THE INCOME TAX APPELLATE TRIBUNAL: SPECIAL BENCH: RAJKOT
Before S/Shri G C Gupta, VP, D K Srivastava, AM and A M Alankamony, AM

ITA Nos. 391 &392/Rjt/2011
Assessment Years 2009-10 & 2010-11

M/s. Bharti Auto Products v. CIT- II, Rajkot
408/1, GIDC, Shanker Tekri, Jamnagar
PAN: AACFB1550C / RKTB00649F

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Date of Hearing: 18.06.2013
Date of Pronouncement: 06.09.2013

Assessee by: S/Shri D M Rindani, P M Maharshi, and B R Popat, CAs
Revenue by: Shri Rajiv Ranade, CIT-DR

Order

Srivastava: In exercise of powers conferred by section 255 of the Income-tax Act, the Hon'ble President has constituted this Special Bench to hear and dispose of both the aforesaid appeals. The ld. Commissioner (Appeals) has passed a common order to dispose of the appeals for both the assessment years. Besides, facts as well as issues involved in both the appeals are common. It is therefore convenient to dispose of both the appeals by a consolidated order.

2. In ITA No.391/Rjt/2011 relating to assessment year 2009-10, the assessee has taken the following grounds of appeal:-

"1. The learned Commissioner of Income Tax (Appeals) - II, Rajkot erred in confirming the order of ITO(TDS) – 3, Jamnagar holding the appellant liable for default of TCS of Rs.2,61,225/- and interest amounting to Rs.28,723/-.

2. The learned Commissioner of Income Tax (Appeals) – II, Rajkot erred in interpreting the definition of "Scrap" U/s.206(C)(1).

3. The learned Commissioner of Income Tax (Appeals) – II, Rajkot failed to appreciate that since the appellant held a bonafide belief regarding interpretation of definition of scrap u/s.206, it could not have been treated as an assessee deemed to be in default.

The appellant craves leave to add, amend, alter, withdraw any ground of appeal anytime upto the hearing of this appeal."

3. In ITA No.392/Rjt/2011 relating to assessment year 2010-11, the assessee has taken the following grounds of appeal:-

> "1. The learned Commissioner of Income Tax (Appeals) - II, Rajkot erred in confirming the order of ITO(TDS) – 3, Jamnagar holding the appellant liable for default of TCS of Rs.6,28,614/- and interest amounting to Rs.10,519/-.
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> 2. The learned Commissioner of Income Tax (Appeals) – II, Rajkot erred in interpreting the definition of "Scrap" U/s.206(C)(1).
>
> 3. The learned Commissioner of Income Tax (Appeals) – II, Rajkot failed to appreciate that since the appellant held a bonafide belief regarding interpretation of definition of scrap u/s.206, it could not have been treated as an assessee deemed to be in default.
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> The appellant craves leave to add, amend, alter, withdraw any ground of appeal anytime upto the hearing of this appeal."

4. In both the aforesaid appeals, the assessee has prayed for admission of the following additional grounds of appeal:-

> Additional ground No.1.
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> "The Income-tax Officer (TDS-3), Jamnagar erred in not discharging the onus of showing as to how the material imported by the appellant fell within the definition of "Scrap" as given in section 206C of the Act and the Learned Commissioner of Income-tax (Appeals) further erred in confirming the order of the Income-tax Officer (TDS-3), Jamnagar."
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> Additional ground No. 2
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> "The Income-tax Officer (TDS-3), Jamnagar failed to appreciate that section 206C strictly did not apply to the facts of the appellant in as much as the sale of materials made by the appellant was not of the nature and kind covered within the definition of a "buyer" as given in section 206C of the Act."
>
> Additional ground No.3

"The I.T.O. and the learned C.I.T.(Appeals) failed to appreciate that where the assessee stated that buyers were assessed to tax, there would be no double recovery of tax on the same sum and thus the I.T.O. erred in treating the assessee as deemed to be in default without first ascertaining this fact from the buyers."

5. It was prayed that all the aforesaid three grounds of appeal should be admitted as they were legal in nature and, after admission, they should be restored to the file of the CIT(A) in view of the judgment of the Hon'ble MP High Court in CIT v. Tollaram Hassomal, 153 Taxman 532 (MP). We have considered the submissions of both the parties. Additional grounds of appeal raised by the assessee are not independent grounds of appeal but are elaborations of the main grounds of appeal. The aforesaid additional grounds of appeal are inextricably linked with the issues raised in the main grounds of appeal. Apart from being integral part of the main grounds of appeal, they are predominantly of legal nature and therefore no useful purpose would be served by restoring the matter to the file of the CIT(A). In this view of the matter, all the aforesaid three grounds of appeal are admitted for adjudication together with main grounds of appeal.

6. The assessee is an individual. He is an importer, trader and seller of brass scrap. Survey u/s 133A of the Income-tax Act was carried out at his business premises on 21-01-2010. It was noticed that the assessee had imported and sold brass scrap amounting to Rs.2,61,22,573/- in assessment year 2009-10 and Rs.6,28,61,420/- in assessment year 2010-11 without collecting tax at source as required by section 206C(1) of the Income-tax Act. The Assessing Officer therefore issued a show cause notice on 01.02.2010 calling upon the assessee to show cause as to why he should not be treated as assessee in default for non-collection of tax at source @ 1% of sales of brass scrap made by him in both the assessment years under appeal. In reply, the assessee, vide his letter dated 12.02.2010, submitted before the AO that he was a mere trader of imported brass scrap. It was also submitted that the brass scrap sold by him was not generated from the manufacture or mechanical working of material and therefore the brass scrap sold by him was not "scrap" within the meaning of Explanation (b) to section 206C of the

Income-tax Act". The Assessing Officer considered the submissions made by the assessee. He however rejected them for the detailed reasons given in the order passed by him u/s 206C of the Income-tax Act on 09.03.2010. It has been held by him that the assessee has failed to collect the tax at source as required by section 206C(6) of the Income-tax Act on the sale of scrap made by him to various dealers in both the years under appeal and therefore he is liable to pay a sum of Rs.2,61,225/- u/s 206C(6) and further sum of Rs.28,723/- being interest thereon u/s.206C(7) for assessment year 2009-10 and further sum of Rs.6,28,614/- u/s 206C(6) and interest thereon amounting to Rs.10,519/- u/s.206C(7) of the Income-tax Act for assessment year 2010-11. Aggrieved by the order passed by the AO, the assessee carried the matter in appeal before the CIT(A). The ld. CIT(A) has dismissed both the appeals with the following observations:-

"8. I am not in agreement with the above contentions of the appellant. It is rightly liable for collecting the sums at 1% from the buyers of the imported brass scrap u/s.206C. My reasons for reaching this conclusion are as below:-

(a) Firstly, one has to find out whether the appellant should be a manufacturer, thus becoming liable for TCS u/s.206C of the Act or not? I am afraid, it is not. Even a trader can be very well brought under the purview of Section 206C. The reasons are explained in the following lines:-

The title of Section 206C reads as "**Profits and gains from the business of trading in alcoholic liquor, forest produce, <u>scrap</u> etc.**" This clearly indicates that an assessee, who has been trading in scrap, falls within the purview of Section 206C. It is not necessary to find out whether the appellant sells the scrap originated from its manufacturing activity, if any, or scrap is procured from outside source and sold thereafter. Whatever the origin of the scrap, as the appellant is trading in scrap, this activity is squarely covered u/s. 206C of the Act.

Section 206C stipulates that every person being a seller, at the time of selling of any of the goods of the nature specified in that section will collect sum at a certain percentage. The definition of 'seller' under explanation (c) of section 206C(11) also does not stipulate that the seller should be a manufacturer only. It talks only about the status.

'Buyer' is also defined in explanation (a) of section 206C(11) as a person who obtains goods on sale by certain specified modes. Buyer may be a manufacturer or a trader. The explanation does not differentiate even this aspect as well.

The appellant tries to draw support for his contention that only a manufacturer is subject to rigors of section 206C by picking a specific word from the definition of '**scrap**' given in the explanation. But the appellant forgets that the substantive portion, i.e. the Title of Section clearly stipulates "**profits from the business of trading in scrap**". The substantive part weights more than the definition given in the explanation.

(b) Secondly, the appellant's argument that it is not a manufacturer and thus it is not in a position to generate waste/scrap is not acceptable as the definition of '**scrap**' reads as under:-

"[(b) "scrap" means 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) of Sec.206C(11)]

It has two distinct limbs. Even if one of the limbs is applicable, an assessee can be treated as if he deals in scrap, not usable as such –

(i) "**scrap**' means waste; and

(ii) "**scrap**' generated from the manufacture or mechanical working of materials.

The above indicates that only 'waste' materials may partake the character of 'scrap'. This first limb of the definition definitely applies to the appellant's case because it imports **brass scraps.** This further conveys that there is no need to apply the second limb to the appellant (i.e. **scrap** need not to have arisen from any manufacturing or mechanical activity if the first limb is applicable and applied. In the 'Sales contract' on high seas sale basis, the nature of the material sold is to be invariably mentioned and in the appellant's case, it is admittedly '**brass scraps**'. Even bills of entry for home consumption issued by Customs Authorities, bills issued by supplier, bills raised by the appellant on other parties and bills of landing indicate very clearly what the appellant sold is only scrap. It is also understood that the customs duty was paid by the appellant by claiming the goods imported as '**scrap**' at a particular rate.

In nutshell, in the appellant's case, scrap means waste which is definitely not usable as it is. Scrap might have been bought and sold. Scrap might have arisen due to manufacturing activity which is sold. Whatever may it be, it is a fact that the appellant had the '**scrap**' for sale.

(c) The appellant has not furnished any evidence of its claim regarding disclosure of such purchases by its buyers and consequent payment of tax in any of the case. Hence, this argument also does not survive. Further, here this contention is not relevant as the issue under consideration is that of TCS default.

9. In the end result, I fully endorse the views taken by the A.O. in invoking section 206C(1) of the Act in the appellant's case. Consequently, the appeals of the assessee for both the assessment years, i.e., AYs 2009-10 & 2010-11 are dismissed."

7. Aggrieved by the order passed by the CIT(A), the assessee is now in appeal before this Tribunal. At the time of hearing, the assessee prayed for admission of the following documents placed at pp 6-29 of paper-book (Volume-II) filed by the assessee on 12.06.2013 as additional evidence under Rule 29 of the Income-tax (Appellate Tribunal) Rules:-

a. Copy of letter from M/s. AL-NAWAZ METAL TR. LLC (foreign supplier) regarding nature and origin of material, with sample invoices and import documents.

b. Copy of letter from M/s. DIETIKER AG FUR ROHMENTALLE (foreign supplier) regarding nature and origin of material, with sample invoices and import documents.

c. Copy of letter from M/s. OVERSEAS METAL TRADING (foreign supplier) regarding nature and origin of material, with sample invoices and import documents.

8. The aforesaid documents are stated to be relevant for disposal of appeal. It is the case of the assessee that he could not file them before the AO/CIT(A) as they were not available with him at that time. The ld. Departmental Representative did not object to the admission of the aforesaid documents as additional evidence. They are therefore being admitted to avoid any prejudice that may be caused to the assessee due to non-admission of the aforesaid documents as additional evidence.

9. In support of both the appeals, S/Shri Rindani, Maharshi and Popat, Chartered Accountants, duly authorized by the assessee u/s 288 of the Income-tax Act have entered appearance on behalf of the assessee before this Tribunal. They have filed written submissions and paper-books.

10. Shri Rindani has filed written submissions running into 6 pages under the signature of the assessee and also made oral submissions at the time of hearing. His submissions, in brief, are as under:

(i) The AO has straightway concluded that the assessee was liable to collect tax at source without explicitly showing as to how the materials dealt with by the assessee and noticed by the Department during survey fell within the definition of scrap. According to him, the AO failed to discharge the aforesaid onus and hence his action of treating the assessee as assessee in default was not sustainable in law in view of the decisions in TEJ Quebecor Printing Ltd. V. JCIT, 84 ITD 684; SOL Pharmaceuticals Ltd. V. ITO, 83 ITD 72; and Senior Accounts Officer v. CIT, 34 DTR 69 (MP).

(ii) The material traded by the assessee was not “scrap” within the meaning of Explanation (b) to section 296C notwithstanding the fact that it was imported and declared as scrap before the Customs authorities. According to him, the assessee himself was neither a manufacturer nor had he carried out any mechanical working on the materials imported by him. It was submitted that the definition of “scrap” as given in Explanation (b) to section 206C should be restricted to mean and include the scrap generated from the manufacture or mechanical working by the assessee himself on sale of which alone liability u/s 206C could be fastened.

(iii) The material imported and traded by the assessee has not arisen from the manufacture or mechanical working of materials undertaken by the assessee as the brass scrap imported by the assessee comprised of loose and collected items made of brass such as utensils, water taps, hardware items, brass stove, brass show pieces, household items of brass, etc. According to him, the items imported and sold by the assessee were discarded items and not scrap arising from the manufacture or mechanical working of materials. Relying upon the judgment in Vijay Ship Breaking Corporation v. CIT, 314 ITR 309 (SC), he submitted that the word “manufacture” used in Explanation (b) to section 206C was narrower in meaning than the word “production” and therefore discarded items traded by the assessee, which were of personal use by someone at some point of time in the past, would not qualify to be called “scrap” in terms of Explanation (b).

(iv) Relying upon the decisions of this Tribunal in Nathulal P Lavti v. ITO, ITA Nos.1167 & 1168/Rjt./2010; and Navine Fluorine International Ltd. v. ACIT, 45 SOT 86, he submitted that both the words “waste” and “scrap” in Explanation (b) were one word and therefore both of them are qualified by the words following them, namely, “from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons”. According to him, “waste” as well as “scrap” must arise from the manufacture or mechanical working of materials undertaken by the assessee himself in order to constitute “scrap” within the meaning of Explanation (b) to section 206C.

(v) Every kind of scrap under the sun cannot be said to be covered under the definition of “scrap” as given in Explanation (b) as such an interpretation would render the later part of the definition, i.e., “from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons” otiose. He contended that any interpretation which rendered later part of the definition of “scrap” otiose should be avoided. According to him, it can be avoided only if (i) both the words, namely, “waste” as well as “scrap” are held to be one word; and (ii) both the aforesaid words are held to be qualified by the words following them. If so interpreted, the items traded by the assessee would not fall under the definition of “scrap” as they have not been generated by the assessee from the manufacture or mechanical working of materials undertaken by him.

(vi) Referring to Circular No.528 dated 16.12.1998 issued by the CBDT, he submitted that the aforesaid Circular simply explains the intention behind inserting section 206C in the Income-tax Act. It does not explain the meaning or scope of the term “scrap” used in Explanation (b) to section 206C and therefore is of no use in interpreting the said term. Referring to Circular No.525 dated 24.11.1988 issued by the CBDT, he submitted that the provisions of section 206C were intended to be used in those cases where

persons engaged in certain trades/businesses were untraceable and not in those cases where they were traceable as in the case of the assessee.

(vii) Inviting our attention to the first proviso inserted in sub-section (6A) of section 206C with effect from 1.7.2012, he submitted that the provisions of section 206C would not apply to a case where it is shown that the buyer has furnished his return of income and satisfied all other conditions stipulated by the said proviso. In this connection, he referred to the judgments in Hindustan Coca Cola Beverage (P) Ltd. v. CIT, 293 ITR 226 and Sree manjunatha Wines v. CIT, 202 Taxman 620 (Karn.).

11. Elaborating his arguments further regarding the applicability of first Proviso to sub-section (6A) of section 206, Shri Rindani submitted that a person, other than a person, referred to in sub-section (1D) responsible for collecting tax, 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 licenses or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee has fulfilled the conditions laid down in the said Proviso. He submitted that this aspect of the matter has not been examined by the AO and therefore the matter should be restored to the file of the Assessing Officer.

12. Appearing for the assessee, Shri Maharishi made similar submissions as those made by Shri Rindani. He submitted 5 unsigned loose sheets titled “Written submission on the definition of scrap contained in Explanation (b) to section 206C” in which extracts explaining the meaning of “scrap” as downloaded from various sources available on internet have been reproduced. These sources are Mariam Webster Dictionary, www.Ask.com and Wikipedia. According to him, Mariam Webster Dictionary defines scrap as “fragments of stock removed in manufacturing” and “manufactured articles or parts rejected or discarded and useful only as material for reprocessing; especially waste and discarded metals”. He further submitted that the term “waste” as defined in the said Dictionary would mean “damaged, defective, or superfluous materials produced by a manufacturing process, as (1) materials rejected during a textile manufacturing process and used

usually for wiping away dirt and oil <cotton waste>; (2) scrap; (3) and unwanted bye-product of a manufacturing process, chemical laboratory or nuclear reactor <toxic waste> <hazardous waste> <nuclear waste>." Relying upon the website www.ask.com, he submitted that the difference between scrap and waste is that "scrap" is a loss connected with the output mostly an unforeseen loss of raw materials in production process while "waste" is a foreseen and calculated percentage of loss of raw materials or an output that does not have any sales or use. According to him, Wikipedia defines material as anything made of matter, constituted of one or more substances. Based on the aforesaid sources, he submitted that both scrap and waste must arise from the manufacture or mechanical working of materials in order to constitute "scrap" within the meaning of Explanation (b) to section 206C. He also referred to the definition of "waste and scrap" as given in Note 8(a) of Section XV of First Schedule of the Central Excise Tariff Act 1985 and also to the judgments in M/s Grasim Industries Ltd. v. Union of India, Civil Appeal No.7453 of 2008; Collector of Customs v. IM Kemex India Ltd., 1996 (86) ELT 95 (Tribunal); and Hindalco Industries Ltd. v. CCE, 2002 (144) ELT 339 (Tribunal) rendered in the context of the definition of "waste and scrap" as given in Note 8(a) of Section XV of First Schedule of the Central Excise Tariff Act.

13. Supporting the decisions cited by Shri Rindani, Shri Maharshi also submitted that both the words, namely "waste" and "scrap", used in Explanation (b) to section 206C of the Income-tax Act were one phrase. He emphasized that no material would be "scrap" within the meaning of Explanation (b) to section 206C of the Income-tax Act unless it was generated from manufacture or mechanical working of materials. According to him, the process of manufacture or mechanical working can be carried out only on materials and therefore only those items could be treated as "scrap", which were generated from the manufacture or mechanical working of "materials". He contended that if the items of scrap were not generated in the course of manufacture or mechanical working of "materials", such items would not be "scrap" as defined in Explanation (b). In this connection, he cited the example of sale of old newspapers. He submitted that old newspapers are not generated from manufacture or mechanical working of "materials" and therefore they would not be

"scrap" within the meaning of Explanation (b) to section 206C of the Income-tax Act. On this analogy, he sought to emphasize that discarded items as sold by the assessee would not be "scrap" within the meaning of Explanation (b) to section 206C. It was submitted by him that the aforesaid proposition would clearly emerge if the definition of scrap as given in Explanation (b) to section 206C of the Income-tax Act is considered in its entirety. He contended that the scrap should not only be generated from the manufacture or mechanical working of materials but also such scrap should not definitely be usable as such because of breakage, cutting up, wear and other reasons. Having thus explained the meaning of "scrap" as used in Explanation (b) to section 206C, he submitted that discarded materials generated on dismantling of building, as in the matter under appeal, would not qualify to be called "scrap" within the meaning of section 206C.

14. Shri Popat has also filed unsigned written submissions running into 7 sheets, which incorporate synopsis of his submissions. According to him, the provisions of section 206C would be attracted only when "scrap" was sold to a "buyer". He submitted that the sale of scrap to a person other than a buyer would not attract the provisions of section 206C. He invited our attention to the term "buyer" used in Explanation (aa) to section 206C of the Income-tax Act and submitted that the buyer is a person who obtains specified goods in any sale, by way of auction, tender or any other mode or the right to receive any such goods. He submitted that a person would not be a buyer unless he obtains specified goods in any sale by way of auction, tender or any other like mode. He contended that the phrase "any other mode" is preceded by "auction, tender" and therefore sale "by any other mode" must by analogous to auction or tender. In this connection, he referred to the principle of Noscitur a Sociis according to which the meaning of questionable or doubtful words or phrases in a statute may be ascertained by reference to the meaning of other words or phrases associated with it and also to the principle of ejusdem generis. He submitted that sale of goods by an assessee to a buyer in retail sale of such goods cannot therefore be construed as sale to a buyer as such sale was not by way of auction or tender or any other like mode and therefore such transactions in retail sale between the assessee and his buyer would clearly be outside the scope of

section 206C. In this connection, he compared the provisions of sub-clause (ii) with those of sub-clause (i) of clause (aa) of Explanation to 206C of the Income-tax Act. He submitted that sub-clause (i) defines a buyer as a person who obtains specified goods in any sale, by way of auction, tender or any other mode while sub-clause (ii) defines a buyer for the purpose of sub-section (1D) as a person who obtains specified goods in any sale. Based on the aforesaid comparison, he submitted that the legislative intent was quite clear that the buyer, except for the purposes of sub-section (1D) of Section 206C, would be a person who obtains specified goods in any sale which must necessarily be by way of auction, tender or any other mode analogous to auction or tender and not by way of retail sale as in sub-clause (ii) of clause (aa) of Explanation 206C. Turning to the facts of the case, he submitted that the Revenue has brought no material on record to show that the assessee has sold brass scrap to a “buyer” by way of auction, tender or any similar mode. According to him, the assessee has sold brass scrap in retail sale and not by way of auction, tender or similar mode and therefore the goods sold by him cannot be said to have been sold to a “buyer” for the purposes of sub-section (6) of section 206C.

15. In reply, the ld. Departmental Representative relied upon the orders passed by the Assessing Officer and the ld. Commissioner (Appeals). He has filed a paper-book, which contains, inter-alia, his written submissions in 14 pages. His submissions, in brief, are as under:

(i) Section 206C has been inserted in the Income-tax Act to ensure collection of taxes at source from persons carrying on particular trades in view of peculiar difficulties experienced by the Revenue in the past in collecting taxes from them. Section 206C thus seeks prevention of evasion of taxes. In interpreting the aforesaid provisions, which are intended to plug leakage of revenue and prevent tax evasion, a construction which would defeat its purpose should be eschewed and a construction which preserves its workability and efficacy should be preferred.

(ii) Provisions of section 206C are applicable to traders as well as manufacturers as there is no requirement in section 206C that the seller

should be a manufacturer also. In this connection, he referred to the head-note of section 206C and other relevant provisions of the said section in this behalf.

(iii) "Waste" and "scrap" as mentioned in the definition of scrap in section 206C are different and distinct items and not the same. Materials not arising from manufacture or mechanical working of materials are also covered by the definition of "scrap" as given in section 206C. Discarded materials or materials which are no longer useful also fall under the definition of scrap.

(iv) The definition of "scrap" in Explanation (b) is quite comprehensive in its ambit and scope in the sense that it covers both, namely, waste as well as scrap from the manufacture or mechanical working of materials which is definitely not usable as such …" The use of the words "which is" in the phrase "scrap from the manufacture or mechanical working of materials which is not definitely usable as such…" in Explanation (b) also supports the aforesaid view that anything which is unusable as such is scrap.

(v) The definition of "scrap" as given in Explanation (b) is wide enough to include "waste and scrap" as defined in Note 8(a) of Section XV of Schedule I of the Customs Tariff Act and Central Excise Tariff Act and therefore any material which is declared as waste and scrap for the purposes of the Customs Tariff Act or Central Excise Tariff Act Note 8 would be covered by the definition of "scrap" in section 206C.

(vi) Relying upon letter F.No.275/86/2011-IT(B) dated 18th May 2012, circulated by the CBDT to all the Commissioners/Directors of Income-tax (TDS), he submitted that (1) the term "scrap" is clearly defined in the Explanation to section 206C and there is no requirement that the goods to be eligible for scrap should be produced/manufactured by the seller itself; (2) the term "buyer" is also defined in the same Explanation according to which a buyer is a person who obtains in any sale, by way of auction, tender or any other mode, goods of the specified nature and thus a "buyer" in terms of the said Explanation is not restricted to a person who buys the specified goods in

an auction or tender alone but covers a buyer in the retail sale of specified goods as well; and (3) all the sellers of scrap including those trading in scrap are liable to collect tax at source from the buyers of such scrap.

16. It was further submitted by the ld. Departmental Representative that the assessee himself has shown and declared the goods sold by him as “scrap” before the Customs authorities and paid customs duty accordingly and therefore there was no dispute that what was imported and subsequently sold by the assessee was scrap and nothing else.

17. We have heard both the parties and carefully considered their submissions including the authorities referred to by them at the time of hearing and also in the written submissions filed by them. The facts, as found by the Assessing Officer and the CIT(A), are that the assessee is an individual. He is an importer. It has been found by the Assessing Officer and the CIT(A) that he has imported brass scrap and sold the same to various parties in both the years under appeal. It has also been found by them that bills of entry issued by the Customs authorities, bills issued by the supplier, bills raised by the assessee and bills of landing, etc., also indicate that the assessee has imported “scrap” and sold the same as such. It is also stated in the appellate order passed by the CIT(A) that the assessee has declared imported goods as “scrap” for payment of customs duty and accordingly paid the customs duty as per the rates prescribed for scrap. It has also been found by both the AO and the CIT(A) that the assessee has not collected the tax at source from the buyers in conformity with the provisions of section 206C of the Income-tax Act and therefore the assessee, according to them, was liable to be treated as “assessee in default” u/s 206C(6) and (7) of the Income-tax Act.

18. Before taking up the grounds of appeal as also the aforesaid issues for consideration and adjudication, it is necessary to reproduce section 206C of the Income-tax Act in so far as it is relevant for disposal of the issues under appeal. Relevant portions of section 206C read as under:-

"BB.—Collection at source

Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

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 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:

TABLE

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*vi*)	Scrap	One per cent

Provided that .....

.....

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(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 person, other than a person referred to in sub-section (1D), 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:

Provided further ….

(7) Without prejudice to the provisions of sub-section (6), if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3):

Provided that ……

Explanation.—For the purposes of this section,—

(*a*) "accountant" shall have the meaning assigned to it in the *Explanation* to sub-section (2) of section 288;

(*aa*) "buyer" with respect to—

(*i*) sub-section (1) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,—

(*A*) a public sector company, the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(*B*) a buyer in the retail sale of such goods purchased by him for personal consumption;

(*ii*) sub-section (1D) means a person who obtains in any sale, goods of the nature specified in the said sub-section;

(*ab*) xxxxxxxx

(*b*) "scrap" means 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;

(*c*) "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and also includes an individual or a Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in sub-section (1) or sub-section (1D) are sold.

19. Section 206C as originally enacted did not provide for collection of tax at source on sale of scrap. By the Finance Act 2003, “scrap” has been included and placed in the Table in sub-section (1) of section 206C as a result of which every seller {as defined in Explanation (c) to section 206C} of scrap is required to collect tax @ 1% at the time of debiting 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. The liability of a seller to collect tax at source in terms of section 206C is absolute unless

requisite declaration from the buyer is obtained and a copy thereof is delivered to the Chief Commissioner or Commissioner in terms of the provisions of sub-section (1A) and (1B) of section 206C.

20. Reasons for inserting section 206C in the Income-tax Act have been explained in Circular No.525 dated 24.11.1988 issued by the Central Board of Direct Taxes as under:

> **"1.** Considerable difficulty has been felt in the past in assessing income of persons who take contracts for sale of liquor, forest produce, etc. It has been the Department's experience that for taking such contracts, firms or associations of persons are specifically constituted and very often no trace is left of them or their members after the contract has been executed. Persons have also been found to have taken contracts in 'benami' names by floating undertakings or associations for short periods. Since tax is payable in the assessment years on the incomes of the previous years, the time by which the incomes from such sources become assessable, such persons become untraceable. Moreover, at the time of assessment years in these cases, either the accounts are not available or they are mostly incorrect or incomplete. Thus, even if assessments could be made on *ex parte* basis, it becomes almost impossible to collect the tax found due, either because it becomes difficult to establish the identity of the persons and trace them or because of the fact the persons in whose names contracts were taken are men of no means. With a view to combating large scale tax evasion by persons deriving incomes from such business, the Finance Act, 1988 has inserted a new section 44AC to provide for determination of income in such cases. Further, with a view to facilitating collection of taxes from such assessees, the Finance Act, 1988 has inserted a new section 206C to provide for collection of such tax at source."

21. It is quite obvious that the provisions of section 206C have been enacted to ensure collection of taxes from persons carrying on particular trades in view of peculiar difficulties experienced by the Revenue in the past in collecting taxes from

them. Section 206C thus seeks to prevent evasion of taxes. It therefore needs to be construed strictly and in a manner that seeks to achieve the purpose for which it has been enacted.

22**.** As rightly submitted by both the parties that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. The courts, in the interpretation of statutes, always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which contributes redundancy to the legislature should not be accepted, except for compelling reasons.

23. The issues under appeal have been clarified by the Central Board of Direct Taxes in its letter No.275/86/2011-IT(B) dated 18th may 2012 addressed to all the Commissioners/Directors of Income-tax (TDS) as under:

> "Subject: Liability of Old Iron (Scrap) Dealers cum traders under section 206C of the Income Tax Act 1961 – regarding
>
> Representations were received from certain Associations of Old Iron Scrap Dealers cum Traders alleging wrong interpretation of law regarding applicability of provisions of Section 206 C of the Income Tax Act 1961 in their case.
>
> The Income Tax Act, 1961 as per Section 206C requires a seller of goods of specified nature (defined in the Act and includes scrap) to collect Tax at source at specified percentage of the receipt from the buyer and deposit the same in the Government account. The term scrap is clearly defined in the explanation to this section and there is no requirement that the goods to be eligible for scrap should be produced/manufactured by the seller itself. Further the term buyer is also defined in the same Explanation and means a person who obtains in any sale, by way of auction, tender or any other mode,

goods of the specified nature. Thus a buyer is not restricted to a person who buys the specified goods in an auction or tender and thus includes a buyer in the retail sale of specified goods as well. As per Taxation Laws (Amendment) Act 2003, w.e.f. 08-09-2003, if a buyer in the retail sale of such goods buys it for personal consumption and furnishes before the seller such declaration in prescribed Form 27C, then the Seller is not liable to collect tax on the same.

Thus all Sellers of Scrap, within the meaning of Section 206C, including those trading in scrap are liable to collect tax at source from the buyers of such scrap. However if the buyer declares by furnishing Form 27C before the seller its purpose for obtaining such goods being manufacturing/processing/producing articles and not trading purpose then the seller is exempted from collecting such tax from such buyer.

If it may be added that Sellers as defined in the explanation to Section 206C only are liable to collect tax at source. It may further be added the Act as per section 206C (9) allows any buyer to approach the Assessing Officer for obtaining a certificate of lower rate of collection of TCS".

24. Explanation (b) to section 206C defines "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". It is evident that the word "scrap" occurs twice in the said definition. It is first used as a term which is sought to be defined and which includes "waste" also and thereafter the word "scrap" is used again in the expression "scrap from the manufacture or mechanical working of materials". The said definition is in two parts. Its first part, i.e., "waste and scrap from the manufacture or mechanical working of materials", refers to what would constitute "scrap" while its second part, namely, "which is definitely not usable as such because of breakage, cutting up, wear and other reasons" refers to the characteristics which a material has to possess in order to fall in the category of "scrap". The second part of definition, being integral part of the definition, also throws light on the scope and ambit of the term "scrap" and therefore needs to be taken into consideration while interpreting the first part of the definition of "scrap".

25. We shall first take up the first part of the definition, namely, “waste and scrap from the manufacture or mechanical working of materials”. The first part of the definition seeks to cover both “waste” as well as “scrap from the manufacture or mechanical working of materials”. In the absence of any definition of the term “waste” in the Income-tax Act, we have to turn to its meaning as it is understood in common parlance. In common parlance, “waste” is understood as something unusable or unwanted material. According to the Concise Oxford Dictionary, “waste” is something which has been “eliminated or discarded as no longer useful or required”. “Scrap”, on the other hand, represents something which is left over after the greater part has been used or consumed. “Scrap” thus refers to the incidental residue derived from certain types of manufacture, which is recoverable without further processing. It is in this context that the words “from the manufacture or mechanical working of materials” qualify the preceding word “scrap” and not “waste”. The definition of “scrap” as given in Explanation (b) is not limited to scrap from the manufacture or mechanical working of materials alone but extends to cover “waste” also. Therefore the scope of the term “scrap” as defined in Explanation (b) cannot be interpreted so as to restrict its application to scrap from the manufacture or mechanical working of materials alone. While “waste” covers everything that is unusable or has been discarded as no longer useful as such, “scrap” covers everything that arises from the manufacture or mechanical working of materials. By its very nature, “waste” is a term of wider import while “scrap” is narrower in its scope.

26. The first part of the definition of “scrap” in Explanation (b) refers not only to scrap from the “manufacture” but also to “mechanical working of materials”. Both the phrases, namely, manufacture and mechanical working of materials differ in their meaning and content. In Black’s Law Dictionary, the meaning of the term “Manufacture” has been explained thus: “Manufacture. *v.* From Latin words manus and factura, literally put together by hand. Now it means the process of making products by hand, machinery or other automated means…” The term “Manufacture” as a noun is also defined in the same Dictionary as follows: “Manufacture. n. The process or operation of making goods or any material produced by hand, by

machinery, or by other agency; anything made from raw materials by the hand, by machinery, or by art…." "Mechanical working of materials" refers to physical operations on materials. It signifies physical operations to bring about physical change to which the material is subjected in order to change its shape, properties or structure. In order to fall in the definition of "scrap", it is not necessary that the same should occur in the course of manufacture; it can also occur in the course of mechanical working of materials, i.e., in the course of physical operations on materials. Thus, both the operations/processes, namely, the manufacture and mechanical working of materials, can give rise to scrap. Any article or thing arising from the physical operations on materials which is not usable as such would therefore fall in the category of "scrap". As stated earlier, the second part of the definition, i.e., "which is definitely not usable as such because of breakage, cutting up, wear and other reasons" also throws light on the scope of the term "scrap" in as much as it seeks to define the characteristics of scrap. In order to constitute "scrap", the article or thing must not be usable as such because of breakage, cutting up, wear and other reasons. The use of the words "other reasons" in the second part of the definition of "scrap" is significant. In order to constitute "scrap", what is contemplated by Explanation (b) is the non-usability of materials as such, which could even be for a reason other than breakage, cutting up and wear. The phraseology employed in Explanation (b) shows that the term "scrap" has been defined in wide terms so as to include both (i) waste, and (ii) scrap from the manufacture or mechanical working of materials. However both of them have been used as one phrase, i.e., as "waste and scrap from the manufacture or mechanical working of materials", for the second part of the definition and therefore both of them should definitely be not usable as such because of breakage, cutting up, wear or other reasons.

27. At the time of hearing, it was submitted on behalf of the assessee that the use of the word "and" in the expression "waste and scrap from the manufacture or mechanical working of materials" suggests that both of them, namely, waste and scrap, must arise from the manufacture or mechanical working of materials and that waste per se cannot be scrap unless it, like scrap, also arises from the manufacture

or mechanical working of materials. We do agree with the submission that the word 'and" in the said expression joins both the words, namely, (i) waste; and (ii) scrap from the manufacture or mechanical working of materials and to that extent they constitute one phrase, i.e., "waste and scrap from the manufacture or mechanical working of materials" and that is why the words "which is" have been used as link between the first part and second part of the definition. However, the word "and" in the said phrase has been used to enlarge the scope of "scrap", which is sought to be defined by Explanation (b) to section 206C, so as to cover both, i.e., waste as well as scrap from the manufacture or mechanical working of materials. If the legislative intent was to exclude waste from the definition of "scrap", it could have easily done so by not including the "waste" in the definition of "scrap".

28. It is the case of the Revenue that the items imported and subsequently sold by the assessee as "brass scrap" fall under the Revised Indian Trade Classification Code (RITC) 74040022 as declared by the assessee himself before the Customs authorities. In this connection, the ld. Departmental Representative referred to the definition of "waste and scrap" as given in Note 8(a) to Schedule I (Import Tariff) of the Customs Tariff Act and submitted that the goods imported by the assessee were known as metal scrap in trade circles, both in India and abroad. In this connection, he referred to the Harmonized Commodity and Coding Systems, which are popularly known as HSN or HS, developed by the World Customs Organization and followed by over 200 countries including India to facilitate easy identification of merchandise in international trade. According to him, the goods imported and sold by the assessee being brass scrap fall under the classification of waste and scrap under the said Coding System. In support of his submissions, he relied upon three judgments of the Hon'ble Customs, Excise and Gold Tribunal/Customs, Excise and Service Tax Appellate Tribunal, namely, Sujana Steels Ltd. v. Commissioner of Central Excise, 2000 ECR 776 Tri Chennai; Quick Car Wash Pvt. Ltd. v. Commissioner of Customs, 2007-TIOL-CESTAT-DEL; Collector of Customs v. Shankar Metal Trading Co., 1991 ECR 309 Tri Delhi.

29. We have perused the definition of “waste and scrap” as given in Note 8(a) of Section XV of Schedule I (Import Tariff) of the Customs Tariff Act, which reads as under:

> **“8.** In this Section, the following expressions have the meanings assigned to them:
>
> (a) waste and scrap:
>
> Metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons.”

30. The assessee has declared the goods imported by him under the Revised Indian Trade Classification Code (RITC) 74040022, which includes within itself brass scrap of various descriptions. The goods imported by the assessee are categorized as “copper waste and scrap” (including brass scrap) under the Harmonized Commodity and Coding Systems. In trade circles also, the goods imported by the assessee are categorized as metal waste and scrap. In Quick Car Wash Pvt. Ltd. v. Commissioner of Customs (supra), Hot/Cold Rolled Sheets of defective quality and in rusted condition were imported and therefore were not usable as such. On the aforesaid facts, it was held that the authorities were not justified in treating the said materials as not of metal waste. Relevant observations made by the Hon’ble Customs, Excise and Service Tax Appellate Tribunal in this behalf read as under:

> “8. Upon perusing the record and considering the submissions of both the sides, we find in favour of the appellant. It is to be noted that the consignment is of mixed dimensions, 50% of it has been found to be rusted. It has also been noted that the material is secondary/defective. Materials of this description is clearly not capable of being sold as ferrous products. Therefore, we feel that the authorities were not justified in treating the consignments as not of metal waste. The HSN note relied upon by the learned SDR also does not seem to support a contrary view. There is also a mention that waste and scrap of iron and steel of a miscellaneous nature

would not be usable as such. In the present case, there is no evidence that the goods in the consignments could be sold as ferrous products or \used as such. It is difficult to plead that rusted iron is capable of use as iron sheets, particularly when the consignment has been found by the expert to be of 50% rusted."

31**.** Metal waste and metal goods, which are not usable as such, are categorized as waste and scrap under the Customs Tariff Act. The crux of the matter is non-usability of the material as such. If the material is not usable as such, it has to necessarily fall in the category of waste and scrap. The definition of "scrap" as given in Explanation (b) to section 206C of the Income-tax Act covers all kinds of waste including metal waste and metal goods which are not usable as such and therefore is significantly wider in its scope than the definition of "waste and scrap" as given in Note 8(a) of Section XV of Schedule I of the Customs Tariff Act. In this view of the matter, the definition of "scrap" as given in Explanation (b) to section 206C includes not only "waste and scrap" of metal as contemplated by Note 8(a) of Section XV of Schedule I of the Customs Tariff Act but also all kinds of waste and scrap including those arising from the manufacture or mechanical working of materials provided such "waste and scrap" is not usable as such because of breakage, cutting up, wear and other reasons.

32**.** It was strenuously argued on behalf of the assessee that the Courts and Tribunal have consistently taken the view, in the context of the levy of Central Excise duty under the Central Excise Act read with Central Excise Tariff Act, that used, worn-out, obsolete and scrap items of brass as items of collection were not liable to excise duty as they do not arise as part of manufacture of prime product. In this connection, three judgments have been cited, namely, M/s Grasim Industries Ltd. v. Union of India, which is a judgment of the Hon'ble Supreme Court in Civil Appeal No.7453 of 2008; and two judgments of the Hon'ble CEGAT in Collector of Customs v. IM Kemex Ltd., 1996 (86) ELT 95 and Hindalco Industries Ltd. v. Commissioner of Central Excise, 2002 (144) ELT 339. We have perused them.

33. Section 3 of the Central Excise Act mandates levy of duty on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985. It therefore follows that the Central excise duty cannot be levied on the goods including scrap which are not manufactured or produced in India. It is in the context of the aforesaid provision that the courts and tribunal have held, in the context of levy of excise duty, that the waste and scrap not generated from the manufacture of the prime product cannot be subjected to levy of central excise duty in the hands of non-manufacturers. This context is completely absent in the Income-tax Act and therefore the requirement that the waste and scrap must be generated by the assessee himself from the manufacture of the prime product as required by the Central Excise legislations cannot be read into the Income-tax Act. Section 206C of the Income-tax Act, on the other hand, fastens liability on a seller of scrap for collection of tax at source. There is no requirement that such a seller should himself generate scrap from the manufacture or mechanical working of materials undertaken by him.

34. It was vehemently contended on behalf of the assessee that section 206C applies to sale of scrap which is generated by the assessee himself from the manufacture or mechanical working of materials. We are unable to accept the aforesaid submission for several reasons. **One**, the head note of section 206C shows that the provisions of section 206C are applicable to business of trading, inter-alia, in scrap. The use of the words “business of trading” in the said head note makes it clear that the applicability of section 206C is not restricted to sale of scrap generated from the business of manufacturing undertaken by the assessee himself but covers sale of scrap in the business of trading in scrap also. **Two**, sub-section (1) of section 206C requires the “seller” to collect tax at source. The term “seller” is defined in Explanation (c) to section 206C according to which the term “seller” means “the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and also includes an individual or a Hindu undivided family whose total sales, gross receipts or turnover from the

business or profession carried on by him" exceed the monetary limit as specified therein. Explanation (c) to section 206C does not require that a seller of scrap must himself generate scrap from the manufacture or mechanical working of materials. Therefore such a requirement cannot be read in section 206C for its applicability to sale of scrap. **Three,** the subject matter of sale on which tax is required to be collected at source from the buyer is, inert-alia, scrap, which is defined in Explanation (b) to section 206C to mean waste and scrap from the manufacture or mechanical working of materials. It does not further require that the scrap, in order to be covered by Explanation (b) to section 206C, should also be generated by the assessee from the manufacture or mechanical working of materials undertaken by the assessee himself. "Scrap from the manufacture or mechanical working of materials" may arise as a result of manufacturing activity undertaken by the assessee himself or by anyone else. Similarly, scrap may also arise from the mechanical working of materials, which is different from manufacture. For the aforesaid reasons, it is held that tax is required to be collected at source from the buyer, in terms of section 206C, on sale of, inter-alia, scrap being waste and scrap from the manufacture or mechanical working of materials undertaken by the assessee himself or by anyone else. A seller of scrap is neither required to be a manufacturer himself nor the scope of "scrap", as defined in Explanation (b), is restricted to scrap generated from the manufacture or mechanical working of materials undertaken by the seller himself. It is sufficient for the applicability of section 206C if the person sought to be fastened with liability u/s 206C is a seller of scrap being waste as well as scrap from the manufacture or mechanical working of materials provided all other conditions for the applicability of section 206C are also satisfied.

35. In the matter under appeal before us, the assessee himself has declared the goods imported by him as brass scrap before the Customs authorities. He is therefore bound by that declaration. Once it is declared as waste and scrap under the Customs Tariff Act, it necessarily follows that it is in the nature of waste and scrap, which is definitely not usable as such. Be that as it may, the definition of "scrap" under Explanation (b) is wider in scope than the definition of "scrap" as

given in the Customs Tariff Act. In this view of the matter, materials recovered on demolition of buildings, old machines/fixtures/fittings sold as scrap, discarded packing materials, etc., would also fall in the category of “scrap” as defined in Explanation (b) as all of them are items, which are no longer useful as such, and therefore fall in the category of waste and scrap from the manufacture or mechanical working of materials, which is definitely not usable as such. Resultantly, ground nos. 1 and 2 taken by the assessee in both the assessment years under appeal are dismissed.

36. Apropos ground no. 3, it was submitted that the assessee was under a bona-fide belief that what was imported and sold by him was not “scrap”” within the meaning of Explanation (b) to section 206C. We are unable to accept the aforesaid submission for two principal reasons. One, the assessee has placed no material either before the AO or before the CIT(A) or before us to establish his bona-fide in the matter. It is not his case that he was advised by any competent professional that the scrap sold by him would not attract the provisions of section 206C. Two, the provisions of section 206C are not subject to reasonable cause or bona-fide belief like provisions relating to levy of penalty. In this view of the matter, ground no. 3 in both the appeals is dismissed.

37. Apropos additional ground no. 1, it was submitted on behalf of the assessee that the Assessing Officer has fastened the liability on the assessee u/s 206C without bringing any material on record to show that the assessee has sold scrap within the meaning of Explanation (b) to section 206C. We are unable to accept the aforesaid submission for two principal reasons. One, it is the assessee himself who had declared that the materials sold by him was imported by him as scrap. The AO is not required to prove facts admitted by the assessee himself. Once the assessee makes a declaration to that effect before the Government and the Government also acts upon that declaration, he is precluded from pleading otherwise before the Government. Section 115 of the Evidence Act is quite apposite. Both the authorities, namely, the AO and the CIT(A), have taken cognizance of the aforesaid declaration made by the assessee before the Customs authorities before fixing the liability on the assessee. It cannot therefore be said that the AO has not brought out any

material on record to show that the material imported and subsequently sold by the assessee was “scrap”. Two, we have also taken the view that the material imported and subsequently sold by the assessee was “scrap” within the meaning of Explanation (b) to section 206C. In this view of the matter, additional ground no.1 taken by the assessee in both the assessment years under appeal is dismissed.

38. Apropos additional ground no. 2, it was submitted on behalf of the assessee that the provisions of section 206C require a seller to collect the tax at source from the buyer (and from none else) on sale, inter-alia, of scrap. Our attention was drawn to the definition of “buyer” as given in sub-clause (i) of clause (aa) of Explanation to section 206C, which defines a “buyer” as “a person who obtains in any sale, by way of auction, tender, or any other mode, goods of the nature specified in the Table in sub-section (1) ……” It was submitted that the buyer from whom tax is required to be collected at source should be one who obtains in any sale, by way of auction, tender or any other mode, goods of the specified nature. Placing reliance on the interpretative tools of noscitur a sociis and ejusdem generis, it was submitted that the phrase “any other mode” in the expression “a person who obtains in any sale, by way of auction, tender or any other mode …..” in Explanation (aa)(i) would get its meaning from the words preceding it, namely, “by way of auction, tender” and therefore the said phrase, namely, “any other mode” would have to be construed narrowly and in the same sense as something akin to auction or tender. It was further submitted that sale of scrap in retail sale/trade could not be construed as sale by way of auction, tender or any other similar mode and therefore such a purchaser of scrap in retail sale could not be treated as buyer within the meaning of Explanation (aa)(i) to section 206C. Several judgments, i.e., Ahmedabad Private Primary Teachers v. Administrative Officer, AIR 2004 SC 1426; Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise, AIR 1991 SC 754; Siddheswari Cotton Mills v. Union of India, AIR 1989 SC 1019; Housing Board of Havana v. Havana Housing Board Employees, AIR 1996 SC 434; Amar Chandra Chakroborty v. Collector of Excise, AIR 1972 SC 1863; M/s Grasim Industries Ltd. v. Collector of Customs, judgment dated 4th April 2002 of the Supreme Court in Civil Appeal No. 1951 of 1998; Kavalappara Kottarathil Kochuni v. State of Madras, AIR 1960 SC

1080; Thakur Amarsinghji v. State of Rajasthan, AIR 1955 SC 504; Lokmat Newspapers Pvt. Ltd. v. Shankarprasad, judgment dated 19.7.1999 of the Supreme Court; Gwalior Rayon Silk Mfg. (Wvg.) Co. v. Custodian of Vested Forests, AIR 1990 SC 1747; Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax, AIR 1964 SC 766; Union of India v. Deoki Nandan Aggarwal, AIR 1992 SC 96, were cited by him in which both the aforesaid principles have been explained. It was contended that the assessee has sold the scrap in retail trade and not by way of auction or tender or any similar mode or mode akin to auction or tender and therefore it was not required to collect tax at source from them u/s 206C as such purchasers in retail trade were not buyers within the meaning of Explanation (aa)(i) to section 206C.

39. The principle underlying the doctrine of “noscitur a sociis” is that he who cannot be known from himself may be known from his associates. Under the said doctrine, the meaning of questionable or doubtful words or phrases in a statute may be ascertained by reference to the meaning of other words or phrases associated with it: Black’s Law Dictionary. Under “ejusdem generis” canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. The aforesaid principle however does not necessarily require that the general provision be limited in its scope to the identical things specially named. Nor does it apply when the context manifests a contrary intention. Ejusdem Generis rule is explained in HALSBURY'S LAWS OF ENGLAND thus: 'As a rule, where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament. For the Ejusdem Generis rule to apply, the specific words must constitute a category, class or genus, then only things which belong to that category, class or genus fall within the general words'.

40. The Ejusdem Generis rule is not a rule of law but is merely a rule of construction to aid the courts to find out the true intention of the legislature. Like all

other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear or meaning of questionable or doubtful words or phrases in a statute is required to be ascertained. If a given provision is plain and unambiguous and the legislative intent is clear, there is no occasion to call in aid that rule. Similarly, a phrase cannot be construed ejusdem generis unless it is susceptible of meaning analogous to the preceding words. The aforesaid propositions are well supported not only by the judgments cited on behalf of the assessee but also by several other judgments of the Hon'ble Supreme Court, e.g., U.P. State Electricity Board v. Hari Shanker Jain, AIR 1980 SC 65; Lilavati Bai v. State of Bombay, AIR 1957 SC 521; Amar Chand Chakraborty v. Collector of Excise, AIR 1972 SC 1863; Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal, Civil Appeal No. 2050 of 2010.

41. As already stated earlier, section 206C seeks to prevent mischief, i.e., evasion of taxes in certain types of businesses. The words defining a buyer as "a person who obtains in any sale, by way of auction, tender or any other mode ….." in Explanation (aa)(i) are plain and simple in their meaning and content. The buyer is one who obtains specified goods "in any sale" which could be by way of auction, tender "or any other mode". The use of the word "or" in the aforesaid expression shows that all the three phrases (namely, auction, tender or any other mode) are intended to carry independent meaning without being controlled by each other. The use of the words "any other mode" in the said expression further shows that the mode of sale need not be by way of auction or tender alone but could be by any other mode. The words "any other mode" are words of wide amplitude and therefore cover all possible modes of sales in addition to specific modes of sales by way of auction or tender. Hence they cannot be construed ejusdem generis or as referring to similar sales as those by way of auction or tender. The Legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words "or any other mode". These words (i.e., "any other mode") are not words of limitation but of extension so as to cover all possible ways in which a person (i.e., a buyer) could obtain specified goods in sale. The words "or any other mode" in Explanation (aa)(i) in section 206C are intended to cover all other modes of sales

which may not come within the meaning of the preceding words, namely, auction or tender. Hence, far from using those words (i.e., “any other mode”) ejusdem generis with the preceding words of the Explanation (aa)(i), the legislature has used those words in an all inclusive sense. No decided case of any court holding that the words "or any other mode" have ever been used in the sense contended on behalf of the assessee has been brought to our notice. In our considered opinion, in the context of the object sought to be achieved, mischief sought to be avoided, the language used in Explanation (aa)(i) of section 206C, and the clarity with which the legislative intent has been expressed, there is no room to construe the words “or any other mode” ejusdem generis the preceding words in Explanation (aa)(i). We therefore hold that a person who obtains specified goods in retail sale or by any other mode of sale would also be a buyer within the meaning of Explanation (aa)(i) as such sale would fall in the category of sale by “any other mode”. In this view of the matter, all the submissions made in this behalf by the assessee are rejected. Resultantly, additional ground no. 2 is dismissed.

42. We shall now turn to additional ground no. 3. At the time of hearing, our attention was also drawn to the first proviso inserted in sub-section (6A) of section 206C with effect from 1.7.2012 according to which any person, other than a person referred to in sub-section (1D) of section 206C, 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 responsible for collecting tax at source furnishes a certificate to this effect from an accountant in such form as may be prescribed, which, according to Rule 37J of the Income-tax rules, shall be furnished in Form No. 27BA. The aforesaid proviso relaxes the rigours of consequences flowing from non-collection of tax at source if the conditions stipulated by the said proviso are fulfilled.

43. There is no dispute that the said proviso has been inserted in sub-section (6A) of section 206C with effect from 1.7.2012. Amendments on exactly similar lines have been carried out in section 201 of the Income-tax Act by inserting a proviso to sub-section (1) thereof with effect from 1.7.2012. The need for such amendment has been explained in the Explanatory Notes to the Finance Bill 2012 as under:

> "E. RATIONALIZATION OF TAX DEDUCTION AT SOURCE (TDS) AND TAX COLLECTION AT SOURCE (TCS) PROVISIONS
>
> In order to provide clarity regarding discharge of tax liability by the resident payee on payment of any sum received by him without deduction of tax, it is proposed to amend section 201 to provide that the payer who fails to deduct the whole or any part of the tax on the payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee –
>
> (i) has furnished his return of income under section 139;
>
> (ii) has taken into account such sum 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 payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.
>
> The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payee.
>
> It is also proposed to provide that where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the such resident, the interest under section 201(1A)(i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Amendments on similar lines are also proposed to be made in the provisions **of section 206C relating to TCS** for clarifying the deemed date of discharge of tax liability by the buyer or licensee or lessee.

These amendments will take effect from 1st July, 2012."

44. First Proviso inserted in sub-section (6A) of section 206C seeks to achieve three-fold objectives. One, it seeks to (1) ensure that there is no loss to the Revenue, i.e., (i) the buyer has furnished his return of income u/s 139, (ii) the buyer has taken into account such sum on which tax was required to be collected at source u/s 206C for computing income in such return of income, (iii) the buyer has paid the tax due on the income declared by him in such return of income, (iv) the payer, i.e., the person responsible for collecting the tax at source u/s 206C, has furnished a certificate in Form No. 27BA confirming the aforesaid; (2) rationalize the provisions relating to collection of tax at source; (3) provide relief to the collector of tax at source from the consequences of non/short deduction collection of tax at source and to that extent it is a beneficial provision. In the aforesaid background, the issue that arises for consideration is whether the first proviso to section 206C(6A) is applicable to pending matters also notwithstanding the fact that it has been made effective from 1.7.2012.

45. In CIT v. Chandulal Venichand, 209 ITR 7 (Guj.), the issue before the Hon'ble jurisdictional High Court was whether the first proviso inserted in section 43B with effect from 1.4.1988, which was intended to be a beneficial provision, would apply retrospectively. The Hon'ble High Court has held: "Once it is held that the proviso is inserted as a remedial and curative measure for removing the difficulties faced by the taxpayers because of inadvertent mistake or omission which has crept in in drafting section 43B, it would be just and proper to hold that it would relate back to the date when section 43B was introduced." The aforesaid judgment of the Hon'ble jurisdictional High Court has been approved by the Hon'ble Supreme Court in Allied Motors (P.) Ltd. v. CIT, 224 ITR 677 (SC). Keeping in view the fact that the first proviso to sub-section (6A) of section 206C not only seeks to rationalize the provisions relating to collection of tax at source but is also beneficial

in nature in that it seeks to provide relief to the collectors of tax at source from the consequences flowing from non/short collection of tax at source after ensuring that the interest of the Revenue is well protected, we have no hesitation to hold that the said proviso would apply retrospectively and therefore to both the assessment years under appeal. We therefore direct the assessee to appear before the Assessing Officer along with relevant documents as stipulated by the first proviso to sub-section (6A) of section 206C within two months of the date on which this order is pronounced upon which the AO shall examine the claim of the assessee in the light of the said provisions and pass appropriate order accordingly in conformity with law after giving reasonable opportunity of hearing to the assessee. Thus the issue raised in additional ground no. 3 stands restored to the file of the AO with the aforesaid observations.

46. In view of the foregoing, both the appeals filed by the assessee are partly allowed.

Sd/-	Sd/-	Sd/-
(A M Alankamony)	(G C Gupta)	(D. K. Srivastava)
Accountant Member	Vice President	Accountant Member

06-09-2013.

PRONOUNCEMENT OF ORDER
UNDER RULE, 34 OF ITAT RULES, 1963

ITA No. 391 & 392/Rjt/2011 - M/s. Bharti Auto Products Vs CIT

Result Partly allowed

Sd/-	Sd/-	Sd/-
(A Mohan Alankamony)	(G C Gupta)	(D. K. Srivastava)
Accountant Member	Vice President	Accountant Member

Date : 06/09/2013

Copy of Order Forwarded to:-

1. Appellant-M/s. Bharti Auto Products, Jamnagar..
2. Respondent-The Commissioner of Income Tax-II, Rajkot..
3. Concerned CIT-TDS, Rajkot.
4. CIT (A)-II, Rajkot.
5. DR, ITAT, Rajkot
6. Guard file.

By order,

Private Secretary ITAT, Rajkot