

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.08/Ahd/2020
(Assessment Year: 2012-13)

Umeshkuamr Harilal Shah A/401, Sukan Apartment, Nr. St. Merry School, Naroda, Ahmedabad-382330	Vs.	ITO(TDS)-3 Ahmedabad
[PAN No.AGSPS6516P]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Jinesh Shah, A.R.
Respondent by:	Shri Dr. Mukesh Jain, Sr. D.R.
Date of Hearing	15.09.2022
Date of Pronouncement	02.11.2022

ORDER

This appeal is filed by the assessee against the order dated 12.06.2018 passed by the Ld. CIT(Appeals)-7, Ahmedabad for A.Y. 2012-13.

2. The grounds of appeal raised by the assessee read as under:

“1. The Ld. Commissioner of Income Tax (Appeals)-7 [Herein referred as CIT(A)] has erred on facts and in law in confirming the findings of the assessing officer that provisions of section 206C is applicable on traders of scrap.

2. The ld. CIT(A) has erred on facts and in law in upholding the order of the assessing officer and rejected the claim of Assessee that provision of Sec. 206(C) shall not be applicable to the assessee as it was his first year of audit and TDS/TCS shall applicable to individual only if accounts are audited in immediate preceding year. Addition made for TCS on Scrap of Rs. 268248.

3. The Ld. CIT(A) has erred by levy of interest U/s 206C(7) of Rs. 222646 of the IT Act for the above issues.”

3. The assessee is engaged in the business of supply of Iron Bara, MS Steel, Building Materials, MS Plate and other Ferrous and non-Ferrous Metals. The assessee filed return of income which was finalized under Section 143(3) of the Income Tax Act on 30.03.2015 determining total income at Rs. 6,71,263/-. A show-cause notice was

issued to the assessee on 04.01.2018 and 23.01.2018 thereby asking the assessee to show-cause why an order under Section 206C(1)/206C(7) of the Income Tax Act, 1961 should not be passed in respect of non-collection of TCS on the sales of scrap income under the head of income from operation amounting to Rs. 2,68,24,875/-, and penalty under Section 271CA should not be levied for the said default. The assessee submitted its reply on 15.02.2018 stating therein that TCS is not applicable on the sale of scrap as it is not resulted due to any manufacturing activity. Assessee has just acted as trader, therefore, TCS is not applicable on trading of scrap. The Assessing Officer observed that since assessee is a trader in scrap the assessee was required to collect TCS @ 1% and deposit the same in the Government Account before due date as per the provision of Section 206C of the Income Tax Act. The Assessing Officer further observed that the assessee company made sale of scrap of Rs. 2,68,24,875/- to M/s. Neesa Infrastructure Ltd. on which no TCS has been made. The Assessing Officer held that the assessee has a tax liability of Rs. 4,90,894/- in respect of 206C(1) and interest under Section 206C(7).

4. Being aggrieved by the order under Section 206C passed by the Assessing Officer the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. A.R. submitted that there is on delay of 483 days in filing the present appeal for which the assessee has filed affidavit of the assessee thereby stating that the assessee was on medical treatment and was recovering during the period and could not file the appeal within stipulated time. The Ld. D.R. oppose the condonation of delay.

6. Heard both the parties. The assessee has explained the delay and the delay appeared to be genuine, therefore, the delay is condoned.

7. The Ld. A.R. submitted that TCS is not applicable on the sale of scrap as the assessee is not in the manufacturing activity and act as trader. AS per Section 206C of Tax Collection Act source the person is liable to collect tax at source to inform person only if last year his accounts are audited under Section 44AB in the immediately preceding financial year in which goods are sold. The Ld. A.R. submitted that the assessee started the business in the name of Kirti Enterprise. The Audit Report of the assessee has not mentioned in details for the preceding year as the assessee is not liable for the audit in any other previous years. The assessee submitted the copy of Audit Report before the CIT(A) as additional evidence under the Rule 46A of the Income Tax Rules 1962. The Ld. A.R. submitted that during the appellate proceedings, the CIT(A) has rejected the appeal merely on the ground that the Audit Report Point 11 has not mentioned any change in the method of accounting. The Ld. A.R. submitted that Point 11 of the Audit Report is for the disclosure when the assessee has changed the method from mercantile system of cash or vice-versa. It is nothing to disclose for any audit liability was there in previous year or not. The Ld. A.R. submitted that as per the Circular No. 18 dated 21.05.2012 the applicability of TCS on scrap traders has been clarified and if the buyer declares by furnishing Form 27C before the seller it is for the purpose for obtaining such goods manufacturer/processing/producing articles and not trading purpose than the seller is exempted from collecting such tax from such buyer.

The Circular further clarifies that the term scrap is clearly defined in the explanation to this section and there is no requirement that the goods to be liable for scrap should be produced/manufacture of the seller itself.

8. The Ld. D.R. relied upon the assessment order and the order of the CIT(A). The Ld. D.R. submitted that the assessee sold scrap during the year under consideration and had not collected TCS on the same and as per the decision of the Special Bench of the Tribunal in case of *Bharti Auto Product vs. CIT* (2013) 92 DTR 345 Explanation (c) to Section 206C that the word “seller” does not require that the seller of scrap must himself generate such scrap and therefore, such a requirement cannot read into the section.

9. Heard both the parties and perused all the relevant material available on record. It is undisputed fact that the assessee is not a manufacturer and the scrap which was sold by the assessee was not from the manufacturing activity. The decision of the Special Bench in case of *Bharti Auto Product* (supra) was observed that scrap means wasted which is definitely not usable as it is. Scrap might have been bought and sold. Scrap might have arisen due to manufacturing activity which is sold. Whatever it may be, it is a fact that the assessee had the scrap for sale. In the present assessee’s appeal the assessee has taken reliance on the Circular 18 dated 21.05.2012 was not considered by the Special Bench of the Tribunal. But from the perusal of the said Circular which later issued by the CBDT it is stated that there is no requirement that the goods to be eligible for scrap should be produced/manufacture by the seller itself. In present

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assessee's case the assessee has not filed prescribed Form 27C thereby exempting the seller to collect tax under Section 206C of the Act. Thus, the Assessing Officer as well as CIT(A) has rightly made tax liability including interest under Section 206C of the Act. There is no need to interfere with the findings of the CIT(A). Hence, appeal of the assessee is dismissed.

10. In result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on	02/11/2022
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 02/11/2022

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad