



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.298/RJT/2023

(निर्धारणवर्ष / Assessment Year: (2012-13)

(Physical Hearing)

The ITO, TDS – 3, 2 <sup>nd</sup> floor, Taranjali Buildign, P. N. Marg, Jamnagar – 361008	Vs.	Sampatlal Badrilal Somani Proprietor of S. B. Metal Udyog, Plot No. 4/A/1, Nr. Kriti Weight Bridge, Shanker Tekri, Udyognagar, Jamnagar – 361004
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AHHPS0245D</b>		
(Appellant)		(Respondent)

Appellant by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Respondent by : Shri Chetan Agarwal &  
Shri Brijesh Parekh, Ld. AR

**Date of Hearing** : 10/10/2024

**Date of Pronouncement** : 07/01/2025

आदेश / ORDER

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals), which in turn arises out of an



assessment order passed by the assessing officer, under section 206C and 206C(7) of the Income Tax Act, 1961, vide order dated 31.07.2017.

2. Grounds of appeal raised by the Revenue are as follows:

*1) The Ld. CIT(A) has erred in law and on facts in holding that late submission of Form 27C and 27BA, being procedural provisions, does not render the appellant as assessee-in-default under section 206C(6A) of the Income Tax Act particularly when the assessee has failed to furnish the statutory declaration as per section 206C(1A) within the stipulated time prescribed under section 206C(1B) of the Income Tax Act, 1961 read with rule 37C of the Income Tax Act Rules, 1962.*

*2) The Ld. CIT(A) has erred in law and on facts in directing not to treat the assessee as assessee – in – default for non-collection of TCS on sale of scrap to manufacturer where Form no. 27C has not been filed with the department and not furnished before the specified authorities as per prescribed manner in the Income Tax Act, 1961.*

*3) The Ld. CIT(A) has erred in law and on facts in cancelling demand aggregating to Rs. 1,09,81,819/- containing of TCS of Rs. 62,39,670/- and interest on TCS amounting to Rs. 47,42,149/-.*

*4) on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

*5) The appellant craves leave to amend or alter an ground or add a new ground, which may be necessary.*

*6. It is therefore, prayed that the order of the Ld. CIT(A) may be cancelled and that of the AO may be restored to the above extent.*

3. The facts of the case which can be stated quite shortly are as follows: The assessee is an individual and engaged in the business of "Scrap". The assessment was completed u/s 143(3) of the Act for assessment year (A.Y.) 2012-13. During the course of assessment proceedings, it was seen by the assessing officer that assessee has sold scrap to the tune of Rs. 62,39,66,957/- in the financial year 2011-12. As per the provisions of section 206C(3) person has to prepare and submit a statement in form 27EQ to the prescribed income tax



authority within the time prescribed in Rule 31AA of the Income Tax Rules 1962. On verification of the records, it was observed by the assessing officer that assessee has not collected TCS to the tune of Rs. 62,39,670/-, on sale of scrap of Rs. 62,39,66,957/- for the F.Y. 2011-12, relevant to A.Y. 2012-13. Assessee has also not filed statement in form 27EQ for the year under consideration. Therefore, assessing officer issued show -cause notice to the assessee, vide AO letter dated 01/01/2016, 01/06/2016 and then after on 16/06/2017, as to why TCS liability of Rs. 62,39,670/- should not be determined by passing order u/s 206C(6) of the Income Tax Act.

4. The assessee, in reply to above show- cause notices, submitted its contention on various dates. Due consideration was given by the assessing officer to all the replies of the assessee. The assessing officer, dealt with the various replies of the assessee as under and conclusion reached by the assessing officer is reproduced below:

(i)Reply dated 07/7/2017: Assessee contended that he is engaged in the business of scrap which is not generated by its own mechanical process and therefore does not fall in the definition of scrap. Here it is pertinent to mention that assessee is engaged in the trading of scrap and the purchases of the same are under the head and in form of scrap. The title of Section 206C reads as "Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc." This clearly indicates that an assessee, who has been trading in scrap, falls within the purview of Section 206C. It is not necessary to find out whether the assessee sells the scrap originated from its manufacturing activity, if any, or scrap is procured from outside source and sold thereafter. Whatever the origin of the scrap may be, as the assessee is trading in scrap, this activity is squarely covered u/s 206C of the Act. Section 206C stipulates that every person being a



seller, at the time of selling of any of the goods of the nature specified in that section will collect sum at a certain percentage. The definition of 'seller' under explanation (c) of section 206C(11) also does not stipulate that the seller should be a manufacturer only. Therefore, the contention of assessee is not tenable and accepted. Reliance is placed on the decision of Hon'ble ITAT(Special Bench). Rajkot in the case of M/s Bharti Auto Products, Jamnagar vide ITA no. 391 & 392/Rjt/2011.

(ii) Further assessee has submitted the copy of proof of submission of Form No.27C to Office of the Commissioner of Income-Tax, Jamnagar. On verification of the same it is seen that form 27C are submitted on 18/02/2016 which is long after the time limit prescribed in Rule 37C(3) of Income Tax Rules. Further the same ought to have been submitted to the Commissioner of Income Tax(TDS), Ahmedabad who is a prescribed authority. The late filling of form 27C loses its sanctity and judicial stand.

(iii) This clearly again concludes that assessee, though understands and believes that the goods traded during the relevant year are very well within the definition of SCRAP, tries to escape from the liability of TCS on sale of such scrap. On one hand, assessee contends that goods traded, during the financial year, do not fall under the category of SCRAP and on other hand submits relevant forms and tries to save from liability of collection of TCS. Therefore, the reply of the assessee is in itself with ambiguity and therefore not accepted. The assessee has not discharged its liability within the time prescribed in Rule 37C(3) of Income Tax Rules. Here it is pertinent to mention that assessee has submitted these forms after initiation of proceedings by this office. This again leads to conclusion that the act of submitting form 27C to the CIT office, Jamnagar as well as after a long period of time, prescribed in Rule 37C(3) of Income Tax



Rule is an after-thought for the purpose of escaping from his TCS liability. Further assessee has relied upon certain judicial pronouncements. However, the facts of referred judicial decisions are different from that of the present case.

(iv) Assessee is engaged in the business of "Scrap". During the year under consideration assessee has sold scrap to the tune of Rs. 62,39,66,957/-. Assessee has not collected TCS on such sale. As per the provisions of sec. 206C(1) of the Act, assessee is under an obligation to collect TCS. Due to non-collection of TCS, assessee is treated as "Assessee in default". The amount of such TCS is determined at Rs. 62,39,670/-. Furthermore assessee is also liable to pay interest on such TCS within the provisions of sec. 206(C) (7) of the Act. A separate penalty proceedings u/s 272(A)(2)(k) was also proposed by the assessing officer to the prescribed authority.

5. Aggrieved by the order passed by the Assessing Officer, under section 206C(6) & 206C(7) of the Income tax Act, 1961, the assessee carried the matter in appeal before the Ld. CIT(A), who has allowed the appeal of the assessee, observing as follows:

*3. Ground no.1 is general and hence, not adjudicated separately. The same is dismissed. Ground no. 2,3,4, and 5 are directed against the grievance of the appellant regarding the determination of TCS at Rs.62,39,670/- by the AO u/s 206C(1) of the IT Act.*

*3.1 The appellant has furnished its submission during the course of appellate proceedings, which have been taken on record. As per appellant, it had sold the scrap to the tune of Rs.62,39,66,957/- to the manufacturers and traders for which declaration containing in duplicate inform no. 27C and 27BA was collected from the manufacturers as well as traders. The appellant argues that it had filed form no. 27C belatedly before the Hon'ble CIT, Jamnagar on 18.02.2016 and form no. 27BA filed to the ITO(TDS) and the same were furnished during the assessment proceedings as well. The appellant has placed reliance on the provisions of section 206C(1A) and contends that the appellant is not legally obliged to collect the TCS from a buyer who*



*furnishes a declaration to the appellant to the effect that the purchase made by such buyer are to be utilized for the purpose of manufacturing, processing or producing articles or things or for the purpose of generation of power and not for trading purposes. The appellant has also argued that in appellant's own case for AY 2010-11, Hon'ble CIT(Appeals) and Hon'ble ITAT has ruled in favour of the appellant on same grounds. The appellant has also relied upon various case laws in support of its contention and claims that the appellant cannot be penalized or saddled with liability u/s 201(1) or 201(1A) when the depositors to whom Interest had been paid/credited have furnished declaration in the prescribed manner requesting not to deduct tax.*

*3.2 Considered the facts of the ground, material available on record, contention of the appellant and impugned assessment order along with the case laws cited by the appellant. It is seen that the main argument of the appellant is that the purchasers were manufacturers which had furnished form no. 27C and 27BA to the appellant and in accordance with the section 206C(1A) no collection/TCS was required to be deducted by the appellant. Since, the matter involves the provisions of section 206C(1A), it is more than handful to go through the provisos of section 206C(1A), which reads as under:*

*(1)(A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things [or for the purposes of generation of power] and not for trading purposes.*

*3.3 In the instant case the buyers have furnished declaration in form no. 27C and 27BA to the appellant, however, the appellant filed form no. 27C before the Hon'ble CIT, Jamnagar on 18.02.20216 which was considered belatedly.*

*3.4 It is pertinent to note that similar order under section 206C had been passed in the appellant's case in A.Y. 2011-11. The appeal filed by the appellant against this order was decided by the CIT(A) vide order dated 26.06.2015, wherein the appeal was partly allowed. The Ld. CIT(A) held as*

*6. I have duly considered the submission of the appellant and also gone through the discussion made in the order under section 206C/206C(7).*

*6.1 Although I don't agree with the appellant's submission that section 206C(1) is not applicable in trader case, it is very much applicable which has now been clarified in M/s Bharti Auto Case. However, it has also been clarified that late submission of form 27C & 27BA does not make the assessee in default, because procedural provisions are generally curative in nature. Hence, the TCS as well as interest on TCS demand is hereby cancelled. However, interest is leviable on the TCS to be deducted from the due date of deduction to the date of filing return of income by the buyers. Accordingly, the AO is directed to charge the Interest in case of 27BA forms submission"*



*Subsequently, the decision of the CIT(A) was upheld by the Hon'ble ITAT, Rajkot who had dismissed the appeal by the department. The Hon'ble ITAT, Rajkot, Bench, vide its order 21.03.2016 held as under:-*

*5. We have heard the rival submissions and perused the material on record. The issue in the present cases are with respect to holding the assessee in default u/s 206C of the Act and penalty u/s 271CA of the Act. We find that while dealing the issue in favour of the assessee, Ld.CIT(A) and after relying upon the decision of Special Bench of Tribunal in case of M/s Bharti Auto Products in ITA No. 391 & 392/Rjt/2011 order dated 06.09.2013 has held that the late submission of form no. 27C and 27BA does not make assessee in default. As far as Revenue's appeal with respect to levy of penalty u/s 271CA is concerned, Ld. CIT(A) held that since the assessee has not been treated as assessee in default u/s 206(6) and 206C(7), the question of penalty does not arise. Before us, Revenue has not brought on record any contrary binding decision in its supports. In view of the aforesaid facts, we find no reason to interfere with the order of Id. CIT(A). Thus the grounds of Revenue in both the appeals are dismissed.*

*3.5. Respectfully following the decision of the Ld. CIT(A) and Hon'ble ITAT in the appellant's own case, it is held that late submission of Form 27C and 27BA, being procedural provision, does not make the appellant an assessee-in-default. Hence, the TDS as well as interest on TCS demand is hereby cancelled. However, interest is leviable on the TCS to be deduction / collection to the date of filing of return by the buyers. Accordingly, the AO is directed to charge the interest in case of submission of 27BA forms."*

6. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

7. Learned DR for the revenue, argued that Form 27C and 27BA, were not submitted by the assessee, before the proper and correct Authority, as per law. The decision of Id. CIT (A) is not acceptable, as the Form 27C and 27BA, did not reach to the appropriate income tax authority, hence order passed by the assessing officer may be upheld.



8. On the other hand, Ld. Counsel for the assessee, submitted that now the assessee is ready to furnish Form 27C and 27BA, etc, before the appropriate income tax authority, therefore matter, may be remitted back to the file of the assessing officer for fresh adjudication, as the assessee would file the relevant forms before the assessing officer, as well as, before the appropriate income tax authority.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. We find merit in the submission of the Id. Counsel for the assessee to the effect that Form 27C and 27BA, etc, were not available before the appropriate income tax authority, therefore, we are of the view that the matter should be remitted back to the file of the assessing officer for fresh adjudication, as the assessee would file the relevant forms before the assessing officer, as well as, before the appropriate income tax authority, hence, one more opportunity should be granted to the assessee to plead his case before the assessing officer. For the reasons given above, we are of the view that the order of the CIT(A) on this issue requires to be set aside and the issue needs to be looked into afresh by the AO in the light of the observations as set out above. We hold and direct accordingly. The AO



will afford opportunity of being heard to the Assessee before deciding the issue.  
The Assessee will also be at liberty to let in further evidence to substantiate it's  
case. For statistical purpose, the appeal of the revenue is treated as allowed.

10 In the result, for statistical purposes, the appeal of the revenue is allowed.

**Order is pronounced on 07/01/2025 in the open court.**

**Sd/-  
(DINESH MOHAN SINHA)  
JUDICIAL MEMBER**

**Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date:07 / 01/2025

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot