

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER

I.T.A. No.319/Asr/2023
Assessment Year: 2022-23

Aay Kay Manufacturing Co. Through Its Partner Ajay Kumar 466/22, Aman Nagar, Jalandhar. [PAN:-ABGFA2952A] (Appellant)	Vs.	ITO-CPC, Bengaluru. (Respondent)
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Appellant by	Sh. Amit Bajaj, Adv.
Respondent by	Smt. Priyanka Patel, Sr. DR

Date of Hearing	06.05.2024
Date of Pronouncement	04.06.2024

ORDER

Per: Udayan Dasgupta, JM:

This appeal is preferred against the order of the JCIT(A) – 12, Mumbai, passed u/s 250 of the Act 61, dated 15/09/2023, which has arisen out of the order of the CPC Bangalore passed u/s 143(1) of the Act 61.

2. The assessee has taken the following grounds: -

“1. The CIT (Appeals) and the A.O. has erred in Confirming and making an addition of Rs. 4,83,000/- in the returned income on account of TCS payable in the Audit report

2. *The CIT (Appeals) and the AO has erred in concluding that the TCS payable is claimed as an expenses by Appellant, in contradiction to the returned income filed by the appellant wherein TCS payable is not claimed as deduction*

3. *The CIT(Appeals) & and AO have erred in making addition u/s 43B of TCS payable which is neither an allowable expense nor has been claimed by the Appellant in his return.*

4. *Without prejudice to the above grounds The CIT(Appeals) have failed to appreciate that the amount of unpaid TCS Payable Rs. 4,83,000/- in the Tax Audit Report was shown inadvertently whereas the actual amount of TCS Payable was Rs. 4,10,834/- and the figure of Rs. 4,83,000 was the amount of Provision for Income Tax on current year profits |as shown in the profit and loss account.*

5 *That the appellant craves to add, alter, leave and amend' (any ground of appeal before the final disposal of appeal."*

3. All the grounds relate to one single addition of Rs.4,83,000/- made by CPC, Bangalore, u/s 43B of the Act 61, for not depositing the TCS (tax collected at source) amount of Rs. 4,83,000/-. The addition is made on the basis of qualified reporting by the auditor of the assessee in the tax audit report (TAR) as evident from Form No 3 CD, clause no 26B (b) serial No – 1, (placed in paper book page No 107) where it is reported by the auditor as:

"Sec 43B(a) – tax, duty, cess , fee , etc. : TCS Payable Rs.4,83,000/-



There is further reporting by the auditor in clause – 5, serial no 6 and 7 of Form 3 CD, which says that the assessee has collected tax at source on sales of scrap and the amount so collected has not been deposited with interest thereon and no return of TCS has been filed till the date of TAR.

On the basis of the above mentioned qualified reporting in TAR, the addition of Rs.4,83,000/- has been made by CPC, Bangalore u/s 143(1), for violation of provisions of section 43B of the Act 61.

3.1 In the course of first appellate proceedings , the assessee pointed out before the JCIT(A) , that there has been a mistake in reporting the correct figure of TCS collection which is actually Rs.4,10,834/- (instead of Rs.4,83,000/- mentioned in tax audit report), and has argued that the since the assessee has not made any claim of deduction of the above amount in the profit and loss account , the said amount is not hit by the provisions of section 43B of the Act 61, and as such the question of disallowing the deduction not claimed at all would not arise.

3.2 The first appellate authority was not convinced and the addition was sustained on the ground that the assessee should have taken adequate steps to rectify or revise the tax audit report in time (after detection of the error) and also due to the fact that the assessee has debited an amount of Rs. 4,83,000/- in audited profit and loss account as at 31/03/2022, and as such the addition was sustained.



4. The Ld. AR, of the assessee retreated the same argument, that it was an inadvertent error on the part of the tax auditor regarding the figures of TCS mentioned above which should be Rs.4,10,834/- (instead of Rs.4,83,000/- being the figure of provisions for taxation as reflected in audited profit and loss account). And since the amount of Rs.4,10,834/- has neither been claimed as deduction nor debited in the profit and loss account, the same cannot be disallowed under section 43B of the Act 61. In support of his contention he relied upon Delhi High Court in the case of CIT vs Noble and Hewitt (I) Private Limited, reported 305 ITR page 324 (Delhi) and in the case of CIT vs Everest Litho Press, reported in 285 ITR 297 (Madras HC).

5. The Ld. DR , relied on the order of the CIT (A) and argued that the TCS has remained outstanding at the end of the year and as evident from the audit report, the same has also not been deposited till 29th September, 2022, (the date of audit report) and as such the disallowance has been rightly sustained by the JCIT(A) , and the said addition may please be upheld.

6. We have heard the submission of both the parties and perused the materials on record including the paper book filed by the assessee.

This is a case of tax collected at source by the assessee from the buyer. In the instant case the assessee is engaged in the business of trading in Scrap and the provisions of section 206C (1) of the Act 61, is applicable on him for collection of



provisions of section 206C (1) of the Act 61, is applicable on him for collection of tax at specified percentage of consideration of sales, as income tax.

6.1 The relevant provisions of section 206C (1) is reproduced below for ready reference:

“206C [(1) 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 amount⁷⁰ 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.”

Sub sec (3) of Sec 206

“Any person collecting any amount under this section shall pay within the prescribed time the amount so collected to the credit of the Central Government or as the Board directs.”

Sub sec (4) of Sec 206

“[(4) Any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected and credit shall be

given to such person for the amount so collected in a particular assessment year in accordance with the rules⁹⁸ as may be prescribed by the Board from time to time.]”

Sub sec (6A) of Sec 206

“(6A) If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax;”

Sub sec (8) of Sec 206

“(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the [person responsible for — collecting tax].”

6.2 From the reading of various sub sections of sec 206C of the Act 61, it is clear that the tax collected by the assessee, under the provisions of this section, is the income tax portion of the buyer of the goods, which is collected by the assessee from the buyer, to be subsequently credited to the account of the Central Government within stipulated time frame provided by the statute. Sub section (6A) further provides that in case of failure of the assessee he shall be deemed to be an assessee in default in respect of the tax. The case of the assessee is covered by sub

section (8), of the said section where the assessee has not paid the tax to the credit of the Central Government, after the collection, then the tax amount along with interest shall be a charge upon all assets of the person.

6.3 To put it in simple words, the TCS amount is “income tax” of the buyer of goods collected by the assessee (seller) for subsequent payment of the amount so collected to the credit of the Central Government, and the assessee is simply holding the said amount as custodian of the Government, till the time of actual deposit.

6.4 In the instant case, before us the assessee has declared sales in audited profit and loss account at Rs. 9.91 crores (which is excluding TCS) (as confirmed by the AR during hearing of the case) and since the TCS is not credited in the accounts, the question of debit of the said amount in profit and loss account, also does not arise.

6.5 The TCS amount of Rs.4,10,834/- is not a sum payable by the assessee, it is the income tax of the buyers, collected and retained, by the assessee as per provisions of section 206C of the Act 61, and recorded through journal entries, and held by the assessee as custodian of the Government, and the same is duly reflected as liability in the audited balance sheet as at 31/03/2022.

7. Since, the said amount of “income tax” of the buyers, cannot be debited in profit and loss account and claimed as a deduction, the assessee, it is not hit by the

provisions of section 43B of the Act 61, and the addition of Rs. 4,10,834/- is liable to be deleted.

8. In the result, the appeal of the assessee bearing ITA No. 319/Asr/2023 is allowed.

Order pronounced in the open court on 04.06.2024

Sd/-

Sd/-

(Dr. M. L. Meena)
Accountant Member

(UDAYAN DASGUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order