

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 519 of 2016****TO****TAX APPEAL NO. 526 of 2016**

=====

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

Versus

SIYARAM METAL UDYOG PVT LTD.....Opponent(s)

=====

Appearance:

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

=====

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE A.J. SHASTRI**Date : 27/06/2016****COMMON ORAL ORDER**
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These are common appeals. We may refer to facts from Tax Appeal No.519 of 2016.

2. Revenue is in appeal against the judgment of Income Tax Appellate Tribunal raising following question for our consideration.

“Whether the Appellate Tribunal has substantially erred in law and on facts in deleting the addition made u/s.206C(1) of the Income Tax Act on account of non-collection of TCS on sale of scrap and interest charged u/s.206C(7) in spite of the fact that the assessee was trader of scrap

and the provision of section 206(1) was applicable to the assessee?"

3. Having heard learned counsel for the Revenue and having perused the documents on record, we notice that the Assessing Officer had made additions on the ground that the respondent had breached section 206C of the Income Tax Act, 1961 in case of sale of scrap, on the ground that the assessee had not submitted form-27C comprising of the buyer's declaration to the Commissioner of Income-tax in time. The assessee on the other hand had contended that he was not a trader of scrap and therefore, the provisions of section 206C did not apply at all. Assessing Officer turned down his contention and proceed to make the additions.

4. Eventually, when the issue reached the Tribunal, the Tribunal relying on earlier decision in case of Bharti Metals held that the items in question were scrap. However, in view of the fact that the assessee had admittedly filed a declaration in form 27-C collected from the buyers, ruled in favour of the assessee. The Tribunal observed as under:

"9. This leads both the parties aggrieved. The Revenue's case is that the CIT(A) has

erred in accepting the assessee's argument on merit submitting belated Form No.27C along with consequential interest. The assessee's grievance on the other hand raises a legal plea of non applicability of section 206C in its scrap trading sales. We make it clear in Revenue's appeal that there is no substantive ground challenging lower appellate findings in paragraph no.8 of the CIT(A)'s order clarifying that a part of its high seas sales is already covered in earlier survey. There is also no dispute about the fact that the assessee has belatedly submitted relevant Form No.27C collected from its buyers. The same were placed on record before the Assessing officer itself who declined to accept the same in view of delay in submission thereof. There is no issue qua genuineness of these Forms. We find that the co-ordinate Bench decision of Tribunal (supra) already holds that such a belated submission of relevant Form is a procedural lapse only. The Revenue is unable to point any distinction on facts or law therein. We accordingly see no reason to interfere with lower appellate findings remitting the issue back to the Assessing Officer for adjudication afresh as per law. The Revenue's corresponding ground accordingly fails. The Revenue's next argument seeks to restore interest component of the above stated impugned demand. We are of the view that this issue is a consequential one only. We uphold lower appellate findings qua this interest issue as well. Revenue's appeal ITA No.350/RJT/2015 fails."

5. It thus, emerges that admittedly the assessee had submitted form 27C collected from the buyers. There was no dispute about the genuineness of the contents thereof. However, the same was filed somewhat

belatedly. It was in this background, the Tribunal found that the additions with the aid of section 206C could not have been made.

6. Section 206C of the Act pertains to profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc. Sub-section 1 of section 206C provides that every person being a seller shall at the time of debiting of the amount payable by the buyer collect from the buyer of any of the goods specified in column (2) of the table, a sum equal to the percentage specified in the corresponding entry of the table as income tax. Clause (aa) of the explanation to section 206C, *inter alia*, provides that buyer with respect to sub-section (1) means a person who obtains in sale by way of auction, tender or any other mode, goods of the nature specified in the table or the right to receive any such goods but does not include a buyer in the retail sale of such goods purchased by him for personal consumption.

7. In the context of this exclusion clause contained in explanation of the term 'buyer', sub-section (1A) of section 206C provides as under:

(1A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things [or for the purposes of generation of power] and not for trading purposes.

8. Thus, in terms of the explanation clause (aa) any person who purchases the goods in retail sale for personal consumption would not be included within the definition of term 'buyer'. It is therefore, that under sub section (1A) of section 206C, calculation of tax under sub-section 1 would not be made, if the buyer furnishes to the person responsible for the tax a declaration in writing in prescribed form declaring that the goods in question are to be utilized for the purposes of manufacturing process or producing articles or things or for the purpose of generation of power and not for trading purposes. The declaration to be made in sub-section (1A) of section 206C thus would enable the Revenue authorities to, as and when the need so arises make proper verifications. This sub-section itself does not provide for any time limit

within which, such declaration is to be made. The time limit, of course, would be found in Rule 37C of Income Tax Rules, 1962. The main thrust of sub-section 1A of section 206C thus is to make a declaration as prescribed, upon which, the liability to collect tax at source under sub-section (1) would not apply. When there was no dispute about such a declaration being filed in a prescribed format and there was no dispute about the genuineness of such declaration, mere minor delay in filing the said declaration would not defeat the very claim. The Tribunal therefore, viewed such delay liberally and in essence held that there was substantial compliance with the requirement of filing the declaration.

9. No question of law arises. Tax Appeals are dismissed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

ANKIT