



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

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

ITA No.247/CTK/2015

Assessment Year : 2013-14

M.G.Mohanty., 2-A, Forest Park, Bhubaneswar.	Vs.	ACIT (TDS-1), Bhubaneswar.
PAN/GIR No.AAFFM 2127 H		
(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.

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.39,05,790/- and Rs.3,48,123/- 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.3,48,123/- 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

also filed written submission including case laws in support of its claim and 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.42,53,913/- (Tax of Rs.39,05,790/- and Interest of Rs.3,48,123/-) 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), 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

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 /10/2021.

(Manish Borad)
ACCOUNTANT MEMBER

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

(Chandra Mohan Garg)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant : M.G.Mohanty., 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