



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI. T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.14, 15 & 16/LKW/2019
Assessment Year:2014-15, 2015-16 & 2016017

M/s Lala Bharat Lal & Sons 242/93, Yahiya Ganj Lucknow	v.	ITO (TDS)-1 Lucknow
TAN/PAN:AADFL1745J		
(Appellant)		(Respondent)

S.P. No.04, 05 & 06/LKW/2019
[in ITA No.14, 15 & 16/LKW/2019]
Assessment Year:2014-15, 2015-16 & 2016017

M/s Lala Bharat Lal & Sons 242/93, Yahiya Ganj Lucknow	v.	ITO (TDS)-1 Lucknow
TAN/PAN:AADFL1745J		
(Applicant)		(Respondent)

Assessee by:	Shri Rakesh Garg, Advocate		
Department by:	Shri Ajay Kumar, D.R.		
Date of hearing:	06	02	2020
Date of pronouncement:	19	02	2020

ORDER

PER BENCH:

These are three appeals filed by the assessee against the orders of the Id. CIT(A), all dated 31/12/2018. Since similar issues are involved in these appeals, these were heard together and for the sake of convenience, a common and consolidated order is being passed. For the sake of completeness, the grounds

of appeal taken by the assessee in ITA No.14/LKW/2019 are reproduced below:

01. The CIT(A) has erred on facts and in law in upholding the business activity of trading in ferrous and non-ferrous metals carried on by the appellant firm, as an activity of sale of scrap, as defined in section 206C(1) of the I.T. Act, 1961, thereby wrongfully treating the appellant as an assessee in default for not collecting TCS @ 1 % on the entire sale proceeds made by the appellant firm.

02. Because the CIT(A) has wrongly interpreted the provisions of section 206C and has erred in upholding, that the business of trading in metals, carried on by the appellant firm of purchase and sale of scrap, is covered by the definition of scrap whereby the appellant firm was liable to collect TCS @1 % on the entire sales made.

03. Because the AO as well as the CIT(A) have erred on facts and in law by ignoring the fact that some of the buyers of the appellant firm are manufacturers, from whom Form 27C has been received by the appellant firm, thus, provisions of section 206C(1) of the Income Tax Act, 1961 is not applicable on the appellant firm, hence, the appellant cannot be held an assessee in default as per provisions of section 206C(6) and 206C(6A) of the Income Tax Act, 1961 with respect to the said buyers.

04. Because on a proper interpretation of the provisions of law, it would be found that the order passed by the AO and upheld by the CIT(A) is contrary to facts, bad in law the same be quashed.

2. At the outset, the ld. Counsel for the assessee submitted that the assessee is dealing in the business of trading of scrap and during the years under consideration, the Assessing Officer held that the assessee was liable to collect TCS @ 1% of the sale amount, from the buyers, which the assessee did not do and therefore, the Assessing Officer passed an order under section 206C(6), 206C(6A) and 206C(7) of the Income Tax Act, 1961. It was submitted that before the Assessing Officer and the ld. CIT(A), the averment of the assessee was that the sale/trading done by the assessee did not tantamount to sale of scrap as defined in Explanation (b) to section 206C of the Act, as the same had not been generated from manufacture or mechanical working done by the assessee. It was submitted that the assessee had also relied on the order of the ITAT Ahmedabad 'B' Bench in the case of 'Navine Fluorine International Ltd. vs. ACIT(TDS)' in ITA No.1213 and 1214/Ahd/2010, wherein, the Tribunal had held that for invoking the provisions of Explanation (b) to section 206C of the Act, it is necessary that waste and scrap sold by the assessee should arise from the manufacturing or mechanical working of the material. The ld. Counsel for the assessee further relied on the decision of the ITAT Rajkot Bench in the case of 'Nathulal P. Lavti vs. ITO(TDS)', order dated 17/6/2011, wherein, the Hon'ble Bench held that to bind the assessee with the liability (1) the material sold must be waste and scrap, (2) the material sold should generate from the manufacture or mechanical working of materials, and (3) the material sold is not usable as such, because of breakage, cutting up, wear and other reasons. It was submitted that to fasten an assessee with the liability for TCS under section 206C of the Act, all the conditions should have been met with. It was submitted that in the present cases, it is absolutely clear that the assessee was not into

manufacturing and the scrap sold by the assessee did not result from the manufacture or mechanical working of materials. The ld. Counsel for the assessee submitted that both the authorities below have relied on the order of the Special Bench of the ITAT Rajkot in the case of 'M/s Bharti Auto Products vs. CIT-II, Rajkot', order dated 6/9/2013, wherein, the Tribunal held that the provisions of section 206C of the Act are applicable to the dealers and traders in scrap also. The ld. Counsel for the assessee, in this respect, submitted that the decision of the Special Bench of the ITAT Rajkot in the case of 'M/s Bharti Auto Products vs. CIT-II, Rajkot' (supra) was considered by the Hon'ble Gujarat High Court in the case of 'CIT (TDS) vs. M/s Priya Blue Industries Pvt. Ltd.', wherein, the Revenue had specifically taken a ground of appeal, that the Tribunal had wrongly placed reliance upon the case of 'Navine Fluorine International Ltd. vs. ACIT(TDS)' (supra) despite the fact that the Special Bench of the Tribunal in the case of 'M/s Bharti Auto Products' (supra) had held that the words 'waste' and 'scrap' are two different and distinct words. The ld. Counsel for the assessee submitted that the Hon'ble Gujarat High Court, after reproducing the grounds of appeal taken by the Revenue, had dismissed the appeal of the Revenue and, therefore, the decision of the Special Bench of the Tribunal in the case of 'M/s Bharti Auto Products' (supra) is not a good law, as it has been overruled by the Hon'ble Gujarat High Court in the case of 'CIT (TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra). Therefore, it was prayed that the assessee was not liable to deduct TCS under section 206C of the Act. The ld. Counsel for the assessee further placed reliance on the order of the ITAT Ahmedabad 'D' Bench in the case of 'Shri Azizbhai A. Lada vs. ITO(TDS)', wherein, the Tribunal vide order dated 10/1/2018, after considering the judgment of the Hon'ble

Gujarat High Court in the case of 'CIT (TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra), allowed relief to the assessee. The ld. Counsel for the assessee further placed reliance on the decision of ITAT Ahmedabad 'SMC' Bench in the case of 'Dhasawala Traders vs. ITO(TDS)', wherein, the Tribunal, vide order dated 1/9/2016, after considering the judgment of the Hon'ble Gujarat High Court in the case of 'CIT (TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra), has again allowed relief to the assessee.

3. The ld. D.R., on the other hand, has placed heavy reliance on the orders of the authorities below and submitted that in the case of 'M/s Bharti Auto Products' (supra), the Special Bench has clearly decided the issue in favour of the Revenue by holding that the provisions of section 206C of the Act are applicable to the suppliers and traders in scrap also. It was further submitted that the Hon'ble Gujarat High Court in the case of 'CIT (TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra) has not specifically dealt with the ground taken by the Revenue and therefore, it cannot be said that the Hon'ble Court had overruled the judgment of the Special Bench in the case of 'M/s Bharti Auto Products' (supra).

4. We have heard the rival parties and have gone through the material placed on record. We find that it is an undisputed fact that the assessee is not a manufacturer and is only a dealer in scrap. During the years under consideration, as noted in the assessment orders, the assessee had sold scrap, which included unburned transformer coils from various distribution companies of UPPCL. We find that whether a trader in scrap is liable to be fastened with liability to collect TCS under section 206C came up for consideration of the ITAT Ahmedabad 'B' Bench in the case of

Navine Fluorine International Ltd. vs. ACIT(TDS)' [supra], wherein, the ITAT held that to fall under the definition of scrap as given in the Explanation to section 206C of the Act, the term 'waste' and 'scrap' are one and which should arise from manufacture and if the scrap is not coming out of manufacture, then the items do not fall under the definition of scrap and thus not liable to TCS. The findings of the ITAT Ahmedabad Bench, as contained in paras 12 and 13, are reproduced below:

"12. The explanation to section 206 C of the IT Act provides the meaning of scrap means "waste and scrap" from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons. In the above definition the important words used in the definition of scrap are "waste and scrap" - "from manufacture" and "which is". The word "waste and scrap" are one item. Thereafter, the word used is "from" the manufacture or mechanical working of material. It would mean that the waste and scrap being one item should arise from the manufacture or mechanical working of material. It is, therefore, necessary to read the words waste and scrap together which are generated out of manufacturing process of the assessee. The words waste and scrap should have nexus with the manufacturing or mechanical working of material. Thereafter, 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". The word waste Navine Fluorine International Ltd. Vs ACIT, TDS Cir, Surat "which is" denotes to singular item and thus the singular item would be waste and scrap. The words waste and scrap thus cannot be read differently as is argued by the learned DR. The list of scrap sold by the assessee is reproduced above which are not connected with manufacture or mechanical working of material. The findings of the learned CIT(A) are based on presumption only that since the assessee is engaged in manufacture of fluorine and other refrigerated gases, therefore, entire scrap is generated out of its manufacturing activities. The findings of the learned

CIT(A) are not based on any material or evidence. The assessee is admittedly engaged in manufacturing of fluorine and other refrigerated gases and list of scrap items noted above would indicate that same cannot be used for manufacturing or mechanical working of material of fluorine and other refrigeration gases. By the nature of the scrap items noted above, the same cannot be used while manufacturing gases or doing any mechanical working of the material for the gases. The items of the scrap in the case of the assessee would not form part of the definition of the scrap as is provided in Explanation (b) to section 206 C of the IT Act. Thus, the explanation is wrongly applied in the case of the assessee.

13. Considering the facts noted above, we are of the view that the authorities below have wrongly applied the meaning of scrap as is provided in Explanation (b) to section 206 C of the IT Act in the case of the assessee. Therefore, the assessee cannot be held to be in default. The assessee is not required to deduct tax u/s 206 C (6) of the IT Act on the items of scrap as noted above. Resultantly, no Navine Fluorine International Ltd. Vs ACIT, TDS Cir, Surat interest could be charged u/s 206C (7) of the IT Act. We accordingly, set aside the orders of the authorities below and allow both the appeals of the assessee.”

5. Further, we find that the Special Bench of the Rajkot Bench of the Tribunal in the case of ‘M/s Bharti Auto Products vs. CIT-II’ in ITA Nos.391&392/Rjt/2011, held that irrespective of manufacturing, all the traders in scrap are liable to collect TCS under the provisions of section 206C of the Act.

6. We further find that the Ahmedabad Bench of ITAT in the case of ‘ITO(TDS) vs. Priya Blue Industries Pvt. Ltd.’ in ITA No.2207/Ahd/2011, vide order dated 14/5/2015, again relied on the order of the Ahmedabad Bench of the ITAT in the case of ‘Navine Fluorine International Ltd. vs. ACIT(TDS)’ [supra] and held that the words ‘waste’ and ‘scrap’ should have nexus with

manufacturing or mechanical working of materials. For the sake of completeness, the findings of the Ahmedabad Bench of the ITAT are reproduced below:

“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 Vs. 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, ware 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 sizable 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 "usable 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.”

7. The Hon'ble High Court, in 'CIT(TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra), vide order (APB:14-22), dated 3/11/2015, passed in ITA No.604 of 2015, upholding the above findings of the Tribunal, observed as follows:

"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."

8. Thus, the Hon'ble High Court held that the expression "scrap" is defined in clause (b) of the Explanation to section 206C

of the Act to mean 'waste' and 'scrap' from manufacture of mechanical working of materials, which is definitely not useable as such, because of breakage, cutting up, wear and other reasons; and that a plain reading of the expression 'scrap' as envisaged under the provisions contained in clause (b) of the Explanation to section 206C of the Act, shows that any material which is useable as such, would not fall within the ambit of "scrap". The order of the Tribunal was upheld as being one on facts.

9. The Tribunal, in 'Dhasawala Traders vs. ITO' (APB:8-13), vide order dated 1/9/2016 in ITA No.979,980 and 1535/Ahd/2015, following the Hon'ble Gujarat High Court judgment in 'CIT(TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra), held that where the assessee had not generated any scrap in manufacturing activity, as contemplated under the Explanation to section 206C of the Act, and where the assessee was only a trader, having not sold scrap as such, but having sold products which were re-useable and had resulted from ship breaking activity, he was not supposed to collect tax under section 206C of the Act. The relevant portion of the order of the Tribunal reads as follows:

"8. A perusal of the paragraph-6 of the above judgment would indicate that certain items generated out of ship breaking activity might be known commercially as "scrap" but they are not waste and scrap. These items are re-useable as such, and therefore, would not fall within the definition of "scrap" as envisaged in the Explanation to section 206C(1). The assessee has also contended that it was engaged in the sale of MS pipe, iron which were obtained from ship breaking industries. The assessee himself has not generated any scrap in manufacturing activity, as contemplated in the Explanation. He was a

trader. Therefore, the assessee has not sold scrap as such. He has sold the products resulted from ship breaking activity, which are reusable. Thus, the assessee was not supposed to collect tax under section 206C of the Act. The Id. AO has erred in raising the demand. I allow all appeals and delete additions.

9. In the result, all the appeals of the assessee are allowed.”

10. In ‘Azizbhai A Lada vs. ITO’, vide order (APB:1-7) dated 10/1/2018, passed in ITA No.765/Ahd/2015, again, following the Hon'ble Gujarat High Court decision in ‘CIT(TDS) vs. M/s Priya Blue Industries Pvt. Ltd.’ (supra), decided the matter in favour of the assessee, holding as follows:

“9. If the facts of the case in hand are considered in the light of the decision of the Hon'ble Jurisdictional High Court (supra), we find that the items sold by the assessee do not fit into the category of scrap as explained by the Hon'ble High Court (supra). Therefore, in our considered opinion, the assessee cannot be treated as an assessee in default and on the impugned sales cannot be treated as sale of scrap thereby making the assessee out of the purview of Section 206C of the Act.

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11. Facts being similar, respectfully following the findings of the Hon'ble Jurisdictional High Court (supra), we do not find any merit in the impugned demand raised by the A.O.

12. Considering the facts of the case in the light of the afore-stated decisions of the Hon'ble Jurisdictional High Court, we set aside the findings of the Id. CIT(A) and direct the A.O. to delete the impugned demand.”

11. The facts in either ‘Dhasawala Traders vs. ITO’ (supra), or ‘Azizbhai A Lada vs. ITO’ (supra), have not been shown to be any different from those of the case at hand. The only argument is that the Hon'ble High Court has not taken into consideration the Special Bench decision in the case of ‘M/s Bharti Auto

Products vs. CIT-II' (supra). This argument, however, we find, is prima facie unsustainable. This is so, because a bare perusal of the judgment of the Hon'ble High Court (supra) reveals that the following substantial questions of law had been raised before their Lordships:

"(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?

12. The question of law at item '(B)' above is the one that is presently under the scanner. This question of law specifically raises the issue as to whether the Tribunal was not incorrect in overlooking 'Bharti Auto Products' (SB) [supra]. The Lordships, in para 8 of the judgment, have unambiguously held that since the Tribunal had remitted the matter to the Assessing Officer after recording a finding of fact that the products obtained by the assessee in the course of ship breaking activity, are useable as such, due to which, they do not fall within the definition of scrap, the order of the Tribunal, being based on a finding of fact, did not give rise to any question of law. The factual matrix remains much the same in the case at hand. Here also, the assessee is a trader in scrap. Their products are not a result of manufacturing process carried out by them.

13. In the above view of the matter, it cannot at all be held that while passing their judgment, the Lordships, in 'CIT(TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra), overlooked the Special Bench order in 'Bharti Auto Products' (SB) [supra].

14. Even otherwise, this decision of the Hon'ble High Court has been followed by the Tribunal in 'Dhasawala Traders vs. ITO' (supra) and 'Azizbhai A Lada vs. ITO' (supra). The order in 'Azizbhai A Lada vs. ITO' (supra) is rendered by a co-ordinate Bench of the Tribunal, to which, no contrary decision has been cited by the Department before us. Further neither 'Dhasawala Traders vs. ITO' (supra) nor 'Azizbhai A Lada vs. ITO' (supra) have been shown to be upset either on appeal or otherwise.

15. In this view of the matter, respectfully following 'CIT(TDS) vs. M/s Priya Blue Industries Pvt. Ltd.' (supra), we decide the grounds of appeals taken by the assessee in favour of the assessee.

16. Since we have decided the appeals on merit, the stay petitions have become infructuous and hence the same are dismissed as infructuous.

17. In the result, the appeals of the assessee are allowed whereas the stay petitions are dismissed.

Order pronounced in the open Court on 19/02/2020.

Sd/-
[A. D. JAIN]
VICE PRESIDENT

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

DATED:19/02/2020
JJ:0702

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar