आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।

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

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA.No.979, 980 and 1535/Ahd/2015
निर्धारण वर्ष/ Asstt. Year: 2012-2013, 2013-14 and 2011-12

Dhasawala Traders 463/, Depak Tenement Prabhudas Talav Road Shishuvihar, Bhavnagar. PAN : AAHFD 6690 E	Vs	ITO, TDS-4 Ahmedabad.
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri B.R. Popat, AR
Revenue by :	Shri Sumit Kumar Verma, DR

सुनवाई की तारीख/**Date of Hearing : 30/08/2016**
घोषणा की तारीख /**Date of Pronouncement: 01 /09/2016**

आदेश/O R D E R

Present three appeals are directed at the instance of the assessee against common order of the ld.CIT(A)-8 dated 20.3.2015 for the Asstt.Years 2012-13 & 2013-14 and order dated 24.4.2015 for the Asstt.Year 2011-12.

2. Solitary common grievance of the assessee in all these years relates to raising of demand amounting to Rs.85,919/-, Rs.10,55,845/- and Rs.10,84,223/- u/s.206© r.w.s. 206C(7) of the Income Tax Act, 1961 in the Asstt.Years 2011-12 to 2013-14 respectively.

3. Brief facts of the case are that survey under section 133A of the Act was carried out at the premises of the assessee on 31.1.2013. During the course of survey, it revealed to the Department that the assessee was engaged in the business of trading in iron, steel scrap, MS pipe, other non-ferrous scrap, ship scrap materials & machineries. According to the Revenue,

assessee was supposed to collect tax at source at the rate of 1% of the sale, and it was required to be deposited in the government account before the date as per Section 206C of the Income Tax Act. In case scrap sale is made to a manufacturer or actual user, then TCS was not required to be deducted provided a declaration in form no.27C is being obtained by the assessee from the buyer. The assessee during the course of survey contended that he has obtained form no.27, but file of this form was not traceable. The ld.AO has held that the assessee failed to collect tax at the rate of 1% of the sale, and also failed to deposit such amount to the government account within due date. Therefore, he made an addition of Rs.8,5,488/- in the Asstt.Year 2012-13. He charged interest at the rate of 1% for 24 months under section 206C(7) at Rs.2,04,357/-. In this way, he raised demand of Rs.10,55,845/- in the Asstt.Year 2012-13.

On identical principle, calculations have been made in other two years. Appeal to the ld.CIT(A) did not bring any relief to the assessee.

4. The ld.counsel for the assessee, at the very outset, contended that in case of M/s.CIT Vs. Priya Blue Industries P.Ltd., the Tribunal has considered scope of expression "scrap" provided in the definition in *Explanation-b* to section 206C of the Act. According to the Tribunal, wastage and scrap generated out of manufacturing activity is to be considered as "scrap" and if the assessee was engaged in the manufacturing activities, which has risen to "scrap" then, on sale of that scrap, the tax ought to be collected by the assessee at the given rate. In the case of ship breaking, not only waste would be generated, but there are finished products which are re-useable. The Tribunal has remitted the issue with regard to generation of scrap arising out of manufacturing activity in the course of ship breaking. As far as sale of

other items was concerned, the Tribunal held that these items did not fall within the ambit of definition "scrap". This order of the Tribunal passed in ITA No.2207/Ahd/2011 has been upheld by the Hon'ble Gujarat High Court in Tax Appeal No.604 of 2015. The judgment of Hon'ble High Court reported in 381 ITR 210. On the strength of this decision, the ld.counsel for the assessee contended that though in the invoice "scrap" is being mentioned, but assessee has not sold any scrap which was generated out of manufacturing activity undertaken by the assessee. The assessee has sold items which were re-usable products in a ship breaking activity. These items are "scrap" by nomenclature. They are not in fact scrap. Therefore, assessee cannot be held liable to collect tax under section 206C of the Act. The ld.DR, on the other hand, relied upon the orders of the Revenue authorities below.

5. I have duly considered rival contentions and gone through the record carefully. Expression "scrap" has been defined in *Explanation-b* attached to Section 206C. It reads as under:

> *(b) "scrap" as "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".*
>
> *Explanation (b) below Sec.206C(1) has two distinct limbs. Even if one of the limbs is applicable, an assessee can be treated as if he deals in scrpa, not usable as such:*
>
> *(i) scrap means waste;*
> *(ii) scrap means scrap generated from the manufacture or mechanical working of materials.*

6. The Tribunal has considered this aspect in the case of Priya Blue Industries P.Ltd. who was engaged in the business of ship breaking. The finding recorded by the Tribunal reads as under:

> "*As per assessee, assessee has collected and paid TCS on following type of items of sales during the year.*
> *"1. ARTICLES OF IRON & STEEL WIRE ROPES*

2. WASTE & SCRAP OF CASTIRON
3. WASTE & SCRAP OF COPPER
4. WASTE & SCRAP OF IRON & STEEL
5. WASTE & SCRAP OF STAINLESS STEEL
6. WASTE & SCRAP, OF NICKET
7. WASTE&SCRAPOFGM, GUM, COP, GER.ALU.PRO"

Assessee has not collected TCS on following type of items sold during the year:

"1. Old & used plates
2. Non-excisable (exempted) like furniture, wood, etc.
3. Trading of scrap (melting)
4. High seas sale "

We find that ITAT 'B' Bench, Ahmedabad in ITA Nos. 1213 and 1214/Ahd/2010 dated 15.02.2011 in case of Navine Fluorine International Ltd Vs. ACIT, TDS Circle Surat, for A Y 2009-10 & 2010-11, inter alia held that term "waste and scrap" are one item. The "waste and Scrap" must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, ware and to other reasons. It would mean that these waste and scrap being one item should arise from manufacture or mechanical working of material. The words waste and scrap should have nexus with manufacturing or mechanical working of materials. Therefore, the word used is "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". As stated above, assessee is engaged in ship breaking activity and as given to understand these items/ products in question are finished products obtained from the activity. They constitute sizable chunk of production done by ship breakers. Though such products may be commercially known as "scrap" they are definitely not "waste and scrap". The items in question are "usable as such" and therefore does not fall within the definition of scrap as given in of section 206C(1). Having said so, we restore the issue to Assessing Officer with direction to grant relief to assessee under the provision of 206C(1) of Act, with regards to only sale of scrap arising out of manufacturing activity in course of ship breaking after providing due opportunity of hearing to assessee.

7. The finding of the tribunal has been upheld by the Hon'ble High Court and the Hon'ble High Court has made the following discussion on the issue:

> *"5. From the facts as narrated hereinabove, it is apparent that the respondent assessee had collected and paid tax at source (TCS) on the seven items as enumerated in the orders passed by the Commissioner (Appeals) as well as the Tribunal and had not collected tax at source on the following four items :-*
>
> *1. Old and used plates*
> *2. Non-excisable (exempted) like furniture, wood, etc.*
> *3. Trading of scrap (melting)*
> *4. High seas sale.*
>
> *6. The Tribunal, after considering the definition of scrap under clause (b) to section 206C of the Act, has noted that the assessee is engaged in ship breaking activity and the items in question are finished products obtained from the activity and constitute sizeable chunk of production done by ship breakers. Though such products may be commercially known as "scrap" they are not "waste and scrap", as such items are usable as such, and, therefore, do not fall within the definition of scrap as envisaged in the Explanation to section 206C(1) of the Act.*
>
> *7. Section 206C of the Act bears the heading, "Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc." and provides that 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 amount 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. The nature of goods specified at serial No.(vi) is scrap, and the percentage provided is 1%. The expression of scrap is defined under clause (b) to the Explanation to section 206 of the Act, to mean waste and scrap from manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. On a plain reading of the said expression, it is evident that any material which is usable as such*

would not fall within the ambit of the expression "scrap" as envisaged under clause (b) of the Explanation to section 206C of the Act.

8. The Tribunal, in the impugned order, has recorded that the items/products in question obtained from the activity of ship breaking are usable as such and, therefore, do not fall within the definition of scrap. However, since the assessee had not collected tax at source on items other than items obtained out of the manufacturing activity in the course of ship breaking, the Tribunal has remitted the matter to the Assessing Officer for the purpose granting relief to the assessee under the provisions of section 206C (1) of the Act with regard to only sale of scrap arising out of manufacturing activity in the course of ship breaking after providing due opportunity of hearing to the assessee. Thus, the Tribunal after recording a finding of fact to the effect that the products obtained by the assessee in the course of ship breaking activity are usable as such, and, therefore, do not fall within the definition of scrap has remitted the matter to the Assessing Officer to grant relief accordingly. Essentially, therefore, the impugned order of the Tribunal is based upon a finding of fact which does not give rise to any question of law.

9. Insofar as the course of action adopted by the Tribunal in remitting the matter to the Assessing Officer to decide in relation to which of the items the assessee is entitled to relief under the provisions of section 206C(1) of the Act is concerned, no fault can be found in the approach adopted by the Tribunal, inasmuch as, out of the four items of which tax was not collected at source, the matter has merely been referred to the Assessing Officer for the purpose of examining as to what extent relief is required to be granted to the assessee under the provisions of section 206C(1) of the Act having regard to the findings of fact rendered by it."

8. A perusal of the paragraph-6 of the above judgment, would indicate that certain items generated out of ship breaking activity might be known commercially as "scrap" but they are not waste and scrap. These items are re-usable as such, and therefore, would not fall within the definition of "scrap" as envisaged in the *Explanation* to section 206C(1). The assessee has also contended that it was engaged in the sale of MS pipe, iron which were obtained from ship breaking industries. The assessee himself has not

generated any scrap in manufacturing activity, as contemplated in the *Explanation*. He was a trader. Therefore, the assessee has not sold scrap as such. He has sold the products resulted from ship breaking activity, which are re-usable. Thus, the assessee was not supposed to collect tax under section 206C of the Act. The ld.AO has erred in raising the demand. I allow all appeals and delete additions.

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

Order pronounced in the Court on 1st September, 2016 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 01/09/2016