993 is not applicable as the provisions of Section 206C of the Act were not applicable to public sector company who effected the sales at the first stage and therefore the assessee is covered under the provisions of section 206C of the Act even in the second stage of sale of tendu leaves. In our opinion the Ld. CIT(A) has wrongly observed that the provisions of Section 206C of the Act were applicable to the assessee even though the assessee has made sale at second stage and the entity involved in the first stage was public sector undertaking. In the present case we also find that the assessee has collected Form no. 27BA as per Rule 37J and form 27C as per rule 37C from all the six parties copies of which are placed at page 31 to 48 of PB stating that they were engaged in business of manufacturing of Bidies and the tendu leaves were to be used for the purpose of manufacturing units and not for the purpose of trading. The case of the assessee is also covered by the following decisions:

- i) *Karnataka Forest Development vs. ITO in ITA Nos. 1144 to 1146/Bng/2014 dated 17.04.2015.*
- ii) *CIT vs. Siyaram Metal Udyog Pvt. Ltd. in Tax Appeal No. 519 of 2016 dated 27.06.2016.(Guj)*
- iii) *Satya Pal Amrik Singh & Co. vs. Union of India 142 CRE 332(P&H)*
- iv) *M/s G. K. Traders vs. ITO in ITA No. 153/Rjt/2021 dated 6.7.2022*
- v) *KPG Entreprise vs. ITO in ITA No. 2384/Ahd/2012 dated 14.08.2014.*

*In the case of Karnataka Forest Development vs. ITO(supra) , the coordinate bench has held that where the assessee has obtained the form 27 to the effect that the buyer would use the tendu leaves in manufacturing process , then the assessee cannot be treated as assessee in default u/s 206C of the Act or liable for interest. The Hon'ble Gujrat High court has held that where the declaration is made in terms of section 206C(1A) of the Act , then the liability to collect at source under section 206C(1*

) would not apply. The Hon'ble Court further held that where is no dispute as to genuineness of the declaration being filed as prescribed , the minor delay in filing the declaration would defeat the claim. Similar ratio has been laid down in the various other decisions as referred to above. We also note that the purchasers have also furnished declaration making averments that the corresponding purchases were duly accounted for in their books of accounts. In view of the above facts and legal position as discussed above, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the demand by holding that the provision of TCS u/s 206C of the Act are not applicable to the assessee. The appeal of the assessee is allowed.

6. Now we shall take in ITA Nos. 853 & 854/Kol/2023 for AY 2007-08 & 2008-09. We find that the issues are similar to one as decided by us in ITA No. 852/Kol/2023 for AY 2006-07. Since we have decided the similar issue in ITA No. 852/Kol/2023 for AY 2006-07 in favour of the assessee, therefore our findings/decisions in the above ITA No. 852/Kol/2023 for AY 2006-07 would, mutatis mutandis, apply to these appeals as well. Consequently these appeals are also allowed.

7. In the result, all the appeals of the assessee are allowed.

Order is pronounced in the open court on 21<sup>st</sup> February, 2024

Sd/-  
(Sanjay Garg /संजय गर्ग)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 21<sup>st</sup> February, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Raoji Bhai Maganbhai and Company Forest, 17, Tara Chand Dutta Street, Gujarat Bhawan, Burrabazar, Kolkata-700073
2. Respondent – ITO, Ward-59(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata