IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, JODHPUR

BEFORE SHRI N.K. SAINI, VICE PRESIDENT
AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 343 & 344/Jodh/2019
Assessment Year: 2013-14 & 2014-15

M/s Rajasthan State Mines & Minerals Ltd., 4, Meera Marg Udaipur	Vs.	The ACIT Circle, TDS Udaipur

PAN No. AAACR7857H

(Appellant) (Respondent)

Assessee by : Shri P.C. Parwal
Department by: Shri Girish Mehta JCIT DR

Date of hearing : 26/11/2019
Date of Pronouncement : 26/11/2019

O R D E R

PER N.K.SAINI,VICE PRESIDENT :

These two appeals by the Assessee are directed against the separate orders each dated 25/07/2019 of the Ld. CIT(A)-1, Udaipur.

2. Since the issue involved in both these appeals is common and the appeals were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. The only issue involved in this appeal relates to the levy of interest under section 206C(7) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') amounting to Rs. 4,50,991/- and Rs. 5,72,927/- for the Assessment Year 2013-14 and 2014-15 respectively.

4. The facts related to the issue under consideration in brief are that the spot verification was made by the Assessing Officer on 28/10/2013 to see whether the assesse was complying with the provisions of Chapter XVII of the Act, regarding TDS / TCS. The Assessing Officer asked the assessee to furnish the details of payment received by it during the F.Y 2012-13 and 2013-14 on which the provisions of TCS were applicable. The Assessing Officer from the details furnished in Form No. 27C by the assesssee noticed that they were incomplete, the date of declaration as well as date of filing with the department was not mentioned as such the Assessee / deductor was responsible to collect and deposit the tax at source to the Government but has not done so violating section 206C of the Act. In response, it was submitted that no collection of tax shall be made if the buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in Form No. 27C to the effect that the aforesaid goods were to be utilized for the purposes of generation of power and not for trading purposes. It was stated that all the sales of Lignite during the F.Y. 2012-13 and 2013-14 were made to the manufacturers and in none of the case goods were sold to the traders. Therefore assessee was not required to collect TCS on those sales. it was further submitted that even where assessee had collected declaration in Form No. 27C but had not furnished the same to the department the assessee could not be considered as assessee in default. The reliance was placed on the decision of the ITAT, Ahmedabad Bench in case of KPG Enterprise Vs. Income Tax Officer in ITA No. 2384/Ahd/2012, order dt. 14/08/2014. The Assessing Officer however did not find merit in the submissions of the assessee by observing that the contention of the assessee was partly accepted as far as the Income Tax return filed by the buyer had been produced. However the interest under section 206C(7) of the Act was charged considering the assessee in default as the Form No. 27C received from the buyer were found to be incomplete with no date mentioned on those. He also observed that the assessee had not provided any evidence i.e: forwarding letter regarding submission of the same to the department within stipulated time.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

1. It is submitted that as per sec. 206(1A) no collection is to be made, if the buyer

furnishes a declaration in writing in prescribed form 27C, that goods are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

2. In the present case there is no dispute to the fact that all the sales of Lignite during financial year 2012-13 and 2013-14 were made to the manufacturers. These persons have filed declaration in Form 27C to the assessee. Therefore assessee is not liable to collect tax at source u/s 206C. Only because there was delay in the deposition of the declaration to the concerned Commissioner of Income Tax or that the declaration forms submitted to AO are not dated or incomplete no adverse view can be taken for such procedural lapse as once the declaration referred to in section 2O6C(1A) was received by the assessee, it could not legally collect the TCS from such buyers and consequently the assessee cannot be treated as an assessee in default for not collecting TCS from such buyers.

3. For such a lapse assessee cannot be considered as assessee in default and liable for payment of interest as held by Hon 'ble IT AT Ahem dab ad Bench in case of KPG Enterprise Vs. Income Tax Officer in appeal No. ITA no. 2384/Ahd/20l2 order dated 14.08.2014, The relevant para of the judgment is reproduced as under:

"15. We find that section 206C (1 Aj reads as under:

"Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilized for the purposes of manufacturing, processing or producing articles or things [or for the purposes of generation of power] and not for trading purposes."

A perusal of the aforesaid provision shows that the assessee is not legally obliged to collect the TCS from a buyer who furnishes a declaration to the assessee to the effect that the purchases made by such buyer are to be utilized for the purposes of manufacturing, processing or producing articles or things or for purposes or generation of power and not for trading purposes. Thus, in a case where such a declaration is furnished by the buyer to the seller, the seller is not obliged to collect TCS from such buyer and consequently the seller assessee cannot be treated as an assessee in default in respect of not collecting TCS from such buyer. We find that the Commissioner of Income Tax (Appeals) upheld the treatment of assessee as assessee in default in respect of those parties from whom the assessee already received^ declaration in Form 27C on the ground that such declaration was not furnished by the assessee to the Chief Commissioner or Commissioner as required
by the provisions of section 2O6C(1B) of the Act.

16. We find force in the contention of the assessee that once the declaration referred to in section 2O6C(1A) was received by the assessee, then thereafter the assessee could not legally collect the TCS from such buyers and consequently the assessee cannot be treated as an assessee in default for not collecting TCS from such buyers. The above view finds support from the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. ValibhaiKhanbhaiMankad (2013) 261 CTR 538 (Guj.) wherein it has been held that, "Once the conditions of section 194C(3) were satisfied, the liability of the payer to deduct tax at source would cease. The requirement of such payer to furnish details to the income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable."

Our view also finds support from the decision of Mumbai Bench of the Tribunal in the case of Karwat Steel Traders Vs. ITO (2013) 37 taxmann.com 190(Mum.) wherein it was held that, "Where declaration in Form 15G/15H were received by the person responsible to deduct tax, there was no liability on him to deduct TDS. Since separate provisions were prescribed on default for non-filing or delayed filing of Form 15G/15H to Commissioner, non-filing of such form would not invoke disallowance u/s. 40(a)(ia) of the Act."

We also find support from the decision of the Mumbai Bench of the Tribunal in the case of Vipin P. Mehta Vs. ITO (2011) 46 SOT 71 (Mum.) wherein it was held that, "Sub-section (1A) of section 197A of the Act merely requires the declaration to be filed by payee of interest and once it is filed, the payer of interest has no choice except to desist from deducting tax on interest. "

17. In our considered view, the assessee cannot be treated as assessee in default for not collecting TCS from such buyers from whom the assessee received declaration as per provisions of section 2O6C(1A) of the Act.

18. We find that in the instant case, the assessee has not filed copy of declaration received by it u/s. 206C (1A) of the Act before the Assessing Officer for his verification. Therefore, in our considered view, it shall be just and fair to restore this part of the ground of appeal back to the file of Assessing Officer for proper verification and thereafter readjudication of the issue as per law in the light of the discussion made hereinabove after allowing the assessee a reasonable opportunity of hearing. "

Ld. AO in the proceedings u/s 206C(6) has not accepted this decision only on the ground that it relates to sale of scrap and not Lignite ignoring that the principle laid down in this case is fully applicable on the facts of the assessee. Therefore in view of the above decision assessee cannot be considered as assessee in default and interest u/s 206C(7) cannot be levied.

Without prejudice to above it is further submitted that from the copy of returns furnished by the buyers (enclosed with submission) it can be noted that out of 10 buyers 7 have paid advance tax/TDS which is more than the tax due as per their return of income and accordingly they have claimed refund of tax already paid by them. The other three parties have paid the self assessment tax alongwith the interest u/s 234B. Thus in such cases, on account of non collection of tax at source, there is no loss of interest to the revenue. Therefore in such cases no interest liability u/s 206C(7) can be fastened on the assessee. For this reliance is placed on the following cases:-

Rajasthan RajyaVidyutPrasaran Nigam Ltd.,(Raj.HC) 287ITR 354.
In this case it was held that when the assessee has paid more tax than the tax payable and refund is due, even tax deducted at source is counted, in such case, there is no justification for charging of interest under section 201(1 A).

***CIT V Rishikesh Apartments Co-operative Housing Society Limited 253 ITR 310** (Guj.)Where the entire tax payable by payee has been paid by him as advance tax and tax on self assessment, interest can't be levied u/s 201(1 A)*

Solar Automobile India Private Limited V. DCIT 64 DTR 34 (Kar.)
In this case hon 'ble Court in para 9 held as under
"In so far as payment of interest under s. 194A [sic-201(IA)] is concerned, the interest is payable for the period it is not paid after deduction. The principal liability of paying tax is that of the creditor and a statutory duty is cast on the debtor to deduct tax on the income of interest payable and remit the same to the company (sic-Government) irrespective of have filed the returns and paid the tax. If her has filed the return and paid the tax, the liability of the assessee ceases from the day they have paid the tax. "

S.A.A. Ispahani Trust V. ITO 216 Taxman 1 (Mad.)
In this case it was held that assessee is liable to pay the interest from the date of its liability till the date of actual payment made by the recipient if the entire tax amount

In view of above the interest levied u /s 206C(7) by the AO be directed to be deleted.

6. The Ld. CIT(A) after considering the submissions of the assessee sustained the interest levied by the Assessing Officer by observing in para 6 of the impugned order as under:

> *I have carefully considered the AO's stand and appellant's submissions. I find force in the appellant's claim that levy of interest u/s. 206C(7) is not justified in the cases of buyers in whose cases the appellant has furnished sufficient evidence to establish that the taxes paid by those buyers were in excess of the taxes due on their returned income. The appellant has further submitted that from the copies of returns furnished by the buyers (enclosed with submission) it can be noted that out of 10 buyers 7 have paid advance tax/TDS which is more than the tax due as per their return of income and accordingly they have claimed refund of tax already paid by them. However, the appellant has not enclosed copies of returns of any of the buyers and therefore, the appellant's claim is not substantiated. Hon'ble Rajasthan High Court in the case of CIT vs. Rajashan Rajya Vidyut Prasaran Nigam Ltd. (2006) 287 ITR 354 (Raj) considered the issue of levy of interest u/s. 201(1 A) and held that when the assessee has paid more tax than the tax payable and refund is due, even tax deducted at source is counted, in such case there is no justification for charging interest u/s. 201(1 A). The ratio laid down by the Hon'ble Rajasthan High Court is equally applicable to the TCS provisions u/s 206C of the Act. Following the Hon'ble High Court's order (supra), it is held that no interest is chargeable u/s. 206C(7) in the cases of buyers for the relevant assessment year who have claimed refund on account of TDS. However, such details have not been furnished by the appellant. Therefore, as per ratio laid down by the Hon'ble Rajasthan High Court, it is held that the AO is perfectly justified in charging interest of Rs. 4,50,991/- u/s 206C(7) of the Act in respect of these ten buyers, the addition of Rs. 4,50,991/- is confirmed. The grounds raised by the appellant regarding this issue are dismissed.*

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that there was no dispute to the fact that all the sales of lignite during the year under consideration were made to the manufacturers who had filed declaration in Form No. 27C to the assessee. Therefore the assessee was not liable to collect tax at source under section 206C of the Act. It was further submitted that only because there was delay in the deposition of the declaration to the concerned Commissioner of Income Tax or that the declaration forms submitted to the Assessing Officer were not dated or incomplete, no adverse view could have been taken for such procedural lapse as once the declaration referred to in section 206C(1A) was received by the assessee, it could not have legally collected the TCS from such buyers and consequently the assessee could not be treated as an assessee in default. The reliance was placed on the decision of the ITAT, Ahmedabad Bench in case of KPG Enterprise Vs. Income Tax Officer (supra).

9. In his rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and reiterated the observations made therein.

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the Assessing Officer levied interest by invoking the provisions of sub section 7 of the Section 206C of the Act, which read as under:

> *"(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 in case any person responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on Therefore, amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section(6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee."*

10.1 From the aforesaid provisions it is clear that the interest can be levied @1% per month or part thereof on the amount of such tax from the date on which such taxes was collectable to the department on which the tax was actually paid. However in the present case the Assessing Officer himself admitted that the assessee had furnished the copies of the Income Tax return filed by the buyers and provided the copies of Form No. 27C received from the buyers but the said form were found to be incomplete. However nowhere it was stated by the A.O that the assessee was required to collect the taxes. Therefore the interest levied by the Assessing Officer u/s 206(7) of the Act on the basis that the copies of the Form No. 27 furnished by the assesse were incomplete was not justified. In that view of the matter the interest levied by the Assessing Officer and sustained by the Ld. CIT(A) is deleted.

11. For the aforesaid view we are also fortified by the decision of the ITAT Ahmedabad Bench in the case of KPG Enterprise Vs. Income Tax Officer (supra) wherein it has been held in para 17 of the order dated 14/08/2014 that " the assessee cannot be treated as assessee in default for not collecting TCS from such buyers from

whom the assessee received declaration as per provisions of section 206C(1A) of the Act." Accordingly the interest levied by the Assessing Officer under section 206C(7) of the Act and sustained by the Ld. CIT(A) is deleted.

12. In the result, appeals of the assessee are allowed.

(Order pronounced in the open Court on 26/11/2019)

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(N.K. SAINI)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated : 26/11/2019

AG

Copy to: 1.The Appellant, 2. The Respondent, 3. The CIT(A), 4. The CIT, 5. The DR