



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.248/CTK/2015

Assessment Year : 2013-14

M.G.M. Minerals Ltd., 2-A, Forest Park, Bhubaneswar.	Vs.	ACIT (TDS-1), Bhubaneswar.
PAN/GIR No.AADCM 2818 E		
(Appellant)	..	(Respondent)

Assessee by : Shri B.K.Mohapatra/A.K.Sabat, ARs
Revenue by : Shri S.C.Mohanty, Addl. CIT (DR)

Date of Hearing : 22 /10/ 2021
Date of Pronouncement : 26/10/2021
ORDER

Per Bench

This is an appeal filed by the assessee against the order of the CIT(A),1, Bhubaneswar dated 17.2.2015 for the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case, the Order of the learned Commissioner of Income Tax (Appeals)-1, Bhubaneswar ["*CIT (Appeals)*"] dated 17.02.2015, in dismissing the appeal, is against the principles of natural justice, contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts.

2. That on the facts and circumstances of the case, the learned CIT(Appeals), upholding the order of the ACIT (TDS) by ignoring the voluminous paper book containing the documents, supportings and evidence filed before him, is against the principles of natural justice, arbitrary, erroneous and bad, both in the eye of law and on facts.

3. That the Learned lower authorities have misconstrued/mis-appreciated the facts and on presumptions, surmises and conjectures, based on irrelevant considerations and without material on record, have concluded that the assessee has not collected tax at source (TCS) from buyers on sale of iron ore for the period July 2012 to March 2013 and the tax levied of Rs.55,12,849/- is contrary to facts, arbitrary, unjustified, erroneous, bad in law and legally untenable.
4. That, the learned CIT(Appeals), holding that the buyers of iron ore filed their Income tax returns and paid taxes is not backed by any evidence, *(ignoring the documents, supporting^ and evidence filed in the Paper Book in this regard)*, is incorrect, wrong and contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts.
5. That on the facts and in the circumstances of the case, the learned CIT(Appeals), holding that the finding of the ACIT (TDS) that the appellant has failed to collect tax u/s.206C(6) of the IT Act is arbitrary, erroneous and bad, both in the eye of law and on facts and legally untenable.
6. That on the facts and in the circumstances of the case, the Learned lower authorities have erred, both on fact and in law, in treating the aforesaid Rs.55,12,849/- as non- collection of tax.
7. That on the facts and in the circumstances of the case, the learned CIT(Appeals), holding that the ACIT (TDS) is correct in raising demand of Rs.55,12,849/- u/s.206C(6) of the IT Act and consequential interest u/s.206C(7) of the IT Act is arbitrary, erroneous and bad, both in the eye of law and on facts and legally untenable.
8. That the Learned ACIT (TDS) stating that the collection of the Form 27C of the buyers is an after thought is contrary to facts and is on presumptions, surmises and conjectures, and without material on record which has vitiated his order.
9. That without prejudice to Grounds 2 to 8 above, the buyers having given the declarations in Form No.27C in respect of Iron Ore sold by the assessee at time of purchasing the materials, there is no non-collection of tax (TCS), the Learned ACIT (TDS)' order levying tax of Rs.55,12,849/- is unjustified, arbitrary, contrary to facts, erroneous and bad in law.

10. That without prejudice to the Grounds 2 to 9 above, assuming but not admitting that in the facts and circumstances of the case, there is non/short collection of tax at source (TCS) from the buyers, the buyers of iron ore having already filed their Income tax returns for the Assessment Year 2013-14 (relating to the *Previous Year 2012-13*), the levy of tax and interest of Rs.55,12,849/- and Rs.4,53,320/- u/s.206C(6) and 206(7) of the Act respectively is arbitrary, unjustified, erroneous and bad in law.

11. The assessee denies its liability for the levy of the interest of Rs.4,53,320/- u/s.206(7) of the Act. and the charging of the said interest is incorrect, erroneous and legally untenable.”

3. Ld A.R. of the assessee submitted that the assessee Firm is engaged in the business of mining of iron ore having its mines in the District of Keonjhar and Sundargarh in the State of Odisha. Vide Finance Act 2012, an amendment was brought in for Section 206(1)(C) of the IT Act wherein the sale of minerals, being coal or lignite or iron ore was included for the first time within the purview of collection of tax at source (TCS) w.e.f. 1.7.2012. He submitted that as per Section 206C (1A), it is provided that if the buyer of the goods is an Indian Resident and gives a declaration to the Seller that the goods (Iron Ore) are to be utilized for the purpose of manufacturing, processing or producing articles of things or for the purpose of generation of power and not for trading purposes, no TCS be made on such sale of goods. He further submitted that the Rules prescribed in the relevant Form (Form No.27C) after the said amendment of the IT Act was made on 19th February 2013. Thus there was a confusion prevailing regarding the appropriate Form, Accordingly, the assessee did not collect

any TCS from the buyer who were using the goods for the purpose of manufacturing, processing or producing articles of things or for the purpose of generation of power and not for trading purposes and also collected such declaration in old Form 27C and also submitted the same to the appropriate authorities and thus complied with the spirit of the law. However, the Tax Department (TDS) made a survey on the assessee on 06/02/2013 and despite the assessee explaining the facts to the Assessing Officer [*ACIT (TDS)-1, Bhubaneswar*], subsequently by the Order dated 07/06/2013 came to the conclusion that the assessee has collected the declaration after the sale of the goods and therefore, having violated the provisions of Section 206C of the Act is an assessee in default and demanded Tax of Rs.59,66,169 (Tax of Rs..55,12,849/- and Interest of Rs.4,53,320/-) thereon.

4. Ld A.R. further submitted that the assessee has duly collected TCS @ 1% on sale of iron ore w.e.f. 1.7.2012 from the Buyers who are not using the goods for the purpose of manufacturing, processing or producing articles of things or for the purpose of generation of power and may be for trading purposes and has duly deposited the said tax so collected with the Central Government.

5. Ld A.R. submitted that all the details including copies of Form 27C as well as copy of the Income Tax Returns and taxes paid therein for the Assessment Year 2013-14 filed by the Buyers in the Form of Paper Books

also filed written submission including case laws in support of its claim but the CIT(A) in its brief order dated 17/02/2015 has ignored the said Paper Book filed before him and at *Page 3* of his said Order has stated that "*the Appellant's submission that the Buyers have filed returns and paid taxes is not backed by evidence*" and confirmed the order of AO. He submitted that the demand of Tax Rs.55,66,169/- (Tax of Rs.55,12,849/- and Interest of Rs.4,53,320/-) has already been paid by the assessee by way of recovery by the Department.

6. Ld A.R. referred to the decision of Hon'ble Madras High Court in the case of ***CIT vs. Adisankara Spinning Mills (P.) Ltd.*** reported in (2014) 362 ITR 233 (Mad) and also the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd. vs. State of Orissa (1972) 83 ITR 26 (SC) to supports this contention. Further, as has been held by the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage (P.) Ltd. vs. CIT [2007] 293 ITR 226 (SC); 163 TAXMAN 355(SC), there cannot be tax twice and hence no tax be demanded. He submitted that as the assessee has complied with the spirit of the law as per provisions under Section 206C of the Act by collecting the declarations from the Buyers that the goods so bought are for the purpose of manufacturing, processing or producing articles of things and not for trading purposes although belatedly and also has produced evidences regarding the Buyers of goods having filed the IT returns and paid taxes thereon for the Assessment Year 2013-14, the assessee ought

not be burdened with tax demand by treating the assessee as "assessee in default" U/S 206C of the Act. He, accordingly, submitted that in the interest of Revenue if the case is remitted back to the Assessing Officer to verify the documents / submitted and pass orders in accordance with law after giving an opportunity to the assessee to represent its contention and file any other documents in this regard since all the tax demands stand already paid.

7. Ld D.R. did not oppose to remit the matter back to the file of the AO for verification.

8. We have heard the rival submissions and perused the record of the case. It is not dispute that the assessee has already paid the tax due on it. However, there was a confusion prevailing regarding the appropriate Form 27C. Accordingly, the assessee did not collect any TCS from the buyer who were using the goods for the purpose of manufacturing, processing or producing articles of things or for the purpose of generation of power and not for trading purposes and also collected such declaration in old Form 27C and also submitted the same to the appropriate authorities and thus complied with the spirit of the law, details including copies of Form 27C as well as copy of the Income Tax Returns and taxes paid therein for the Assessment Year 2013-14 were filed by the Buyers. The same were not considered by the AO as well as the CIT(A). The Id CIT(A) dismissed the appeal of the assessee by observing that the buyers did not submit Form

27C at the purchase of iron ore and confirmed the order of the AO. It was amended later on and Form 27C placed before us. In view of above, as agreed by both the parties, we set aside the order of the authorities below and remit the matter back to the file of the AO to verify the documents as submitted by the assessee i.e. Form 27C required for considering the case of the assessee and pass order as per law after giving due opportunity to the assessee. Hence, the issue is remitted for limited purposes i.e. verification of Form 27C. Before deciding the issue, the AO is directed to take into consideration the judicial pronouncements (supra) relied by Id A.R. of the assessee .

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 26 /10/2021.

Sd/-
(Manish Borad)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 26 /10/2021
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M.G.M. Minerals Ltd., 2-A, Forest Park, Bhubaneswar
2. The Respondent. ACIT (TDS-1), Bhubaneswar.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack