

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 15TH DAY OF DECEMBER 2014/24TH AGRAHAYANA, 1936

WP(C).No. 14431 of 2014 (D)

PETITIONER :

**EXCEL TIMBERS PVT. LTD
KODAMPUZHA ROAD, PETTA, FEROKE
CALICUT-673631, REP. BY MANAGING DIRECTOR C. MAMMU.**

**BY SENIOR ADVOCATE SRI.ARSHAD HIDAYATULLAH (BOMBAY)
BY ADVS.SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN**

RESPONDENT(S) :

- 1. DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 2 [1]: AYANKAR BHAVAN, NORTH BLOCK
KOZHIKODE-673001.**
- 2. INCOME TAX OFFICER [TDS]
AAYAKAR BHAVAN, NORTH BLOCK, KOZHIKODE-673001.**

**R1 & R2 BY SENIOR ADVOCATE SRI. P.K. RAVINDRANATHA MENON
BY STANDING COUNSEL SRI.JOSE JOSEPH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-10-2014,
ALONG WITH WPC. 14531/2014 & CONNECTED CASES, THE COURT
ON 15-12-2014 DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 14431 of 2014 (D)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT-P1: PHOTOCOPY OF NOTICE FOR 2009-10 TO 2013-14 DATED
27.01.2014.
- EXHIBIT-P2: PHOTOCOPY OF REPLY DATED 24.02.2014 TO EXT.P1 NOTICE.
- EXHIBIT-P3: PHOTOCOPY OF ORDER U/S 206C DATED 31.03.2014 FOR
ASSMT.YEAR 2010-11.
- EXHIBIT-P4: PHOTOCOPY OF ORDER U/S.206C DATED 31.03.2014 OF
ASSMT.YEAR 2011-12.
- EXHIBIT-P5: PHOTOCOPY OF ORDER U/S 206C DATED 31.03.2014 FOR
ASSMT. YEAR 2012-13.
- EXHIBIT-P6: PHOTOCOPY OF ORDER U/S 206C DATED 31.03.2014 FOR
ASSMT.YEAR 2013-14.
- EXHIBIT-P7: PHOTOCOPY OF ORDER U/S.206C DATED 31.03.2014 FOR
ASSMT. YEAR 2014-15.

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R2(A) COPY OF THE STATEMENT U/S. 131 RECORDED FROM THE
MANAGING DIRECTOR OF THE PETITIONER COMPANY.
- ANNEXURE R2(B) COPY OF THE TRIBUNAL DECISION.
- ANNEXURE R2(C) COPY OF THE HIGH COURT'S DECISION.

//TRUE COPY//

P.S. TO JUDGE

Mn

'CR'

P.R. RAMACHANDRA MENON J.

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W.P.(C) Nos. 14431,14531, 14532,  
14541 and 14544 of 2014

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Dated, this the 15th day of December, 2014

JUDGMENT

Whether Section 206C of the Income Tax Act is applicable in the case of dealers like the petitioners, who are importing timber from abroad, to effect 'Tax Collection at Source'; and would the failure, if any, make them an 'assessee-in-default', to be saddled with the liability to pay tax and also interest as envisaged therein, is the main point projected for consideration. The foundation built up to dispute the applicability is, with reference to the circumstances under which Section 44AC and 206C were brought into the Statute Book about 2½ decades ago and the subsequent deletion of Section 44AC alone, with effect from 01.04.1992; however retaining Section 206C. The attempt is, to give only a restricted meaning to the term '**timber obtained by any mode other than under a forest lease**' given at Serial No.iii of the table under Section 206C, which according to the petitioners, has to be read and understood as to the procurement of timber from the 'Indian soil' and not from abroad.

2. Before dealing with the provisions of law, the factual matrix reveals that, all the petitioners are timber merchants, mainly importing

timber from other countries and are selling them mostly to registered dealers in Kerala and outside the State. Admittedly, they were not collecting any 'tax at source' in terms of Section 206C from the purchasers/dealers, to whom the imported timber was sold. While so, the Department conducted a survey under Section 133A of the 'Act' at the business premises of the petitioners. It was observed that the petitioners had failed to collect 'tax at source' under Section 206C(1) of the Act in respect of the sales of timber made during the financial years from 2009-2010 till date. This led to Ext.P1 show-cause notice issued to the petitioners asking them to explain:

- (i) why the petitioners should not be treated as an 'assessee-in-default' under Section 206C(6);
- (ii) why interest under Section 206C(7) should not be charged against the petitioners; and
- (iii) why penal action should not be initiated against the petitioners.

3. On receipt of Ext.P1 notice, the petitioners submitted Ext.P2 explanation, disputing the liability to effect tax collection and mainly contending that the petitioners were not covered under Section 206C (1) of the Act. After considering the reply, the 2nd respondent finalised the assessment, passing Exts.P3 to P7 orders for the different assessment years, holding that there was infringement of the mandatory requirement under Section 206C and hence the petitioners

were to be deemed as 'assessee-in-default', thus demanding to satisfy the tax and interest. Pointing out that appeal will not be an effective alternative remedy, the impugned orders having been passed by placing reliance on the decision rendered by the Gujarat High Court in **Shyam Timber Pvt. Ltd.**'s case (Annexure R2(C) produced along with the statement filed by the 2nd respondent), the petitioners have approached this Court, challenging the said orders in these writ petitions.

4. A detailed statement has been filed by the 2nd respondent, to the effect that the idea and understanding of the petitioners is quite wrong and misconceived. It is stated that, in the course of survey conducted at the premises of the petitioners, statement of the petitioners under Section 131 of the Income Tax Act was recorded, where the petitioners admitted that no tax was collected at source from the registered dealers at the time of sale of timber. The respondents contend that, the term 'obtained' used in Section 206C covers all modes of acquisition. Referring to the relevant provisions of law and also the explanation offered by the petitioners, it is contended that, the petitioners are liable for collecting tax at source from the sale amount of timber sold to other retail dealers, with effect from 08.09.2003. The point regarding the deletion of Section 44AC as well as the purpose and effect of introduction of Section 206C are also

discussed in detail. Copy of the decision rendered by the Rajkot Bench of the Income Tax Appellate Tribunal in **Shyam Timber Pvt. Ltd. Vs. Department of Income Tax** and a copy of the decision rendered by the Gujarat High Court, dismissing the appeal filed by the Revenue (raising the alleged substantial question of law under Section 260A of the Act) have also been produced as Annexures 2(B) and 2(C) respectively.

5. Heard Sri. Arshad Hidayathullah, the learned Senior Counsel on the side of the petitioners and Sri. P.K Ravindranatha Menon, the learned Senior Central Government Counsel (Taxes) appearing on behalf of the respondents.

6. The main point raised by the learned Senior Counsel for the petitioners is that, scope of Section 206C has to be read and understood in the light of the circumstances under which Section 44AC was brought in. Apart from referring to the factual scenario as discernible from the decision rendered by this Court in **P. Kunjahammedkutty Haji Vs. Union of India and others [(1989) 176 ATR 481]**, reliance is also sought to be placed on the relevant 'Budget speech'. The learned counsel submits that, though validity of the statutory provision has been upheld by the Apex Court as per the decision rendered in **Union of India Vs. Sanyasi Rao [(1996) 219 ITR 330]**, the scope of applicability of Section 206C to the

transactions like that of the petitioners, who procure timber by way of import from abroad, effecting the subsequent sale (which according to them will not come within the purview of Section 206C of the Act), was never considered by the Apex Court in the said decision. Since it is settled law, that a decision will make it a 'precedent', only in respect of the issue that has been considered and decided, the learned Senior Counsel submits that, the above decision cannot be an authority on the question raised in these writ petitions and it requires to be independently considered. If there is no liability to collect the tax at source, the nature of transaction being different, involving import from abroad, the petitioners cannot act as the collection agents of the respondents and as such, there cannot be any 'bonded labour' or adverse consequence.

7. The learned Senior Counsel for the petitioners points out that, as discernible from the 'Object and reasons' for incorporating Section 44AC into the statute book and the 'Budget speech' in this regard, that the Department was finding it extremely difficult to trace out the persons/parties and effect assessments, who were dealing with certain specified commodities like 'liquor', 'forest timber' etc. Such goods were being obtained even in bogus names or constituting establishments temporarily and evading payment of tax. By the time subsequent sale is effected and funds are generated, the parties used

to disappear, when it came to the question of satisfaction of the tax. Because of the nature of operations, the identity of the persons concerned was found to be quite difficult to be traced out and in the said circumstances, to check the tax evasion and to procure revenue at the earliest point of time, remedy was worked out by including such items/instances within the reach of the Department, by fixing a specific extent of the purchase price, as 'presumptive income' procured from the deal. It was accordingly, that Section 40AC was introduced and the rate of tax leviable at the source in respect of such commodities, was specified under Section 206C of the Act. Subsequently, on finding that the 'presumptive income' as stipulated under Section 44 AC was causing much hardship to genuine dealers, the Parliament, by virtue of its wisdom, sought to delete the said provision from the statute book with effect from 1.4.1992, as per the relevant Finance Act.

8. The learned Senior Counsel submits that, the petitioners belong to a different class by themselves, being 'importers' of timber from other countries. As such, they are very much identifiable and their transactions are quite transparent. It is stated that, most of the sales effected by the petitioners were to the registered dealers. The transactions are covered by Bills of Entry, documents regarding satisfaction of Customs duty, Lorry receipts, Transit pass etc., and as such, they do not belong to the category of "fly by night operators" as

described by this Court in **P.Kunhammedkutty Haji & Others v. Union of India & Others** [(1989) 176 ITR 481]. The learned counsel also points out that the petitioners are not in a position now, to recover tax from the customers to whom the goods were sold during the concerned assessment years. The sales having been effected to registered dealers, they would have satisfied the tax payable and if there is any failure, it is open for the Department to proceed against them. Since the timber that came to the hands of the petitioners was not from the Indian forests/Indian soil and since there is no reason to doubt the identity of the transaction, the petitioners do not come within the purview of Section 206C, submits the learned counsel. As the 'Presumptive tax' is being imposed to remedy the mischief of large scale evasion of tax in the aforesaid circumstances, the 'deeming fiction', in turn, has always to be given a restrictive interpretation. This is more so since, the remedial measures were brought about, to check the wide spread smuggling of forest produce out of reserve forests, which were mostly being transported with sham documents or without documents in the State. But the position is different in so far as the petitioners' case is concerned, as it involves import from other countries, supported by valid documents and subsequent sale on the strength of further records.

9. Mr. P.K. Ravindranatha Menon, the learned Senior Central

Government Counsel (Taxes) points out that, the challenge raised against the proceedings finalized by the assessing authority is absolutely without any basis, legal or factual. Admittedly, the petitioners have not effected collection of tax at source, in spite of the clear mandate under Section 206C of the Act and in spite of upholding the constitutional validity of the provision, by this Court and also by the Apex Court. It is evident from the impugned orders that, the proceedings have been finalized in respect of the sales effected only to the registered dealers. It is pointed out that, the scope of Section 206C is discernible from the provision itself, subsequent amendments at different points of time, the judgments rendered by this Court, and that of the Apex Court in **Sanyasi Raos' case** (cited supra). The learned counsel also points out that, Section 206C stands on a footing of its own, and it was never resting on the platform of Section 44AC. It is stated that the course stipulated under Section 206C is only to procure revenue at the source itself, and the 'purchase price' is treated as a 'measure', to apply the percentage/rate stipulated. It is almost a similar exercise as the Tax Deducted at Source (TDS). Such an exercise by itself does not amount to any assessment of its own, and the duty cast upon the parties concerned by virtue of the enactment is merely to debit the amount and to have it remitted to the Government account, for being credited to the account of the buyer, as

envisaged under sub section 4 of Section 206C. Even though Section 44AC was deleted with effect from 1.4.1992, Section 206C remains in tact, with its own identity and scope. It is also brought to the notice of this Court that said provision has undergone many changes after 1.4.1992, i.e., after deletion of section 44AC, so as to meet timely requirements, depending upon the policy and desire of the Government/law makers. This conscious exercise very much sustains the provision and the petitioners do come within its reach/ambit. The source from where timber is procured by the petitioners is not a matter of concern, as significance is with reference to the 'product/commodity', which is nothing other than 'timber'. It is only by virtue of the 'evasion-prone' nature of the commodity, that 'timber' is also included as one of such items, based on the legislative wisdom of the law makers, under Section 44AC as well as Section 206C, along with such other specified items. It is accordingly, that '**advance tax**' is stipulated in respect of 'imported timber' as well, by virtue of the mandate under the local laws, particularly, Section 47(16A) of the Kerala Value Added Tax Act.

10. The learned Senior Central Government Counsel makes a reference to various other provisions under the Income Tax Act, such as Section 194 LA, 194 IA etc, as to the mandate to collect/deduct tax at source, in connection with land acquisition, payment of rent to the

landlords, payments on work contracts and the like. Non-collection of tax at source having been admitted, there is clear infringement of the statutory provision under Section 206C and as such, the impugned orders are not assailable under any circumstance, submits the learned counsel. Constitutional validity of Section 44AC and Section 206C of the Income Tax 1961 was the subject matter of consideration in **Kunhammedkutty haji v Union of india [(1989) 176 ITR 481]** and validity of the statute was upheld by a learned Single Judge of this Court. This was affirmed by a Division Bench as per the decision reported in **T.K Aboobacker & Others v. Union of India [(1989) 177 ITR 358]**. The constitutional validity of the provision was upheld also by a Division Bench of the Andhra Pradesh High Court in **A. Sanyasi Rao & Another v. Government of Andhra Pradesh [(1989) 178 ITR 31(AP)]**. The question had come up for further consideration before another Division Bench of this Court again, raising some additional grounds (in **K.M Joseph Binoy v. Union of India**). After referring to the earlier decision rendered by this Court on the point and also by making a reference to the verdict passed by the Division Bench of the Andhra Pradesh High Court, the challenge was repelled as per the decision in **K.M Joseph Binoy's case [(1992) 194 ITR 449(Ker)]**. The position has become final, in view of the confirmation of the verdict passed by the Andhra Pradesh High Court

as per the judgment rendered by the Apex Court in **Union of India & Another v. Sanyasi Rao and others** reported in [(1996) 219 ITR 330(SC)]. Since constitutional validity of the provision has been upheld and the liability to collect tax in terms of Section 206C of the Act has become final, the attempt of the petitioners is to contend and try to establish that the provision is not applicable to their case.

11. To understand the scope of the provision, a peep into the metamorphosis of law in respect of Section 44AC and 206C is necessary. Section 44AC, which was inserted by the Direct Tax law (amendment) Act 1989 with effect from 1.4.1989 reads as follows:

"44AC. Special provisions for computing profits and gains from the business of trading in certain goods.- (1) Notwithstanding anything to the contrary contained in sections 28 to 43C in the case of an assessee, being a person other than a public sector company (hereafter in this section referred to as 'the buyer'), obtaining in any sale by way of auction, tender or any other mode, conducted by any other person or his agent (hereafter in this section referred to as 'the seller), -

(a) any goods in the nature of alcoholic liquor for human consumption (other than Indian-made foreign liquor), a sum equal to forty per cent of the amount paid or payable by the buyer as the purchase price in respect of such goods shall be deemed to be the profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head 'Profits and gains of business or profession'.

Provided that nothing contained in this clause shall apply to a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is, fixed by or under any State Act;"

The following Explanation is being inserted by the Finance Act, 1990, with effect from April 1, 1991:

"Explanation - For the purpose of this clause, 'purchase price' means any amount (by whatever name called) paid or payable by the buyer to obtain the goods referred to in this clause, but shall not include the amount paid or payable by him towards the bid money in any auction, or as the case may be, the highest accepted offer in case of tender or any other mode;

(b) the right to receive any goods of the nature specified in column (2) of the Table below, or such goods, as the case may be, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of the amount paid or payable by the buyer in respect of the sale of such right or as the purchase price in respect of such goods shall be deemed to be the profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head 'Profits and gains of business or profession'.

Sl. No.	Nature of goods	Percentage

(1)	(2)	(3)

(i)	Timber obtained under a forest lease	Thirty five per cent

- | | | |
|-------|--|-----------------------------|
| (ii) | Timber obtained by any mode other
than under a forest lease | Fifteen
per cent. |
| (iii) | Any other forest produce not being timber | Thirty-
five per
cent |

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (i) shall not apply to a buyer (other than a buyer who obtains any goods, from any seller which is a public sector company) in the further sale of any goods obtained under or in pursuance of the sale under sub-section (1).

(3) In a case where the business carried on by the assessee does not consist exclusively of trading in goods to which this section applied and where separate accounts are not maintained or are not available, the amount of expenses attributable to such other business shall be an amount which bears to the total expenses of the business carried on by the assessee the same proportion as the turnover of such other business bears to the total turnover of the business carried on by the assessee.

Explanation- For the purpose of this section, 'seller' means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society".

12. Section 206C of the Act was inserted by the Finance Act

1988 with effect from 1.6.1988, which reads as follows:

"206C. Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc.- (1) Every person, being a seller referred to in section 44AC, shall, at the time of debiting of the amount payable by the buyer referred to in that section 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 on income comprised therein:

Sl. No.	Nature of goods	Percentage

(1)	(2)	(3)

- | | | |
|-------|---|----------------------|
| (i) | Alcoholic liquor for human consumption
(other than Indian-made foreign liquor) | Fifteen
per cent |
| (ii) | Timber obtained under a forest lease | Fifteen per
cent |
| (iii) | Timber obtained by any mode other than
under a forest lease | Five
percent |
| (iv) | Any other forest produce not being timber | Fifteen
per cent. |
-

Provided that where the Assessing Officer, on an application made by the buyer, gives a certificate in the prescribed form that to the best of his belief any of the goods referred to in the aforesaid Table are to be utilized for the purposes of manufacturing, processing or producing articles or things and not for trading purposes, the provisions of this sub-section shall not apply so long as the certificate is in force.

(2) The power to recover tax by collection under sub-section (1) shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4) Any amount collected in accordance with the provisions of this section and paid under sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate furnished under sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable.

(5) Every persons collecting tax in accordance with the provisions of this section shall be within ten days from the date of debit or receipt of the amount furnish to the buyer to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be

prescribed.

(5A) Every person collecting tax in accordance with the provisions of this section shall prepare half-yearly returns for the period ending on 30th September and 31st March in each financial year, and deliver or cause to be delivered to the prescribed income tax authority such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(7) Without prejudice to the provisions of sub-section (6), if the seller does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of two per cent per month or part thereof on the amount of such tax from, the date on which such tax was collectable to the date on which the tax was actually paid.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the seller.

13. Explanation to Section 206C has been inserted by the Finance Act, 1992 with effect from 1.4.1992 as given below:

"Explanation.- For the purposes of this section, - (a)

"buyer" means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,-

(i) a public sector company,

(ii) a buyer in the further sale of such goods obtained in pursuance of such sale, or

(iii) a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act;

(b) "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society"

Subsequently, as per the Finance Act, 2003, Clauses a(i) and a(ii) mentioned above came to be substituted with effect from 1.6.1993 in the following terms:

10. Clauses (a)(i) & a(ii) have been substituted by the Finance Act 2003 with effect from 1.6.1993, which read as follow:

(i) a public sector company, or

(ii) a buyer in the retail sale of such goods obtained in pursuance of such sale."

14. Shortly thereafter, the above provisions were further substituted by the Taxation Laws (Amendment) 2003, with effect form 8.9.2003 which read as follows:

11. The said clauses further substituted by the Taxation Laws(Amendment) Act, 2003 with effect from 8.9.2003 which read as below:

"Explanation.- For the purposes of this section,- (a) "buyer" means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the table in sub-section (1) or the right to receive any such goods but does not include,-

(i) a public sector company, the central Government, a State government and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or (ii) a buyer in the retail sale of such goods purchased by him for personal consumption".

15. From the above provisions, it is very much clear that, tax was not liable to be collected at source under Section 206C, from a buyer in the further sale of such goods obtained, which subsequently came to be restricted to **buyers engaged in 'retail sale'** of such goods during the period from 1.6.1993 to 8.9.2003. After 8.9.2003, exemption was further restricted to the buyers under Clause (a) ii, **only if it was for 'personal consumption'**. This being the position, the concerned dealers of timber had to collect tax at source, at the rate specified under the 'table 2' Section 206C (now 2.5%) from the buyers, unless it was for personal consumption. There is no case for the petitioners that, the sales effected by them during the concerned assessment years were to buyers of any exempted class. Admittedly,

it was to 'registered dealers', who were doing business in timber. Then, the question to be considered is, whether the nature of procurement of the timber by the petitioners by way of '**import from abroad**' will make them to be classified as a different category, to be taken outside the purview of Section 206C of the Income Tax Act.

16. It is true that Section 44AC was introduced as a measure for prevention of possible tax evasion, because of piracy and such other tactics being deployed by traders dealing with the particular/specified commodities like 'Liquor', 'Timber' obtained under forest lease etc. The object of the enactment, as explained in the Budget speech by the concerned Minister, highlights the factual scenario and the difficulty felt by the Revenue in tracing out the concerned traders, to fix the quantum and to effect recovery, mainly for the reason that, they were mostly having bogus identity or were not traceable for other reasons. That situation may not be applicable to the case of the petitioners, who are having import licence, to import timber from abroad. The commodity/timber, after import, is sold to the dealers and is taken to their premises, after processing at different stages and supported by documents at different levels. Apart from the relevant invoices issued in the name of the importer, there will be Bills of Entry, documents regarding the satisfaction of Customs duty, receipts regarding satisfaction of Advance Tax under

the local Statute, Lorry Receipts, Transit Passes etc. It is true, that the petitioners stand on a different footing with proper identity and there may be transparency in their dealings. But the anxiety of the law makers was more with reference to the probable mischief, if any, played by the buyers and the chance for evasion of tax. It was with that intent, a duty was cast upon the sellers, to effect collection of tax at source and to have it remitted to the Government, to be credited against the account of the buyers, as envisaged under sub section 4 of Section 206C.

17. By virtue of the nature of business and the type of commodity involved, the law makers, in their wisdom, thought it fit to fix a 'presumptive income' in respect of such transactions, which was brought about by incorporating Section 44AC w.e.f. 01.04.89. It is true that the said provision had a life span only till 31.03.1993 and the same was deleted, by virtue of a conscious exercise, because of the hardships faced by genuine buyers, brought to the notice of the Parliament. At the same time, the Parliament was well aware of the existence of Section 206C and consciously found it necessary to be retained, as it could work of its own, to effect deduction of tax at the specified rate in respect of the commodities mentioned therein and to be paid to the Central Government, on account of the buyers.

18. It is relevant to note that, under Section 44AC, only **'four'**

different instances/commodities were included to work out 'presumptive income'. Coming to Section 206C, there were **'six entries'** and the entries at Serial No. 2 and 6 (**'Tendu leaves'** and **'Scrap'**) were not there under Section 44AC. This means, eventhough no apprehension was expressed by the law makers with reference to **'Tendu leaves'** or **'Scrap'** and no necessity was felt to have fixed 'presumptive income' in respect of such items while incorporating section 44AC, they however came to be included under Section 206C, intending to collect tax at source, at the prescribed rate. The list was widened in the Table under Section 206C, including **'Minerals being coal, lignite or iron ore' as item vii, w.e.f. 01.07.2012**, as per the Finance Act 2012.

19. From the above, it is clear that, though 'Timber' under specified circumstances was intended to be included under Section 44AC, in the context of fixing presumptive income, it cannot be said that it has lost its significance, on deletion of Section 44AC, as it stands separately covered and dealt with under Section 206C clubbing along with several other items including **'Tendu leaves'** and **'Scrap'** for collection of tax at source. In other words, the law makers had independent application of mind with regard to the items, which were to be included under Section 206C, in respect of which tax had to be collected at source at the specified rate, which includes **'Timber'** as

well. This being the position, the contention of the petitioners that the circumstance under which Section 44AC was incorporated and the consequence in furtherance to deletion of the said provision w.e.f 01.04.1992 is having a bearing with regard to the exigibility of tax to the very same item mentioned in the Table under 206C, is having no merit or significance.

20. It is also pertinent to note that after deletion of Section 44AC from the Statute Book w.e.f. 01.04.1992, there were several amendments to Section 206C as extracted herein before. The scope of the said provision was widened and this is pursuant to conscious decisions taken by the law makers at different points of time. As made clear by the Apex Court, Section 44AC is only an adjunct and explanatory to Section 206C. Section 44AC does not levy any charge, as there is of course difference between the subject matter of tax and the standard by which it is measured. 'Purchase price' is taken as the 'measure', to work out the figure and that is all. The presumptive income concept is to be read and understood to have only a limited field of application i.e. for collection of tax. In fact, there is no presumptive tax under Section 206C and it only fixes a measure, as to the amount to be collected and deposited in the account of the Government, to be credited against the account of the buyer. Proper assessment will follow and once the liability is fixed, it may turn to

'buyer' to pay the balance tax, or effect refund, if any. It is also relevant to note that, the Legislature incorporated **Section 206CA**, by virtue of the amendment in the year 2002, whereby the allotment of tax collection account number was specified among other things. This shows that Legislature did not stop just after deletion of Section 44AC. The amendment at different points of time had its own object and reasons. Collection of tax at source is discernible under other similar circumstances as well, as referred to hereinbefore. This being the position, the circumstance under Section 44AC was introduced or the consequence of deletion of the said provision w.e.f. 01.04.1993, cannot have a bearing in non-satisfying the requirement by the concerned dealers under Section 206C of the Act, in respect of the commodities specified in the 'Table' given under the said provision.

21. It is worthwhile, to have a look at the disputed entry (Entry iv) in the Table of Section 206C, which reads as follows :

<u>Sl. No.</u>	<u>Nature of goods</u>	<u>Percentage</u>

(iv)	Timber obtained by any mode other than under a forest lease	Two and one half percent

The contention put up by the petitioners is that, the Timber obtained

by any mode other than under forest lease does not apply to Timber imported from other countries. In other words, the contention is that, Timber sold by the petitioners admittedly not being from India, it could not have been a subject matter of taxation under Section 206C. To be more specific, according to the petitioners, there is chance for piracy in connection with the Timber grown in India, which cannot have any significance/role/relevance with regard to the timber imported from elsewhere, that too, on the strength of valid documents, and on the basis of transparent transaction. This Court finds it difficult to accept the proposition for more reasons than one.

22. At the outset, it is to be noted that the provision does not draw any distinction between 'Timber grown in India' (whether in forest or elsewhere) and the 'Timber imported' from abroad. The object of the Statute is important to be noted, to ascertain the scope of the provision. Procurement of revenue is of paramount importance and the Statute, to the best possible extent takes care of the different situations, where there is a chance to evade payment of tax suppressing such income. It is in the said circumstance, that 'evasion-prone' items have been identified and appropriate extent of collection of tax has been stipulated to be finalized in the due course, after verification of accounts of the buyers/traders concerned. It is known to everybody that 'Timber' is not such an item, transportation

of which could be easily concealed. But the Department has come across several ways and means carved out by the traders in the field, to effect deals and evade tax through such dubious means. In such situation, commodity-wise preference has been made, identifying such items and the trade set up, considering the market conditions and such other circumstances. This includes trade in Liquor, Timber, Tendu leaves, Scrap, other Forest produces, Minerals being coal, lignite or iron ore. Depending upon the nature and extent of trade and the commodities concerned, different extent of deduction/percentage has also been specified, as given in the 'Table'. This is on the basis of the conscience and wisdom of the law makers and it is not for the Court to question or substitute the same. Whether 'Timber' is imported from outside the country or whether it comes to the hands of the petitioners by forest lease or any other mode, chance to evade tax 'by the buyer' weighed more with mind of the law makers, to have stipulated that, seller shall effect collection of tax at the prescribed rate, at the time of sale.

23. Incidental reference to the Scheme of Statute is also relevant. Section 4 of the Income Tax Act forms the basis for charge of tax and Section 5 refers to the total income. Income deemed to be received is dealt with under Section 7, while Section 9 refers to income deemed to accrue or arise in India. The relevant portion of Section 9

is extracted below :

"S.9 (1) The following incomes shall be deemed to accrue or arise in India -

(i) all income accruing or arising, whether directly or indirectly through or from any business connection in India, or through or from any property in India or through or from any asset or source of income in India [* * *] or through the transfer of a capital asset situate in India..

24. As mentioned herein before, taking note of the factual scenario, as to the chance for evasion of tax in respect of certain commodities (dealings in which was considered to be vulnerable from the taxation point of view), Section 206C was introduced w.e.f. 01.06.1988, stipulating the rate of tax to be collected by the seller, in respect of such sale at varying rate, depending upon the commodity concerned. After amendment at different points of time, the rate of tax in respect of the commodity involved herein (Timber) as on date is 2.5 %. The said tax is actually liable to be paid by the 'buyer' and no prejudice is caused to the sellers in any manner. The tax collected by the 'seller', is to be credited against the account of the 'buyer' in terms of sub Section 4 of Section 206C and the final liability has to be worked out in the course of regular assessment. In other words, it is only as an 'interim measure', as akin to 'advance tax' payable under

the local Statute and to safeguard the interest of the Revenue. The scheme of the Statute was explained by the Apex Court, when constitutional validity of the Act was upheld as per the decision reported in **(1996) 219 ITR 330 [Union of Indian and another Vs. A Sanyasi Rao and Others]**, also referring to the mandate of Section 9 of the Income Tax Act and placing reliance on the earlier decision rendered by the Apex Court in **(1953) 23 ITR 101 [Anglo French Textile Co. Ltd. Vs. CIT]**. The Court held that, there was no doubt even at the time of purchase, that income was said to have been accrued, to attract imposition of tax. Considering the factual position involved, though the 'Timber' was imported from abroad, after clearance from the Customs department paying the Customs duty, when sale is effected by the petitioners (sellers) to the concerned registered dealers or others (buyers), income can be said to have been accrued at the time of purchase to attract imposition of tax on the 'buyer'. For clarity and convenience, rate of tax to be collected is also specified under Section 206C, in respect of the concerned commodities, to be adjusted against the actual tax payable by the buyer under the regular assessment. This being the position, the source from which 'Timber' came to the hands of the petitioners does not have any relevance at all, and it very much satisfies the term **"obtained by another mode"**, as envisaged under the relevant

provisions of law. The version of the petitioners is that it has to be read and understood giving restrictive meaning referring to the circumstances under which section 44AC was introduced w.e.f 01.04.1988, does not hold any water at all.

25. There is a feeble attempt to contend that the petitioners have to be treated as 'second sellers', as the first sale has already taken place on purchasing the goods from abroad. Since it is the second sale, no tax liability could be mulcted upon the shoulders of the petitioners. This proposition is cent per cent contrary to the case projected by the petitioners right from the beginning, that the transaction has to be considered in the 'Indian context', to ascertain whether Section 206C could be invoked in the case of the petitioners (who are importing Timber from abroad), contending that the said provision was intended to tackle the situation of tax evasion by "fly by night operators", who procured the specified commodities from soil of Indian origin. If the transaction has to be reckoned with reference to the Indian context as above, the 'first sale' to be effected is also to be considered in the Indian context and admittedly, the first sale effected in India has been performed by the petitioners in their capacity as sellers. The petitioners do not fall into the shoes of 'buyers', with reference to the mandate of Section 206C and stand to be the 'sellers', whose duty was only to collect tax at source, when sale was effected

to the buyers (after clearance from the Customs department). The failure in this regard places consequential burden upon such sellers, to be treated as 'assesseees-in-default', by virtue of the mandate under sub section (6) of Section 206C, with further liability to pay interest and to face penal action, as envisaged under the relevant provisions of law. The purpose is more to check 'possible tax evasion' by the buyers, in view of the particular nature of the commodity and not to place any financial burden upon the sellers, unless the sellers infringe the obligation cast upon them. Any how, during the course of hearing, the learned senior counsel for the petitioners fairly submitted that the above contention, that the petitioners happen to be the 'second sellers', is not pressed much and as such, this Court does not find it necessary to deal with it any further.

26. The learned counsel for the petitioners made a reference to the decision rendered by the Apex Court in **Rainbow steels Ltd., Muzaffanagar and Birla Cotton Spinning and Weaving Mills Ltd., Delhi v. C.S.T U.P and State of U.P [1981 (2) SCC 141 (paragraphs 4 and 6)]**, as to how construction of the words "**any other mode**" has to be made, to understand the Scheme of the Statute and as to the effect of Section 206C. According to the learned counsel, it has to be with reference to the factual scenario as existed at the time of introduction, when the provision prescribing for

reckoning a portion of the purchase price as 'presumptive income' was brought into, by way of incorporation of Section 44AC of the Income Tax Act, the difficulties experienced by the Revenue to identify persons engaged in the trade of specified commodities (Timber obtained by way of forest lease, Forest produce, Timber obtained by any other mode of transport) and the chances for evasion of tax, for want of proper identity and lack of infrastructure to trace out the defaulters.

27. In the above decision, reference has been made to principle of '**noscitur a sociis**'. The said principle is [as explained in Advance Law Lexicon Vol III - 3rd Edn. 2007 - reprint (P. Ramanatha Iyer)] - ***the meaning of the doubtful word may be ascertained by reference to the meaning of the word associated with it.*** This Court finds that the said decision does not come to the rescue of the petitioners in any manner. Same is the position, with regard to the decision rendered by a Division Bench of the Madras High Court in **Commissioner of Income Tax Vs. Singapore Airlines Ltd. [(2013) 358 ITR 237 (Madras)]** and the Jaipur Bench of the Rajasthan High Court in **Commissioner of Income Tax (TDS) Vs. Rajasthan Urban Infrastructure Development Project (RUIDP) [(2013) 359 ITR 385 (Rajasthan)]**.

28. The question considered by the Madras High Court was,

whether in the facts and circumstances of the case, the Tribunal was right in holding that the payment of landing and parking charges was to be treated as payment to contractors under Section 194C and not as a payment of rent under Section 194-I of the Income Tax Act. Meaning of the term of 'rent' as it appears under Section 194-I of the Income Tax Act was considered, alerting the necessity to apply the principle of 'esjudem generis' and it was held that the payment would not fit in with the definition of 'rent' given under Section 194-I and tax was not deductible on such payment. The appeals preferred by the Revenue pointing out the involvement of substantial question of law under Section 260A was accordingly dismissed, **holding that no substantial question of law was involved.** Almost similar finding was rendered by the Division Bench of the Rajasthan High Court as well, interpreting meaning of the term 'any sum paid' used in section 194-J, holding that the instance of alleged tax liability in connection with the product of the Government of Rajasthan for infrastructure development and civic amenities in the specified area of the State of Rajasthan was not subject matter of tax deduction at source under Section 124-I. The appeal preferred by the Revenue was dismissed, holding that there was no substantial question of law under Section 260A of the Income Tax Act.

29. This Court does not find any merit in the writ petitions and

no ground raised in support of the same could be held as tenable. Accordingly, interference is declined and the writ petitions are dismissed. However, since the correctness of the figures or quantification of the extent of liability is not subject matter of these writ petitions, dismissal of the cases will not bar the way of the petitioners in challenging the impugned orders before the statutory authorities, in accordance with law, with regard to the extent of sales effected by the petitioners/its reckonable extent, fixation of tax u/s 206C (1), r/w s. 206C (6) and interest worked out under Section 206C (7) for the concerned assessment years.

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sp/kp/kmd