Products obtained in course of ship breaking activity won't fall within definition of scrap; not liable to TCS

Summary – The Ahmedabad ITAT in a recent case of Dhasawala Traders., (the Assessee) held that Since products obtained in course of ship breaking activity were usable as such, same would not fall within definition of scrap under section 206C

Facts

- The assessee was engaged in the business of trading in iron, steel scrap, MS pipe, other non-ferrous scrap, ship scrap materials and machineries. A survey was carried out at the premises of the assessee. The assessee contended that he had obtained Form No. 27, but file of this form was not traceable. According to the revenue, being in such a business, the assessee was supposed to collect tax at source at the rate of 1 per cent of sale, which was required to be deposited in the government account before the date as per section 206C. Only in cases, where scraps were sold to a manufacturer or actual user TCS was not required to be deducted provided a declaration in Form No. 27 was being obtained by the assessee from the buyer.
- The Assessing Officer concluded that since the assessee had failed to collect such tax and also failed to deposit such amount within due date. Therefore, he raised demand and charged interest at the rate of 1 per cent for 24 months under section 206C(7).
- On appeal, the Commissioner (Appeals) affirmed the order of the Assessing Officer.
- In an appeal before the Tribunal, the assessee contended that he had sold items which were re-usable products in a ship breaking activity and though the same were scarp by nomenclature, but infact the same was not scrap. Thus, he could not be held liable to tax under section 206C.

Held

- In the case of *CIT* v. *Priya Blue Industries (P.) Ltd.* [IT Appeal No. 22071 (Ahd.) of 2011], the Tribunal held that the 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'. 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).
- Certain items generated out of ship breaking activity might be known commercially as 'scrap' but they are not waste and scrap. These items are reusable 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. The Assessing Officer has erred in raising the demand. The Tribunal allowed all appeals and deleted additions.