



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT  
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ ITA No. 359/RJT/2018  
निर्धारणवर्ष / Assessment Year: (2013-14)  
(Hybrid Hearing)

<b>Vimalbhai Mohanbhai Nariya Prop. S. M. Corporation 4606, GIDC, Phase – III, Dared, Jamnagar</b>	<b>Vs.</b>	<b>Income Tax Officer, TDS – 3, JamnDagar</b>
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AEKPN4149M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri V. P. Sutaria, Ld. AR  
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR  
Date of Hearing : 24/02/2025  
Date of Pronouncement : 19/05/2025

आदेश / ORDER

**PER DINESH MOHAN SINHA, JM:**

Captioned appeal filed by the assessee, pertaining to assessment year(A.Y.) 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax (Appeal), vide order dated 19.04.2017, which in turn arises out of a penalty order passed by Assessing officer u/s 234e of the Income Tax Act, 1961, vide order dated 31.07.2018.

2. The grounds of appeal raised by the assessee;

*“1.The AO erred in imposing penalty of TCS of Rs. 10,37,171/- u/s. 234E of the I.T.Act.*

*2. The AO erred in not considering the fact of the case and relevant rule of I. T. Act.*

*3. The AO should have consider the detailed submission made on 24.07.2017.*



*4. The appellant reserved his rights to add, to alter or to amend above grounds of appeal.”*

3. Brief facts of the case that the assessee is the property of M/s. S. M. Corporation and engaged in the trading in Brass Scrap. He imports brass scrap and sells it to brass parts manufactures in Jamnagar. As per sec. 206(c) he is required to collect TCS if the scrap is sold to other traders. The assessee sells brass scrap to brass part manufactures and hence, he is not liable to collect TCS. The books of accounts of the assessee is audited u/s. 44AB of the I. T. Act. The assessee has received declaration in prescribed format in Form No. 27C from all brass manufactures and the same were filed before the Hon'ble CIT, Jamnagar on 08.11.2016. As the declarations were to be filed before the Commissioner of Income Tax, within the prescribed time but unfortunately the assessee could not file the same. The assessee is sincerely regrets for the mistake and there was no mala-fide intension or any intension to defraud the Government of their dues. The being a venial breach and the Government is not put to any loss by late filing of these declaration. As no tax was payable hence, the return in Form no. 27EQ was not filed. In spite of above submission made before learned Assessing Officer, he passed order u/s. 234E of the I. T. Act, and he has treated the appellant in default and has imposed the penalty of Rs. 10,31,171/- u/s. 234E of the I. T. Act. That the Assessing Officer has not considered sec. 260C(1A) of the Act. If the scrap is sold to the manufactures of brass parts then there is no liability to collect TCS. No manufactures will agree to pay the amount of TCS. As no TCS is collectible then there is no question of filing TCS return. Form 27C were filed late or belated, but the facts remains the fact that the assessee has sold scrap to the manufactures and not to other traders. he is not liable to collect TCS.



4. That the appeal filed by the assessee against the order of the Ld. CIT(A) dated 19.04.2017. That the Ld. CIT(A) dismissed the appeal of the assessee with the following remarks;

*“Further, as per the provisions of section 234E of the Income Tax Act, any assessee, who fails to prepare and deliver a statement within prescribed time to the prescribed authority, is liable to pay an amount by way of fees for the default period. Here in this case assessee has failed to submit the statement in form 27EQ within the prescribed time to the prescribed authority. In view of the same it is seen that there is a default period for levy of late fees u/s. 234E of the Income Tax Act.”*

5. That the appeal filed by the assessee against the impugned order of the Ld. CIT(A), before us.

6. During the course of argument, the Learned Appellant Representative (hereinafter referred to as the “Ld. AR”) of the assessee engaged in business of Scrap and sold scrapes to the manufactures there was no requirement to collect TCS on such sale declarations form obtain from the manufacturer in Form 27C and was submitted to the Ld. CIT(A) Jamnagar. The assessee is not under obligation to collect TCS under provisions of sec. 206C(1) of the Act.

7. On the contrary, the Learned Senior Department Representative (hereinafter referred to as the “Ld. Sr. DR”) for the revenue submitted, the assessee’s business of Trading of Scrap according to sec. 206C of the Act assessee is liable for collection of TCS accordingly liable for filing in form no. 27EQ within the prescribed time, Further, the Ld. Sr. DR relied on the judgement in the case of Hon’ble High Court of Gujarat in Rajesh Kaurani v. Union of India (2017) 83 taxmann.com 137 (Gujarat).



8. We have heard both the parties and perused the material available on record. We note that the appellant has of trader in Brass Scrap, the Brass Scrap is imported and sold to the brass parts manufacturer in Jamnagar, Gujarat against the Form no. 27A, the assessee has not liable to collect TCS on the same which were made to brass park manufacture. We further note that the assessee has filed form no. 27C, submit declaration u/s. 206C1(A) is to be given in form no. 27EQ on 19.02.2013. Previously the same is not given in form no. 27EQ. The same is reproduced below:

*“furnish particulars of amount received or debited on which tax was not collected in view of the furnishing of declaration under sub-section (1A) of section 206C by the buyer”*

i. That the reply of the assessee not to treat the assessee in default of forces the Form. We noted that In the case of CIT Vs. Siyaram Metal Udyog (P.) Ltd. ITA 529 & 526 of 2016) Taxsutra.com, the Gujarat High Court held, that - "the taxpayer or the seller while upholding the order of the Income-tax Appellate Tribunal (the Tribunal) held that a minor delay in filing a declaration in the prescribed format is a mere procedural lapse and it was in compliance with provisions of filing declaration. Therefore, the seller was under no obligation to collect tax at source. It was only require to be Income Tax Act. The details of declaration was not decided to be in relation TCS in form 27EQ. Decision has decided on various Tribunal and High Court brass Scrap by the Scrap trader u/s. 206C it is held that brass scrap sold by the assessee, and it does not attract TCS then there is no question to filed TCS return.

ii. In the case of CIT Vs. Adisankara Spinning Mills (P.) Ltd. (Tax Case (A) No. 1194 of 2010) Hon'ble High Court of Madras held that - "the assessee



having filed statutory form, viz., Form 27C, the technical breach was liable to be condoned by following in decision of this court in the case of CIT Vs. A.N. Arunachalam [1994] 208 ITR 481/75 Taxman 529 (Mad.). Therefore, we do not find any scope to entertain the said question.

iii. That the assessee is not liable to collect TCS from Manufacturer and only the details of declaration are to be included in the Return of TCS. As no credit of the TCS to be availed by any party hence, there is no loss to revenue, being a venial breach the assessee request to set aside the penalty order for which assessee will remain deeply grateful to you.

iv. Our attention was invited to the provisions of sec. 206C(1A), 206C(1B) and 206C3 of the Act, as pr sec. 206(1A) assessee was not allowed to collect TCS from the buyer who furnish declaration in Form No. 27A. We have received declaration Form all the buyer at the time when we sold scrap to them and it will be contra mention sec. 206C(1A) provisions of Act. We have not collected any tax because legally we are banned to collect tax as stated above and hence we humbly believe that we need not file statement (TDS Returns) we note that a stated that scrap (goods) not sold any after 19.02.2013. We humbly believe that in view of the above facts the assessee was not liable to file TCS return in Form No. 27EQ for the year FY 2012-. No such return is prescribed like 27QA in case of without deduction of TDS.

iii. It is correct that as per Sec. 206C, TCS Return is required to be filed within the prescribed time as per rule 31AA of the Income Tax Rules. It seems that as per rule 31AA(4)(v) the details of persons who have submitted declaration under sub section (1A) of section 206C is to be given in Form No.



27EQ w.e.f. 19/02/2013. Previously the same was not there in Form No. 27EQ. The assessee has not sold any scrap after 19/02/2013. We humbly believe that in view of above facts the assessee was not liable to file TCS Return in Form No. 27EQ for the year F.Y. 2012-13. Our kind attention has been given u/s. 206C1(A) and (B), the same is reproduced below;

*“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*

*(1B) The person responsible for collecting tax under this section shall deliver or cause to be delivered to the 21 Principal Chief Commissioner or Chief Commissioner or 2"Principal Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him”*

iv. We observe that as per Sec. 206C, TCS Return is required to be filed within the prescribed time as per rule 31AA of the Income Tax Rules. It seems that as per rule 31AA(4)(v) the details of persons who have submitted declaration under sub section (1A) of section 206C is to be given in Form No. 27EQ w.e.f. 19/02/2013. Previously the same was not there in Form No. 27EQ. The assessee has not sold any scrap after 19/02/2013. We believe that in view of above facts the assessee was not liable to file TCS Return in Form No. 27EQ for the year F.Y. 2012-13.

v. In view of the above, the assessee is not liable to collect TCS from Manufacturer and only the details of declarations are to be included in the Return of TCS. As no credit of the TCS is to be availed by any party hence, there is no loss or delay or question of reconciliation arises. It cannot justify that



the Form 27C found by the assessee, the information and details of sales was not reconciled by the Ld. AO/JAO. In this case, there is no evidence available on record to the effect that Form 271EQ has been filed within due date or not. Therefore, this fact should be investigated by the Ld.AO/JAO. We considering the fact and circumstance of the case and, in the interest of justice, we are of the view that matter should be sent back to the file of the Ld. AO/ JAO for verification of the declaration Form 271(A) of the Act and Form 271EQ, and needless to say that the assessee will appear before the Ld. AO/JAO and comply with the term of the notice.

9. In the result, appeal filed by the assessee is allowed, for statistical purpose/

**Order pronounced in the open court on 19/05/2025.**

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

Rajkot

दिनांक/ Date: 19 /05 /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

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

(True Copy)

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot