

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
**BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

आयकर अपील सं./ITA No.469/CTK/2014

(निर्धारण वर्ष / Assessment Year :2013-2014)

M/s Kalinga Mining Corporation, Niwas, Seikh Bazar, Cuttack-753008	Vs.	ITO (TDS), Shelter Chhak, Cuttack
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AADCK 6791 N</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ITA No.405/CTK/2015

(निर्धारण वर्ष / Assessment Year :2011-2012)

M/s Kalinga Mining Corporation, Niwas, Seikh Bazar, Cuttack-753008	Vs.	JCIT, Range-II, Cuttack
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AADCK 6791 N</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : None  
राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, CITDR  
सुनवाई की तारीख / Date of Hearing : **26/07/2017**  
घोषणा की तारीख/Date of Pronouncement **28/07/2017**

**आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

The assessee has filed an appeal i.e. ITA No.469/CTK/2014 (AY 2013-2014) against the order of CIT(A), Cuttack, dated 29.9.2014 passed u/s.206C(6)(6A)&(7) of the I.T.Act and also appeal in ITA No.405/CTK/2015 against the order of CIT(A), Cuttack, dated 20.07.2015 passed u/s.143(3) of the I.T.Act.

2. None appeared on behalf of the assessee when the matter was called for hearing, nor any adjournment application was placed on record by the assessee. Considering the facts and circumstances of the case, we

proceed to dispose off the appeals on the basis of material available on record and the submissions of Id. DR.

3. First we shall decide ITA No.469/CTK/2014 (AY 2013-2014), wherein the assessee has raised the following grounds of appeal :-

1. *That, under the facts and in the circumstances of the case the ITO(TDS) Cuttack and the Ld. CIT(A), Cuttack are not justified in holding the appellant to be in default as regards collection of TCS from (i) Rashmi Metaliks Ltd. (ii) Indo Sponge Power and Steels Ltd and (iii) Ispat and Power Pvt. Ltd. as all the parties have furnished the required form No.27C at the time of purchase of materials.*
2. *That the Ld. CIT(A) has not totally considered the submission of the appellant given at the time of hearing and without discussing anything in the order has confirmed the order of the ITO. Hence, the same should be quashed.*
3. *That, the default if any is of technical and venial in nature and the Income Tax Authority has not lost any revenue anywhere, hence penalty levied being against settled principle of law and natural justice should be deleted.*

4. Brief facts of the case are that the assessee is engaged in mining works and in the survey operation u/s.133A of the Act, the revenue found that the assessee has not collected tax from the sales of iron ore as per Section 206C of the Act and further as per the amended provisions the assessee has to obtain Form No.27C in respect of non-collection of tax on sale of iron ore. But the AO found that the assessee has sales of iron ore of Rs.28,47,91,919/-, since the assessee could not produce the declaration in form No.27C, show cause notice was issued and as per the provisions the form No.27C has to be submitted before the Commissioner or Chief Commissioner within the prescribed time. The assessee has filed reply on 5.3.2013 explaining that in respect of 15 parties no TCS has

been made as they have furnished Form No.27C and the said forms were collected from the buyers before the execution of sales. The declarations were not submitted to the office of Commissioner of Income Tax (TDS) and such action was not deliberate or intentional but a technical mistake in submitting the forms. The Id. AO dealt on the provisions and explanations of Section 260C(1) of the Act and is of the opinion that the assessee has contravened the provisions on collection of the tax at source from buyers on sale of iron ore and therefore assessee is treated as assessee in default and liable to pay tax and interest aggregating to Rs.6,44,982/- and passed the order under Section 206C(6)(6A)&(7) of the Act.

5. Aggrieved by the order of AO, the assessee filed an appeal with CIT(A). The Id. CIT(A) dealt on the provisions and the facts but concord with the findings of AO and observed that the non-furnishing of declaration in Form No.27C would attract payment of tax and interest and confirmed the AO's order.

6. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Tribunal.

7. None appeared on behalf of the assessee. On the other hand, Id. DR submitted that the CIT(A) is correct in dismissing the appeal as the assessee has delayed in submitting the Form No.27C.

8. We heard the submissions of Id. DR and perused the material available on record. The sole issue being the assessee has not collected tax (TCS) on the sales of iron ore as per section 206C of the Act and the

AO has treated the assessee as assessee in default. We found the assessee is collecting the declaration forms which is more procedural and non-submission of form is in the nature of technical mistake. Further, we are of the opinion that the assessee cannot be penalized for non-submission of the forms, as per the findings the assessee collected form No.27C in respect of parties. On perusal of the assessment order we found that out of 15 parties the AO gave finding that the assessee has produced Form No.27C declaration in respect of 12 buyers of iron ore. We have considered the apparent facts and material on record and accordingly in the interest of substantial justice we shall provide one more opportunity to the assessee to submit the remaining Forms No.27C to the AO. Therefore, we remit the entire disputed issue to the file of AO to consider the form No.27C submitted by the assessee and pass the order afresh and the assessee should be provided adequate opportunity of hearing before passing of the order and the grounds of appeal of the assessee are allowed for statistical purposes.

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

10. Now, we shall take up ITA No.405/CTK/2015 (AY : 2011-2012), wherein the assessee has raised the following grounds :-

- 1) *That, the donation of Rs.3,15,303/- and puja expenses of Rs.27,936/- are a part and parcel of the day to day business activity and expediency and no business can run smoothly without such expenditures. Hence the same being very much a business necessity should be allowed.*

- 2) *That, taking into consideration the volume of business, the payment of donation and puja expenses of Rs.3,15,303/- and Rs.27,936/- respectively being reasonable should be allowed.*
- 3) *That, the deferred tax liability of Rs.21,768/- shown in the balance sheet is as per the standard accounting principle and is a provision for future taxation. It arises due to timing difference in value of assets as per books of accounts and as per income tax act. The provision made being in accordance with standard accounting principle should be allowed.*

11. Brief facts of the case are that the assessee is engaged in the business of mining and filed the return of income on 12.11.2011 declaring total income of Rs.47,56,55,610/- and the return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny under the CASS and notices u/s.143(2) & 142(1) were issued, in compliance to the same, Id. AR of the assessee appeared from time to time, filed explanation and case was discussed and the AO dealt on the disputed issues and disallowed payment of donation of Rs.3,15,303/- and puja expenses of Rs.27,936/- being not incidental to business and also Rs.21,768/- towards deferred tax liability with other additions and assessee total income of Rs.47,78,85,660/- u/s.143(3) of the Act.

12. Aggrieved by the order of the AO, the assessee has assailed an appeal with the CIT(A). However, the CIT(A) confirmed the addition of disputed issue and partly allowed the appeal of the assessee.

13. Aggrieved by the order of CIT(A), the assessee filed an appeal with the Tribunal.

14. We heard the submissions of Id.DR and perused the material available on record and considered the facts and the grounds raised by the assessee and found that there is an ambiguity on the nature of

donations as the CIT(A) gave general observations and the AO has not discussed the reasons for addition. Accordingly, in the interest of justice, we remit the disputed issue of donations to the file of AO to verify the claim and call for the detailed information and pass the order after providing adequate opportunity of hearing to the assessee and allow the grounds of appeal of the assessee for statistical purposes.

15. On the second disputed issue of puja expenses of Rs.27,936/-, the AO has not disputed the genuineness of the expenses and made addition and also there is no proper reasons were accorded and the CIT(A) confirmed the addition. We, considered the facts that the puja expenses have indirect nexus to the business in the nature of belief and direct the AO to delete the addition and allow the ground of appeal of the assessee.

16. In respect of third disputed issue of deferred tax liability, such provisions cannot be allowed in the financial statements, we confirm the action of CIT(A) and dismiss this ground of appeal of the assessee.

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

18. Thus, ITA No.469/CTK/2014 is allowed for statistical purposes and ITA No.405/CTK/2015 is partly allowed for statistical purposes.

Order pronounced in the open court on this 28/07/2017.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 28/07/2017

प्र.कु.मि/PKM, Senior Private Secretary

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-  
M/s Kalinga Mining Corporation,  
Samanta Niwas, Seikh Bazar,  
Cuttack-753008
2. प्रत्यर्थी / The Respondent-
  
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack