

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 604 of 2015**

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THE COMMISSIONER OF INCOME TAX (TDS)....Appellant(s)

Versus

M/S.PRIYA BLUE INDUSTRIES PVT.LTD.....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

MS VAIBHAVI K PARIKH, ADVOCATE for the Opponent(s) No. 1

MR TUSHAR P HEMANI, ADVOCATE for the Opponent(s) No. 1

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 03/11/2015

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. In this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") at the instance of the revenue, the order dated 14.5.2015 made by the Income Tax Appellate Tribunal, Ahmedabad Bench "D" (hereinafter referred to as "the Tribunal") in ITA No.2207/Ahd/2011 has been called in question by proposing the following questions, stated to be substantial questions of law:-

"(A) Whether the Appellate Tribunal has substantially erred in law in interpreting the term Scrap as defined in clause (b) to Explanation to section 206C of the Income Tax Act by holding that the words 'waste and scrap' is a singular item and not distinct?

(B) Whether the Appellate Tribunal has substantially erred in law in placing reliance upon the case of Navin Flourine Chemicals despite the fact that the Hon'ble Special Bench in the case of Bharti Auto Products had held that the words 'waste and scrap' are two different and distinct words?

(C) Whether the Appellate Tribunal has substantially erred in deleting the order passed under section 201(1) of the Income Tax Act of Rs.40,16,418/- and interest charged under section 201(1A) of the Act of Rs.23,29,522?"

2. The Assessing Officer upon verification of the records noticed that during the financial year 2005-06, the assessee had made sales of scrap worth Rs.35,79,69,613/-; however, no documents/papers leading to collection of tax at source on sale of scrap and payment thereof to the credit of the Central Government Account were produced nor was certification in Form No.27C produced. According to the Assessing Officer, the assessee was under an obligation to collect from the buyer of the scrap, a sum of 1% as income tax + SC + EC. The Assessing Officer held that on account of non-compliance of the provisions of section 206C of the Act read with rule 37C of the Income Tax Rules, 1961, the assessee was liable to pay tax and interest under section 206C (7) of the Act and, accordingly, raised a demand of Rs.40,16,418/- under section 201(1) of the Act and levied interest of Rs.23,29,522/- under section 201(1A) of the Act. The assessee carried the matter in appeal before the Commissioner (Appeals), who observed that

the assessee was engaged in ship breaking activity and the items/products in question were, finished products obtained from the activity and constituted sizeable chunk of production done by the ship breakers. The Commissioner (Appeals) was in agreement with the contention of the assessee that though such products may be commercially known as “scrap” they were definitely not “waste and scrap”. He further agreed with the contention of the assessee that the items in question were usable as such and, therefore, do not fall within the definition of “scrap” as given in Explanation (b) to section 206C(1) of the Act. Placing reliance upon the decision of the Tribunal in the case of Navine Fluorine International Ltd. v. ACIT, TDS Circle Surat, the Commissioner (Appeals) ordered deletion of the demand of TCS on the said items. The revenue carried the matter in appeal before the Tribunal. The Tribunal in the impugned order has recorded the following findings:-

“As per assessee, assessee has collected and paid TCS on following type of items of sales during the year.

- “1. ARTICLES OF IRON & STEEL WIRE ROPES*
- 2. WASTE & SCRAP OF CASTIRON*
- 3. WASTE & SCRAP OF COPPER*
- 4. WASTE & SCRAP OF IRON & STEEL*
- 5. WASTE & SCRAP OF STAINLESS STEEL*
- 6. WASTE & SCRAP, OF NICKET*
- 7. WASTE & SCRAP OF GM, GUM, COP, GER.ALU.PRO”*

Assessee has not collected TCS on following type of items sold during the year:

- “1. Old and used plates*
- 2. Non-excisable (exempted) like furniture, wood, etc.*
- 3. Trading of scrap (melting)*
- 4. High seas sale”*

We find that ITAT 'B' Bench, Ahmedabad in ITA Nos.1213 and 1214/Ahd/2010 dated 15.02.2011 in case of Navine Fluorine International Ltd. v. ACIT, TDS Circle Surat, for A.Y. 2009-10 & 2010-11, inter alia held that term "waste and scrap" are one item. The "waste and scrap" must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and to other reasons. It would mean that these waste and scrap being one item should arise from manufacture or mechanical working of material. The words waste and scrap should have nexus with manufacturing or mechanical working of materials. Therefore, the word used is "which is" definitely not usable. The word "is" as used in this definition of the scrap meant for singular item i.e. "waste and scrap". As stated above, assessee is engaged in ship breaking activity and as given to understand these items/products in question are finished products obtained from the activity. They constitute sizeable chunk of production done by ship breakers. Though such products may be commercially known as "scrap" they are definitely not "waste and scrap". The items in question are "useable as such" and therefore does not fall within the definition of scrap as given in of section 206C(1). Having said so, we restore the issue to Assessing Officer with direction to grant relief to assessee under the provision of 206C(1) of Act, with regards to only sale of scrap arising out of manufacturing activity in course of ship breaking after providing due opportunity of hearing to assessee."

3. Mrs. Mauna Bhatt, learned senior standing counsel for the appellant assailed the impugned order by submitting that the interpretation put by the Tribunal as regards the expression "scrap" is erroneous, inasmuch as, section 206 clearly says "scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. It was submitted that the Tribunal has held that "waste and scrap" are one item and has restored the issue to the Assessing Officer with a direction to grant relief to the

assessee under the provisions of section 206C (1) of the Act with regard to only sale of scrap arising out of manufacturing activity in the course of ship breaking after providing due opportunity of hearing. It was submitted that the Tribunal in the impugned order has already given a finding that the items in question are usable as such and do not fall within the definition of “scrap” as given in section 206C (1) of the Act. According to the learned counsel there is no basis for the Tribunal to arrive at such a finding on the material on record. It was, accordingly, submitted that the matter requires consideration and that the appeal deserves to be admitted on the questions as proposed or as may be deemed fit by the court.

4. On the other hand, Mr. Tushar Hemani, learned advocate for the respondent assessee submitted that the Tribunal has interpreted the expression “scrap” in consonance with the meaning of such expression as defined under clause (b) to the Explanation to section 206C of the Act. It was submitted that the assessee had not collected the TCS on four items as reflected in the order of the Tribunal. It was submitted that the Tribunal has given a finding that the assessee would be entitled to the relief under the provisions of section 206C (1) of the Act only with regard to sale of scrap arising out of manufacturing activity in the course of ship breaking and, therefore, the Tribunal has rightly interpreted the expression “scrap” as defined under the Act and that the impugned order being just, legal and proper deserves to be confirmed.

4.1 In support of his submission, the learned counsel placed reliance upon the decision of the Madras High Court in the case of **Commissioner of Income tax v. Adisankara Spinning**

Mills (P.) Ltd., (2014) 362 ITR 233 (Mad), wherein the court had held that the cotton waste disposed of by the respondent assessee was reused raw material for manufacture of lower count of cotton yarn and, therefore, did not fall within the definition of “scrap” as defined in Explanation (b) to section 206C of the Act. The court held that the conclusion of the Tribunal having been reached as a finding of fact, did not give rise to a question of law. It was, accordingly, urged that the appeal being devoid of merits, deserves to be dismissed.

5. From the facts as narrated hereinabove, it is apparent that the respondent assessee had collected and paid tax at source (TCS) on the seven items as enumerated in the orders passed by the Commissioner (Appeals) as well as the Tribunal and had not collected tax at source on the following four items :-

1. Old and used plates
2. Non-excisable (exempted) like furniture, wood, etc.
3. Trading of scrap (melting)
4. High seas sale.

6. The Tribunal, after considering the definition of scrap under clause (b) to section 206C of the Act, has noted that the assessee is engaged in ship breaking activity and the items in question are finished products obtained from the activity and constitute sizeable chunk of production done by ship breakers. Though such products may be commercially known as “scrap” they are not “waste and scrap”, as such items are usable as such, and, therefore, do not fall within the definition of scrap as envisaged in the Explanation to section 206C(1) of the Act.

7. Section 206C of the Act bears the heading, “Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc.” and provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax. The nature of goods specified at serial No.(vi) is scrap, and the percentage provided is 1%. The expression of scrap is defined under clause (b) to the Explanation to section 206 of the Act, to mean waste and scrap from manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. On a plain reading of the said expression, it is evident that any material which is usable as such would not fall within the ambit of the expression “scrap” as envisaged under clause (b) of the Explanation to section 206C of the Act.

8. The Tribunal, in the impugned order, has recorded that the items/products in question obtained from the activity of ship breaking are usable as such and, therefore, do not fall within the definition of scrap. However, since the assessee had not collected tax at source on items other than items obtained out of the manufacturing activity in the course of ship breaking, the Tribunal has remitted the matter to the Assessing Officer for the purpose granting relief to the

assessee under the provisions of section 206C (1) of the Act with regard to only sale of scrap arising out of manufacturing activity in the course of ship breaking after providing due opportunity of hearing to the assessee. Thus, the Tribunal after recording a finding of fact to the effect that the products obtained by the assessee in the course of ship breaking activity are usable as such, and, therefore, do not fall within the definition of scrap has remitted the matter to the Assessing Officer to grant relief accordingly. Essentially, therefore, the impugned order of the Tribunal is based upon a finding of fact which does not give rise to any question of law.

9. Insofar as the course of action adopted by the Tribunal in remitting the matter to the Assessing Officer to decide in relation to which of the items the assessee is entitled to relief under the provisions of section 206C(1) of the Act is concerned, no fault can be found in the approach adopted by the Tribunal, inasmuch as, out of the four items of which tax was not collected at source, the matter has merely been referred to the Assessing Officer for the purpose of examining as to what extent relief is required to be granted to the assessee under the provisions of section 206C(1) of the Act having regard to the findings of fact rendered by it.

10. In the opinion of this court, the impugned order passed by the Tribunal does not suffer from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law warranting interference. The appeal, therefore, fails and is, accordingly, dismissed.

(HARSHA DEVANI, J.)

(A.G.URAIZEE,J)

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