आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ''ए'' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

श्री मुकुल कुमार श्रावत, न्यायिक सदस्य एवं श्री एन0एस0 सैनी, लेखा सदस्य के समक्ष

BEFORE SHRI MUKUL Kr. SHRAWAT, JUDICIAL MEMBER AND
SHRI N.S. SAINI, ACCOUNTANT MEMBER

ITA No. 2384/Ahd/2012
(Assessment Year 2010-11)

K.P.G. Enterprise B-102, Leela Efcee, Beside Aksharwadi, Waghawadi Road, Bhavnagar-364001. PAN: AADFK2216K	Vs	The Income Tax Officer, TDS-4, Ahmedabad.
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

Revenue by :	Shri B.L. Yadav, DR
Assessee(s) by :	Shri B.R. Popat with Asha Maniar, AR

सुनवाई की तारीख/**Date of Hearing : 11/08/2014**
घोषणा की तारीख /**Date of Pronouncement: 14/08/2014**

आदेश/O R D E R

PER SHRI N.S. SAINI, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-XXI, Ahmedabad dated 13.09.2012.

2. The assessee filed concise grounds of appeal vide letter dated 11.08.2014, revising the grounds of appeal filed alongwith appeal memo in Form 36. The Authorized Representative of the assessee submitted that the grounds filed with the appeal memo were lengthy and therefore the

assessee has filed the concise grounds of appeal and requested the Bench to decide the appeal of the assessee on the basis of concise grounds of appeal filed on 11.08.2014.

3. The Departmental Representative did not object to the above submission. Therefore, the appeal of the assessee is decided on the basis of concise grounds of appeal filed on 11.08.2014.

4. The concise grounds of appeal read as under:

1. The Ld. CIT(A) erred in law and on facts in upholding the AO's order u/s 201(1) & 201(1A) by overlooking the legal position that the liability under the said section is not applicable to the cases of failure to collect tax u/s 206C of the Act.
2. The Ld. CIT(A) erred in law and on facts in not appreciating that the products and the customers were not "scrap" and "buyers' respectively, within the definition of the terms as contained in Explanation(b) and Explanation (aa) to section 206C of the Act.
3. The Ld. CIT(A) erred in law and on facts in concluding that non submission of Form No. 27C to the CCIT/ CIT within the prescribed time was a mandatory requirement of law ignoring/ overlooking the jurisdictional High Court decision in the case of CIT vs. Valibhai Khanbhai Mankad in Tax Appeal No. 1182 of 2011.
4. The Ld. CIT(A) erred in law and on facts in not appreciating that consignment dispatches only result in stock transfer and could not have thus been subjected to the provisions of section 206C of the Act.
5. The learned Commissioner of Income tax (Appeals)-XXI, Ahmedabad, has erred in holding that the Appellant was an assessee in default in respect of the alleged non / low collection of tax at source under section 206C of the Act.'

5. Ground no. 1 of the appeal is general in nature and hence requires no separate adjudication by us.

6. At the time of hearing, the Authorized Representative of the assessee submitted that he is not pressing ground no. 2 of the appeal. Therefore, this ground of appeal of the assessee is dismissed as not pressed.

7. The issue involved in ground no. 3, 4 & 5 of the appeal is that the Assessing Officer was not justified in treating the assessee as "assessee in default" u/s. 201(1) of the Act by holding that the assessee has short-collected TCS amounting to Rs 8,41,060/- without appreciation of facts. Further, the Assessing Officer was not justified in charging interest of Rs 2,25,020/- u/s. 201(1A) of the Act without appreciation of facts in totality.

8. We have heard the rival submission and perused the orders of lower authorities and material available on record. In the instant case, the Assessing Officer treated the assessee as an "assessee in default" in respect of Rs 8,41,060/- on the ground of failure of assessee to collect TCS as per provisions of section 206C on sale of scrap by it. The Assessing Officer also levied interest of Rs 2,25,020/- u/s. 201(1A) of the Act.

9. According to the Assessing Officer, the assessee was required to collect TCS of Rs 8,56,317/- on the sale of scrap made by it to various parties whereas the assessee actually collected TCS of Rs 15,257/- only and paid the same amount only to the credit of Central Government. Thus, the assessee short-collected TCS of Rs 8,41,060/-.

10. On appeal, the Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer.

11. Before us, the Authorized Representative of the assessee stated that out of 33 parties involved, 31 parties had furnished declaration in Form No. 27C to the assessee to the effect that the purchase of scrap made by them are to be used in the manufacturing, processing or producing articles

or things and not for trading purposes and therefore the assessee was not legally obliged to collect TCS on sale of scraps made by them amounting to Rs 2,27,06,414/-. Copies of declarations are placed at page nos. 23 to 85 of the paper book.

12. In respect of the above contention, the assessee invited our attention to sub-section (1A) of section 206C of the Act.

13. In respect of remaining two parties to whom scrap sales amounting to Rs 6,29,25,342/- were made, the assessee placed at page nos. 108 to 115 of the paper book auditor's certificate in form no. 27BA which evidences that these parties have filed their return of income and in such return of income they have mentioned the purchases made from the assessee and they have paid income tax due on their returned income. In the above facts, the Authorized Representative of the assessee contended that the assessee cannot be treated as "assessee in default" for default of collection of TCS from these two parties also. For the above submissions, he placed reliance on proviso to sub-section (1A) of the section 206C, the decision of the Rajkot Special Bench of the Tribunal in the case of Bharti Auto Products Vs. CIT (2013) 27 ITR 611 (Trib.)(Rajkot)(SB) and the decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage (P.) Ltd. Vs. CIT (2007) 293 ITR 226(SC). He also contended that as the assessee cannot be treated as an assessee in default, consequentially no interest u/s. 201(1A) becomes leviable against the assessee.

14. On the other hand, the Departmental Representative relied upon the orders of lower authorities.

15. We find that section 206C (1A) reads as under:

> "*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 utilized for the purposes of manufacturing, processing or producing articles or things [or for the purposes of generation of power] and not for trading purposes."

A perusal of the aforesaid provision shows that the assessee is not legally obliged to collect the TCS from a buyer who furnishes a declaration to the assessee to the effect that the purchases made by such buyer are to be utilized for the purposes of manufacturing, processing or producing articles or things or for purposes or generation of power and not for trading purposes. Thus, in a case where such a declaration is furnished by the buyer to the seller, the seller is not obliged to collect TCS from such buyer and consequently the seller assessee cannot be treated as an assessee in default in respect of not collecting TCS from such buyer. We find that the Commissioner of Income Tax (Appeals) upheld the treatment of assessee as assessee in default in respect of those parties from whom the assessee already received declaration in Form 27C on the ground that such declaration was not furnished by the assessee to the Chief Commissioner or Commissioner as required by the provisions of section 206C(1B) of the Act.

16. We find force in the contention of the assessee that once the declaration referred to in section 206C(1A) was received by the assessee, then thereafter the assessee could not legally collect the TCS from such buyers and consequently the assessee cannot be treated as an assessee in default for not collecting TCS from such buyers. The above view finds support from the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Valibhai Khanbhai Mankad (2013) 261 CTR 538 (Guj.) wherein it has been held that,

> *"Once the conditions of section 194C(3) were satisfied, the liability of the payer to deduct tax at source would cease. The requirement of such payer to furnish details to the income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable."*

Our view also finds support from the decision of Mumbai Bench of the Tribunal in the case of Karwat Steel Traders Vs. ITO (2013) 37 taxmann.com 190(Mum.) wherein it was held that,

> "Where declaration in Form 15G/15H were received by the person responsible to deduct tax, there was no liability on him to deduct TDS. Since separate provisions were prescribed on default for non-filing or delayed filing of Form 15G/15H to Commissioner, non-filing of such form would not invoke disallowance u/s. 40(a)(ia) of the Act."

We also find support from the decision of the Mumbai Bench of the Tribunal in the case of Vipin P. Mehta Vs. ITO (2011) 46 SOT 71 (Mum.) wherein it was held that,

> "Sub-section (1A) of section 197A of the Act merely requires the declaration to be filed by payee of interest and once it is filed, the payer of interest has no choice except to desist from deducting tax on interest."

17. In our considered view, the assessee cannot be treated as assessee in default for not collecting TCS from such buyers from whom the assessee received declaration as per provisions of section 206C(1A) of the Act.

18. We find that in the instant case, the assessee has not filed copy of declaration received by it u/s. 206C (1A) of the Act before the Assessing Officer for his verification. Therefore, in our considered view, it shall be just and fair to restore this part of the ground of appeal back to the file of Assessing Officer for proper verification and thereafter readjudication of the issue as per law in the light of the discussion made hereinabove after allowing the assessee a reasonable opportunity of hearing.

19. In respect of the remaining two parties namely M/s Shivam Metacast (Gujarat) Pvt. Ltd. and M/s. S.K. Bansal & Co. in respect of whom the assessee was treated as the assessee in default, we find that the assessee has filed a certificate obtained from their chartered accountants in Form No. 27BA wherein it was certified that these two parties filed their return of income and have taken into consideration the purchases made from the assessee in determining their total income and have paid the income tax due on their returned income. Proviso to sub-section (6A) of section 206C which has been inserted by the Finance Act, 2012 with effect from 01.07.2012 reads as under:

> *"Provided that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee-*
>
> *(i) has furnished his return of income under section 139;*
> *(ii) has taken into account such amount for computing income in such return of income; and*
> *(iii) has paid the tax due on the income declared by him in such return of income;*
>
> *And the person furnishes a certificate to this effect from an accountant in such form as may be prescribed."*

20. Rajkot Special Bench of the Tribunal in the case of Bharti Auto Products Vs. CIT (supra) has held as under:

> *"The first proviso inserted in sub-section (6A) of section 206C seeks to (1) ensure that there is no loss to the Revenue, i. e., (i) the buyer has furnished his return of income under section 139, (ii) the buyer has taken into account such sum on which tax was required to be collected at source under section 206C for computing income in such return of income, (iii) the buyer has paid the fax due on the income declared by him in such return of income, (iv) the i.e., the person responsible for collecting the tax at source under section 206C, has furnished a certificate inform 27BA confirming the aforesaid;(2) rationalise the provisions relating to collection of tax at source; (3) provide relief to the collector of tax at source from the consequences of non/short*

deduction collection of tax at source and to that extent it is a beneficial provision. Keeping in view the fact that the first proviso to sub-section (6A) of section 206C not only seeks to rationalise the provisions relating to collection of tax at source but is also beneficial in nature in that it seeks to provide relief to collectors of tax at source from the consequences flowing from non/short collection of tax at source after ensuring that the interest of the Revenue is well protected, the proviso would apply retrospectively."

21. Further, we find that under the scheme of Income Tax Act, the provision of TDS and TCS has been enacted to facilitate the collection of tax which is leviable on the recipient of the income as per provision of section 4 of the Act. In other words, TDS or TCS is not a separate tax, but they are to facilitate the collection of tax which is chargeable u/s. 4 of the Act primarily from the recipient of income. In other words, when recipient of income has paid income tax directly on their income, then no loss of revenue took place because of non-collection of TCS or non-deduction of TDS and therefore, for such default the assessee cannot be treated as an assessee in default in respect of amount of TDS or TCS. Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage (P.) Ltd. Vs. Commissioner of Income Tax (2007) 293 ITR 226 (SC) has held as under:

"*Since the assessee had paid the interest under section 201(1A) and there was no dispute that the tax due had been paid by the deductee (Padeep Oil), the Appellate Tribunal came to the right conclusion that the tax could not be recovered once again from the assessee."*

Thus, in our considered opinion, if the payer has paid tax on their income and such income has been assessed after taking into consideration the purchases made from the assessee, then tax cannot be again collected from the assessee on the ground of non-collection of TCS or short-collection of TCS.

22. In the instant case, we find that the auditor's certificate which has been furnished before us was not furnished before the lower authorities and therefore, the same could not be verified by them. We, therefore, set

aside this part of the issue also back to the file of the Assessing Officer for proper verification and thereafter readjudication of the issue afresh as per law. Needless to mention that the Assessing Officer shall allow reasonable and proper opportunity of hearing to the assessee before readjudicating the issue afresh.

23. The only other issue which remains to be adjudicated is in respect of charge of interest u/s. 201(1A) of the Act. As we have restored back the issue regarding treating the assessee as assessee in default in respect of amount of TCS, we therefore set aside this issue also back to the file of the Assessing Officer for adjudication afresh as per law in the light of his finding in respect of earlier issues and after taking into consideration the provisions contained in the proviso to section 201(1A) of the Act. Thus, this ground of appeal is allowed for statistical purpose.

24. In the result, the appeal of the assessee is partly allowed as above.

Order pronounced in the Court on Thursday, the 14th of August, 2014 at Ahmedabad.

Sd/-	**Sd/-**
(MUKUL Kr. SHRAWAT)	**(N.S. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 14/08/2014
Ghanshyam Maurya, Sr. P.S.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-III, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (DY./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad