

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH; AMRITSAR.

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER  
AND SH. B.P.JAIN, ACCOUNTANT MEMBER

I.T.A. Nos.327,328, 329 & 330(Asr)/2012  
Assessment years:2007-08, 2008-09, 2009-2010 & 2010-2011  
PAN :AAAFD5602K

The Nawanshahar Co-op. Sugar Mills Ltd. vs. Income Tax Officer,  
Nawanshahar. (TDS)-1, Jalandhar.  
(Appellant) (Respondent)

Appellant by:Sh.Aditya Sharma, CA  
Respondent by:Sh.R.L.Chhanalia, DR

Date of hearing: 14/01/2013  
Date of pronouncement:11/02/2013

**ORDER**

**PER BENCH ;**

The assessee has filed these four appeals against the consolidated impugned order of CIT(A), Jalandhar, dated 28.05.2012 for the assessment years 2007-08, 2008-09, 2009-2010 & 2010-2011 respectively. As the issue involved in all these appeals is common, these were heard together and

therefore, are being disposed off by this consolidated order for the sake of convenience.

2. The grounds raised by the assessee in ITA No.337(Asr)/2012 for the assessment year 2007-08 are reproduced hereunder, as the grounds raised in other appeals are also identical:

- “1. That on facts and the circumstances of the case and the provisions of law, treating molasses, generated during sugar production, as scrap and making the sale of molasses liable to the provisions of section 206C of the Income Tax Act, 1961 is wrong, Molasses is not scrap and the provisions of collection of tax at source are not applicable to the same.
2. That appellant craves permission to raise additional grounds and to amend or alter the foregoing grounds before the appeal is finally decided.”

2. The brief facts are that the assessee is a Cooperative Society and is engaged in manufacturing of sugar. Inspection u/s 133A of the Income Tax Act, 1961 ( hereinafter called ‘the Act’) was carried out at assessee’s Sugar Mill on 29.12.2010 to verify the compliance of the provisions of the TDS/TCS under Chapter XVII of the Act. The AO found certain discrepancies which include that the assessee is selling Molasses and Bagasses generated during the manufacturing process to different persons without collecting tax as required at source u/s 206C of the Act. In response to the query, as to how the provisions of TCS were not applicable on sale of

these items, the person responsible (in short 'PR') vide his reply dated 09.03.2011 has stated that Molasses generated during manufacturing process could not be termed as 'scrap' for the purpose of section 206C since it is a by-product of the process of manufacture. Secondly, Molasses is different from scrap as it is a distinct product produced during the course of manufacture of sugar, it is marketable as such and it is a product on which excise duty is levied and is usable as such. As regards bagasses, it is contended that it is used as bio fuel. Also, it is used as a renewable resource in the manufacture of pulp and paper products and building materials. The assessee finally contended that both Molasses and Bagasses did not fall within the definition of scrap as per Explanation (b) to section 206C of the Act. The AO considered the submissions of assessee and did not accept the same and held that the assessee was liable to collect tax at source on the sale of Molasses and similarly as regards to Bagasses, the same is being sold to M/s. ABC Paper Mill Ltd; for manufacture of pulp, paper and building materials. No tax has been collected at source nor any declaration u/s 27C has been obtained from the company. With the same analogy, the assessee has not complied with the provisions governing collection of tax at source on the sale of bagasse also and AO was satisfied that the assessee was liable to collect tax at source on sale of molasses and bagasse since the same

waste in the assessee's business which is manufacture of sugar and the assessee has failed to collect the tax at source and is in default and also liable to pay tax involved to the credit of Central Govt. A/c within the meaning of section 206C(6A) of the Act. The AO has calculated the amount of default for the assessment year under consideration alongwith interest u/s 206C(7) of the Act, in the impugned order.

3. Aggrieved by the order passed by the ITO, (TDS)-1, Jalandhar, assessee filed an appeal before the Ld. CIT(A), who vide combined impugned order dated 28.05.2012 partly allowed the appeal of the assessee by holding that Bagasses are not scrap for the purpose of section 206C of the Act. He upheld the action of the AO in holding the assessee to be in default u/s 206C(6) of the Act in respect of sale of molasses and charging interest u/s 206C(7) of the Act. The Ld. CIT(A) finally held that in respect of the sale of Bagasses by the assessee, the assessee is not liable to collect tax at source u/s 206C(1) of the Act and consequent demand raised u/s 206C(6) and the interest charged u/s 206C(7) of the Act are vacated and he directed the AO to modify the demand raised on account of non-collection at source and the interest payable by the assessee vide impugned order dated 28.05.2012 for the assessment years in dispute.

4. Now, aggrieved by the order of the Ld. CIT(A), the assessee has filed the present appeal against the impugned order dated 28.05.2012 challenging the order of the ld. CIT(A) before this Bench, in which the Ld. CIT(A) has upheld the action of the AO in holding the assessee to be in default under section 206C(6) of the Act in respect of sale of Molasses and charging interest under section 206C(7) of the Act.

5. The Ld. counsel for the assessee stated that the ld. first appellate authority has rightly deleted the addition on account of Bagasses in the impugned year which has been upheld by this Bench vide order dated 19.11.2012 in assessee's own case in the appeal filed by the Revenue in ITA Nos.311 to 314(Asr)/2012 [ITO, (TDS)-1, Jalandhar vs. M/s. Nawanshar Co-op Sugar Mills Ltd; Nawanshar) and the AO has made the addition on account of Molasses on the same analogy, as applicable on the sale of Bagasses. But the ld. CIT(A) has wrongly made the addition in dispute by upholding the action of the AO in holding the assessee to be in default under section 206C(6) of the Act, in respect of sale of Molasses. He further stated that the definition of scrap clearly establishes that Molasses is not a scrap, as held by the AO.

5.1 In support of his contention, he has filed a copy of order of this Bench dated 19.11.2012 passed by this Bench in assessee's own case in the appeal

filed by the department (supra) as well as the written submissions and a copy of order passed by the ITAT, Ahmedabad Bench, in the case of Navine Flourine International Limited vs. ACIT, TDS, Surat reported in 14 ITR (Trib) 481.

6. On the contrary, the Ld. DR, relied upon the order passed by the Ld. first appellate authority.

7. We have heard both the parties and perused the relevant material available with us alongwith the orders passed by the Revenue Authorities as well as the documentary evidence filed by the Id. counsel for the assessee. The issue under consideration depends upon the interpretation of the meaning of scrap as it provided in Explanation (b) to Section 206C of the Act. For the sake of convenience, the same is reproduced as under:

“Explanation – For the purposes of this section,-

a.....

aa.....

ab.....

[(b) ‘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;”

7.1. The Hon’ble Delhi High Court in the case of CIT vs. Deep Chand and others 257 ITR 756 relied upon the decision of the Hon’ble Supreme Court

in the case of Gurudevdatla VKSSS Maryadit vs. State of Maharashtra AIR [2001] SC, 1980 in which it was held as under:

“It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the word themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the Legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.”

7.2. By following the above decision, the Hon’ble High Court held as under:

“It is now a well settled principle of law that a literal meaning should be attributed to a statute. The golden rule of interpretation should ordinarily be adhered to.”

7.3. The ordinary meaning of scrap and waste, as have been provided in Oxford English Dictionary provides-

- (a) Scrap – Small piece or amount of something especially one that is leftover after part has been used – material discarded for reprocessing.
- (b) Waste – eliminated or discarded as no longer useful or required.

7.4. The ordinary meaning of scrap and waste thus has a similarity in words. Ordinarily, the word “AND” is used in a conjunctive sense. This word is used to connect clauses or sentences or to coordinate words in the same clauses.

7.5. The explanation to section 206C of the IT Act provides the meaning of scrap means “waste and scrap” from the 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 in “**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 “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.

7.6. We have thoroughly gone through the findings of the Id. first appellate authority on the issue in dispute and we are of the view that the findings of the Id. first appellate authority are not based on any material or evidence and the Molasses would not form part of the definition as provided in Explanation (b) to section 206C of the Act. Thus, the Explanation has wrongly been applied in the case of the assessee because the assessee is engaged in the extraction of sugar from sugar-cane and the sugar Molasses is produced as by-product. It is obtained when sugarcane juice is boiled to obtain sugar. Molasses is by-product arise during the processing of sugarcane. It is not wastage and scrap as discussed in the foregoing paragraphs.

7.7. As regards the mechanical working of materials that the Molasses is obtained when the sugar is crystalised from sugarcane juice after boiling and clarifying. The process of crystalisation takes place when the sugarcane juice is saturated to such an extent that the sugarcane juice separates into sugar crystals and molasses and that is the stage where molasses and sugar crystals are separated, no mechanical working of materials is involved.

7.8. Keeping in view the aforesaid discussions alongwith various decisions rendered by the Hon'ble Supreme Court as well as the Hon'ble High Courts, we are of the view that Molasses is not a scrap as held by the Revenue Authorities in the impugned orders. It is not waste or scrap and cannot be used as such. Thus it does not fall within the meaning of scrap as defined in Explanation (b) to section 206C of the Act. Therefore, the assessee cannot be held to be in default and is not required to deduct tax under section 206C(6) of the Act on the Molasses and no interest could be charged under section 206(7) of the Act, as charged by the Revenue Authority in the impugned order. As pointed out in the fore-going paragraphs that the Id. first appellate authority has deleted the addition on account Bagassese itself in the impugned years, which has been upheld by this Bench in the appeal filed by the Revenue vide order dated 19.11.2012 in assessee's own case in ITA Nos. 311 to 314(Asr)/2012 [ITO, (TDS)-1, Jalandhar vs. M/s. Nawanshhar Co-op. Sugar Mills Ltd.; Nawanshhar]. The AO has made the addition on account of Molasses on the similar analogy as applicable on the sale of Bagasses but the Id., CIT(A) has wrongly made the addition in dispute by upholding the action of the AO in holding the assessee to be in default under section 206C(6) of the Act in respect of sale of Molasses. As

per detailed discussions above, the definition of scrap clearly establishes that the Molasses is not a scrap. We, accordingly, cancel the impugned order on the issue in dispute by accepting the appeal filed by the assessee. Thus, the appeal of the assessee is allowed.

8. As regards the other appeals of the assessee in ITA Nos. 328, 329 & 330(Asr)/2012, the findings given hereinabove in the ITA No.327(Asr)/2012 will apply mutatis mutandis to these appeals also. Accordingly, all these appeals are also allowed.

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

Order pronounced in the open court on 11th February, 2013.

Sd/-  
(B.P. JAIN)  
ACCOUNTANT MEMBER

Sd/-  
(H.S. SIDHU)  
JUDICIAL MEMBER

Dated: 11th February, 2013  
/SKR/

Copy of the order forwarded to:

1. The Assessee:M/s. The Nawanshahar Co-op. Sugar Mills, Nawanshhar.
2. The ITO (TDS)-1, Jalandhar.
3. The CIT(A), Jalandhar.
4. The CIT, Jalandhar.
5. The SR DR, ITAT, Amritsar.

True copy  
By order

(Assistant Registrar)  
Income Tax Appellate Tribunal,  
Amritsar Bench: Amritsar.