

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITAno.542/Nag./2016
(Assessment Year : 2013-14)

ITAno.543/Nag./2016
(Assessment Year : 2014-15)

ITAno.544/Nag./2016
(Assessment Year : 2015-16)

M/s. HLA Enterprises Pvt. Ltd.
Krishna House, 71/A, S.T. Bus Stand Road
Ganeshpeth, Nagpur 440 018
PAN - NGPHO2925G

..... Appellant

v/s

Dy. Commissioner of Income Tax (TDS)
Circle-1, AayakarBhawan
Civil Lines, Nagpur 440 001

..... Respondent



ITAno.545/Nag./2016
(Assessment Year : 2014-15)

ITAno.546/Nag./2016
(Assessment Year : 2015-16)

M/s. BHLA Enterprises Pvt. Ltd.
Krishna House, 71/A, S.T. Bus Stand Road
Ganeshpeth, Nagpur 440 018
PAN - NGPHO2925G

..... Appellant

v/s

Dy. Commissioner of Income Tax (TDS)
Circle-1, AayakarBhawan
Civil Lines, Nagpur 440 001

..... Respondent

Assessee by : Shri NareshJakhotia, C.A.
Revenue by : Shri Vitthal M. Bhosale, Jt. CIT-DR

Date of Hearing - 20.04.2022

Date of Order - 21.04.2022

ORDER**PER BENCH**

The captioned appeals have been filed by two different assessee challenging the impugned separate but common orders of even date 14th July 2016, passed by the learned Commissioner of Income Tax (Appeals)-2, Nagpur, for the assessment year 2013-14, 2014-15, 2015-16 (in case of M/s. HLA Enterprises Pvt. Ltd.) and for the assessment year 2014-15 and 2015-16 (in case of BHLA Enterprises Pvt. Ltd.) respectively.



Since all the aforesaid appeals involve common issue, except variation in figures, which arose out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were clubbed and heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, therefore, narrating the facts, as they appear in the appeal in ITAno.542/Nag./2016, for assessment year 2013-14, the result of which will be mutatis mutandis applicable to the other similarly situated appeals on identical issue raised by the assessee for the other assessment years under consideration.

ITAno.542/Nag./2016
Assessment Year : 2013-14

3. The only common issue which arose in all these appeals is, whether or not the authorities below were justified in making and confirming the addition on account of treating the assessee as "assessee in default" for non-payment of Tax Collected at Source (in short "TCS") on its sale.
4. Brief facts are, the assessee in the present case is a trader in coal. A survey under section 133A of the Income Tax Act, 1961 (in short "the Act") was conducted on 11th August 2015. For the year under consideration, during the course of assessment proceedings, the Assessing Officer noticed that the assessee had collected TCS in respect of sales made but had not deposited the same into the Government account. In response to the explanation as sought by the Assessing Officer as to why the assessee should not be treated as "assessee in default" for the TCS collected but not paid in view of the provisions of section 206C(6A) of the Act, the assessee submitted that its purchasers had informed the company that provisions of section 206C of the Act are applicable at the time of first sale and would not be application in second or subsequent sale of goods. The assessee also submitted that proviso of 206C of the Act was inserted in the Income Tax Act, 1961 by Finance Act, 1988, wherein it was clearly



mentioned that the tax would be collectible only "at the point of first sale" and the provisions of section shall not apply to any buyer in the second or subsequent sale of goods. The Assessing Officer, however, did not find any merit in the submissions of the assessee and held that the assessee though collected TCS in respect of sales made but had not deposited the same into the Government account and hence, the assessee was treated as "assessee in default" as per the provisions of section 206C(6A) of the Act and accordingly computed the liability under section 206C(6A)/206C(7) of the Act at ₹ 32,80,304. Being aggrieved, the assessee carried the matter before the first appellate authority challenging the order so passed by the Assessing Officer.



5. The learned CIT(A) confirmed the order of the Assessing Officer inter-alia holding that the assessee had not made any submissions on the issue at any stage and hence, no relief can be given. He also held that there no supporting submissions have been made for the assertion that if there was outstanding amount standing in their books of account of the same buyer, it cannot pay the TCS and such assertion has to be backed by cogent evidences which are absent in the present case. The assessee being once again unsuccessful, filed appeal before the Tribunal.

6. Before us, during the course of hearing, the learned Counsel for the assessee submitted that the proviso to section 206C(6A) of the Act

provides that the assessee may not be treated as "assessee in default" if the buyer has furnished his return with tax payment thereon by incorporating all its purchase and a certificate to this effect from an Accountant in the prescribed Form no.27BA, has been furnished by such buyer. The learned Counsel further submitted that the assessee has now received the certificate from the Chartered Accountant in the prescribed form no.27BA in accordance with the proviso to section 206C(6A) and as a result, the learned Counsel prayed that the assessee may not be treated as "assessee in default". Accordingly, application for admission of additional evidence under rule 29 of the I.T. Rules, 1962, along with Form no.27BA, have been submitted by the learned A.R.



7. The learned Departmental Representative vehemently objected to the submissions of the learned Counsel for the assessee while relying upon the order of the authorities below.
8. We have carefully considered the rival contentions, perused the orders of the authorities below and the material placed on record. Undisputedly, the assessee has indeed collected TCS in respect of sales made but had not deposited the same into the Government account. During the course of hearing, the learned Counsel for the assessee furnished additional evidence under Rule 29 of the I.T. Rules by way of a certificate which is received from the Chartered

Accountant in the prescribed Form no.27BA in accordance with the proviso to section 206C(6A) of the Act. which reads as under:

"(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:

*Provided that any person²³[***] 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:"



9. Consequently, we are of the considered opinion that since the forms cited supra, which are admissible under law, relevant for the issue under consideration to be decided but were not available with the assessee earlier hence the assessee could not produce the same before the authorities below. Hence we allow to admit the application for additional evidence under rule 29 along with Form no.27BA. Accordingly, to provide an opportunity to the Assessing Officer to examine the facts in light of the available evidences, we set aside the impugned order passed by the learned Assessing Officer and learned CIT(A) and restore the issue back to the file of the Assessing Officer for denovo adjudication in the light of the proviso to 206C of the Act

which was inserted in the Income Tax Act, 1961 by Finance Act, 1988, and decide the issue in accordance with law. The assessee is hereby directed to cooperate in the reassessment proceedings. Thus, the grounds raised by the assessee are allowed for statistical purpose.

10. In the result, assessee's appeal for A.Y. 2013-14 is allowed for statistical purposes.

ITAno.543/Nag./2016 - A.Y. 2014-15

ITAno.544/Nag./2016 - A.Y. 2015-16

ITAno.545/Nag./2016 - A.Y. 2014-15

ITAno.546/Nag./2016 - A.Y. 2015-16



11. In all the aforesaid appeals, the only issue raised by the assessee is, whether or not the authorities below were justified in making and confirming the addition on account of treating the assessee as "assessee in default" for non-payment of Tax Collected at Source (in short "TCS") on its sale.

12. The aforesaid issue has been decided by us in one of the assessee's appeal being ITAno.542/Nag./2016, for the A.Y. 2013-14, wherein keeping in view the additional evidence filed by the assessee which was not available before the authorities below at the time of deciding the issue by them, consequently, we set aside the impugned orders, passed by the learned Assessing Officer as well as learned

CIT(A) for all the assessment years under consideration and restore the issue back to the file of the Assessing Officer for denovo adjudication in the light of the proviso to 206C of the Act which was inserted in the Income Tax Act, 1961 by Finance Act, 1988, and decide the issue afresh in accordance with law. Accordingly, the grounds raised by the assessee for all the years under consideration are allowed for statistical purpose.

13. In the result, above referred appeals of both the assessee's for A.Y. 2014-15 and 2015-16 are allowed for statistical purpose.

Order pronounced in the open court on 21.04.2022



Sd/-
SANDEEP GOSAIN
JUDICIAL MEMBER

Sd/-
ARUN KHODPIA
ACCOUNTANT MEMBER

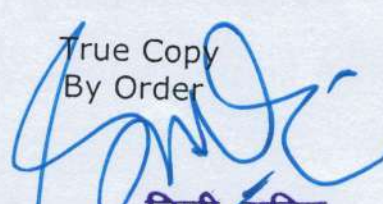
NAGPUR, DATED: 21.04.2022

Copy of the order forwarded to:

- ✓(1) The Assessee; M/s HLA Enterprises Pvt. Ltd, Kirshing House, 71A S.T. Bus Stand
- (2) The Revenue; M/s. BHLA Enterprises Private Limited, Road Ganeshpath Nagpur.
- (3) The CIT(A);
- (4) The CIT, Nagpur City concerned;
- (5) The DR, ITAT, Nagpur;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order


निजी सचिव
Assistant Registrar
Private Secretary
ITAT, Mumbai
आयकर अपीलिय अधिकरण
Income Tax Appellate Tribunal
नागपुर पीठ / Nagpur Bench