

No penalty on furnishing Form 27BA and Non Collection of TCS

Ajit Lalwani Vs ACIT

ITA Nos. 194 & 195/Ind/2020

The issue before the ITAT Indore was whether, even where tax is not collected but the assessee has furnished form 27BA, the assessee cannot be held liable to have violated provisions of section 206C?

ITAT decided it as “Yes”.

Short overview of the case:

1. Assessee, an individual running business, was liable to collect tax at source on purchase of Iron and Steel scrap.
2. However, assessee failed to collect tax and deposit on the due date.
3. Subsequently, assessee deposited tax collected at source and also paid interest levied on late deposit.
4. Assessee provided form No. 27BA duly certified by CA, supporting its contention that parties from whom tax was collected were duly assessed to tax and had reflected alleged sum liable to TCS in their regular ITR.
5. However, this submission and documentary evidence placed by assessee could not find any favour from both lower authorities.
6. Thus, assessee filed present appeals, challenging levy of penalty by AO u/s 271CA and confirmed by CIT(A) for violation of sec. 206C.

On Appeal, the issue framed by the IITAT was as to whether even where tax is not collected but the assessee has furnished form 27BA, the assessee cannot be held liable to have violated provisions of sec. 206C?

While replying as “Yes” to the issue, ITAT observed as under:

1. As per proviso to sec. 206C sub-sec. (6A), in case an assessee had filed details in form 27BA certified by CA, stating that buyer or licensee or lessee had furnished ITR u/s 139, after taking into account such amount for computing income in such ITR and had paid tax due on income declared by him in such ITR, it would not be treated as assessee in default.
2. Thus, it would be precluded from levy of penalty u/s 271CA.
3. Instant assessee had deposited TCS and interest thereon subsequently.
4. However, even where tax was not collected but assessee had furnished form 27BA, assessee was not held liable to have violated provisions of sec. 206C.
5. Assessee were not required to collect taxes at sources when sales were made u/s 206C.
6. Assessee's case was on a much better footing as tax collected at source along with interest levied thereon were deposited and form 27BA of I-T Rules certified by CA, containing all details as required in proviso to sec. 206C(6A) had been fulfilled.
7. Thus, there was no justification in AO's action of levying penalty u/s 271CA by treating assessee in default.
8. Accordingly, the penalty levied for both AYs was deleted.