

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 2505/Ahd/2018 &
ITA No. 339/Ahd/2020
Assessment Year 2012-13**

Nisarahmed Abdulsattar, Shaikh, 907/6, Near Syndicate Bank, Opp. Premier Shopping Centre, Shahpur, Ahmedabad PAN: AFMPD5216L (Appellant)	Vs	The ITO, TDS-2, Ahmedabad (Respondent)
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**Assessee Represented: Shri Pritesh L. Shah, A.R.
Revenue Represented: Shri Atul Pandey, Sr.D.R.**

Date of hearing : 28-06-2023
Date of pronouncement : 30-06-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

ITA No. 2505/Ahd/2018 is filed by the assessee as against the appellate order dated 29-11-2018 passed by the Commissioner of Income Tax (Appeals)-8, Ahmedabad arising out of the order passed under section 206C(6A) r.w.s. 206C(1) and 206C(7) of the Income Tax Act, 1961 for failure to Collect Tax at Source relating to the Asst. Year 2012-13.

2. The brief facts of the case is that the assessee is an individual and Proprietor of M/s. A.S. Didwani Scrap Traders and engaged in the business of Trading in Scrap as per Audit Report filed by the assessee. For the Assessment Year 2012-13, the assessee has sold metal scrap of Rs. 4,90,30,865/- to various parties. However the assessee failed to Tax Collect at Source (TCS) at 1% on such payment u/s. 206C of the Act. Accordingly, proceeding u/s. 206C(6A) and 206C(7) were initiated and show cause notice dated 27-06-2017 was issued to the assessee as to why TCS @ 1% u/s. 206C(6A) along with interest u/s. 206C(7) should not be levied for the above default.

2.1. The assessee replied that he is engaged in the business of Defective Sheets and not in the business of selling of scrap. As per section 206C definition 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". The assessee further submitted it is engaged in trading of metal sheets only and not engaged any kind of manufacturing activity. As per the definition of scrap, which envisages that generated scrap is not usable as such, however the defective sheets are usable as such without any further processing. Hence, the provision of section 206C and collection of TCS is not applicable to the trading activities carried out by the assessee and requested to drop the proceedings initiated and the assessee is not to be treated in default as per the provisions of the Act.

2.2. The above explanation was not accepted by the Assessing Officer and thereby demanded @1% TCS of u/s. 206C(1) of Rs. 4,90,309/- and interest u/s. 206C(7) of Rs. 3,77,538/- vide order dated 26-07-2017.

3. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals)-8, Ahmedabad. In spite of notices to the assessee, the assessee failed to appear, hence the Id. CIT(A) by exparte order, confirmed the addition made by the Assessing Officer and thereby dismissed the assessee appeal.

4. Aggrieved against the same, the assessee is in appeal before us challenging the following Grounds of Appeal.

1. *The Ld. CIT(A) erred in law and in facts in confirming the demand of Rs. 4,90,309/- raised under section 206C being 1% TCS considering the sale of CRC Sheet as scrap, such demand is requested to be deleted.*
2. *The Ld. CIT(A) erred in law and in facts in confirming the imposition of interest of Rs. 3,7,538/- under section 206C(7) of the Income Tax Act, 1961, such demand is requested to be deleted.*

4.1. The assessee also filed Additional Ground of Appeal:

1. *The learned AO erred in passing the order under section 206C(1) r.w.s. 206C(1) and 206C(7) of the Income Tax Act, 1961, after limitation period and learned CIT(A) erred in confirming the order of AO, the order passed by AO is requested to be quashed.*

4.2. The Ld. Counsel appearing for the assessee submitted the end of the financial year is 31-03-2012 and 4 years ends on 31-03-2106. The A.O. ought to have passed the order u/s. 206C(6A) on or before 31-03-2016. However the show cause notice was issued on 27-06-2017 and order u/s. 206C was passed on 26-07-2017 which is after 4 years period and barred by limitation. The Ld. A.R.

submitted the following case laws in support of its his arguments as follows:

Order Passed After Limitation Period – Quashed

Sr. No.	Court/ITAT	Case Name	Reported in
1.	Ahmedabad ITAT	Adani Enterprise Ltd. V. DCIT	108 taxmann.com 524: 178 ITD 373
2	Jaipur ITAT	ITO TDS V. M/s. Eid Mohammad Nizamuddin and Vice Verse	TaxCorp (A.T.) 67021
3	Gujarat High Court	CIT V. Anagram Wellington Assets Management Co. Ltd.	96 CCH 0410 : 389 ITR 0654
4	Delhi High Court	CIT V. NHK Japan Broadcasting Telecom Ltd.	78 CCH 0381 : 323 ITR 0230
5	Mumbai High Court	DIT (International Taxation) V. Mahindra & Mahindra	48 Taxmann.com 150: 225 Taxman 306 : 365 ITR 560 : 270 CTR 105

Non Applicability of Section 206C

Sr. No.	Court/ITAT	Case Name	Reported in
1.	Ahmedabad ITAT	Navine Fluorine International Ltd. V. ACIT, TDS Circle	10 taxmann.com 8 : 14 ITR(T) 481: 45 SOT 86: 139 TTJ 248
2	Rajkot ITAT	Nathulal P. Lavti V. ITO, TDS	14 taxmann.com 94 : 48 SOT 83: 143 TTJ 509
3	Jaipur ITAT	Sikar & Jhunjhunu Zila Dugdha Utpadak Sahakari Sangh Ltd. V. ACIT (TDS)	73 taxmann.com 236
4	Surat ITAT	shree Mahuva Pradesh Sahakari Khand Udyog Mandali Ltd. V. ITO, TDS-4	99 taxmann.com 328
5	Gujarat High Court	CIT (TDS) V. Priya Blue Industries (P.) Ltd.	65 taxmann.com 206: 237 Taxman 1: 381 ITR 210 : 286 CTR 210
6	Gujarat High	PCIT (TDS) V. Safari Fine	89 taxmann.com

	Court	Clothing (P.) Ltd.	129 : 253 Taxman 198
7	Ahmedabad ITAT	Dhasawala Traders V. ITO	48 CCH 0271 : 161 ITD 0142
8	Madras High Court	CIT V. Adisankara Spinning Mills (P.) Ltd.	49 taxmann.com 273 : 226 Taxmann 44 : 362 ITR 233

5. Per contra, the Ld. D.R. appearing for the Revenue supported the order passed by the Lower Authorities and requested to dismiss the appeals filed by the assessee. The order passed by the Assessing Officer well within the reasonable time and additional ground raised by the assessee is liable to be rejected since the same was raised for the first time before this Tribunal.

6. We have given our thoughtful consideration and perused the materials available on record including the case laws filed by the assessee. Following the Apex Court judgment in NTPC Ltd. Vs. CIT (329 ITR 0383) First we adjudicate the additional ground raised by the assessee as it goes to the root of the matter namely “whether the order passed by the Assessing Officer is barred by limitation or not?” In our considered view, this issue is no more res integra and settled by various case laws by higher Judicial Forums as follows:

6.1 The Hon’ble High Court of Gujarat in the case of CIT (TDS) Vs. Anagram Wellington Assets Management Co. Ltd. reported in [2016] 389 ITR 0654 wherein it was held as follows:

“...7. It is true that it is the duty of the assessee to deduct TDS and the question is whether it is likely to cause any loss to the revenue if it is not deducted in time. If TDS is not deducted, it is required to be paid in the first installment of advance tax, which is required to be paid within four months from the date of filing of return. Therefore, even if the contention of Mr. Bhatt is accepted, loss that may be caused to the revenue is only to the tune of interest of four months on delayed payment of tax. Not only that when the declaration about this is made in the return, it comes within the

knowledge of the Assessing Officer even if the TDS is not deducted. Therefore, we are of the view that the period of four years is reasonable period and we concur with the view taken by the Delhi High Court. It is true that the Court cannot legislate the Act, however, the Assessing Officer also cannot be given unfettered powers, which he can exercise even beyond the reasonable period of four years. Therefore, in our view, period of four years is just and proper and the Tribunal has not committed any error while passing the impugned order. Therefore, all these appeals are dismissed. The questions posed for our consideration are answered in favour of the assessee and against the revenue.

6.2. The Hon'ble Delhi High Court in the case of CIT Vs. Hutchison Essar Telecom Ltd. reported in [2010] 323 ITR 0230 wherein it was held as follows:

"...19. Even though the period of three years would be a reasonable period as prescribed by s. 153 of the Act for completion of proceedings, we have been told that the Tribunal has, in a series of decisions, some of which have been mentioned in the order which is under challenge before us, taken the view that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed.

20. The rationale for this seems to be quite clear-if there is a time-limit for completing the assessment, then the time-limit for initiating the proceedings much be the same, if not less. Nevertheless, the Tribunal has given a greater period for commencement or initiation of proceedings.

21. We are not inclined to disturb the time-limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Co-op. Milk Producers Union Ltd. (2007) 9 RC 637: 11 SCC 363 action must be initiated by the competent authority under the IT Act, where no limitation is prescribed as in s. 201 of the Act within that period of four years." (underlining added)

5. From the above, it is clear that the proceedings under s. 201/ 201(1A) of the IT Act, 1961, can be initiated only within three years from the end of the assessment year or within four years from the end of the relevant financial year.

6. In the present case, we are concerned with the financial year 2001-02 or the asst. yr. 2002-03. The proceedings under ss. 201/201(1A) were admittedly initiated beyond the period of three years from the end of the relevant assessment year as also beyond the period of four years from the end of the financial year. Consequently, the Tribunal has correctly concluded that the proceedings were beyond time. No substantial question of law arises for our consideration. The appeals are dismissed."

6.3. In the case of Adani Enterprise Ltd. Vs. DCIT reported in [2019] 108 taxmann.com 524 (Ahmedabad-Trib.) wherein it was held as follows:

“Since no limitation is prescribed under section 206C for passing order by Assessing Officer with reference to failure of assessee to collect taxes, reasonable period of limitation of four years from end of financial year in question was to be followed for passing order under said section”.

7. Admittedly the assessment year involved in this cases A.Y. 2012-13 and four years ends on 31-03-2016. However the show cause notice was issued by the A.O. on 27-06-2017 and order was passed on 26-07-2017 which is beyond 4 years. Therefore the order passed by the A.O. is construed to be an order passed after the period of limitation, the same is not maintainable in law and the same is liable to be quashed.

8. In the result, the appeal filed by the Assessee in ITA No. 2505/Ahd/2018 is hereby allowed.

ITA No. 339/Ahd/2020 for A.Y. 2012-13

9. ITA No. 339/Ahd/2020 is filed by the assessee as against the appellate order dated 06-02-2020 passed by the Commissioner of Income Tax (Appeals)-8, Ahmedabad arising out of penalty levied u/s. 271CA of the Act relating to the Assessment Year 2012-13.

10. The Registry has noted that there is a delay of 68 days in filing the above appeal in ITA No. 339/Ahd/2020. This appeal was filed by the assessee on 18.06.2020. This period falls under COVID-Pandemic situation, thus following Hon'ble Supreme Court judgment dated 23.9.2021 in M. A. No. 665 of 2021 in suo-moto

Writ Petition (Civil) No.3 of 2020, the Hon'ble Supreme Court has excluded time limit for filing appeal from 15.3.2020 till 02.10.2021. Thus, there is no delay in filing the above appeal and we take up the assessee appeal for adjudication.

11. As the quantum appeal itself is allowed in favour of the assessee by quashing the order, consequently the penalty levied u/s. 271CA has No legs to stand. Therefore the same is also hereby dismissed.

12. In the result, the appeal filed by the Assessee in ITA No. 339/Ahd/2020 is hereby allowed.

Order pronounced in the open court on 30-06-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 30/06/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद