

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No. 262/Ahd/2020
Assessment Year : 2011-12**

The Geologist (S.K.), B-Block, Third Floor, Bahumali Bhavan, Hajipura, Himatnagar, Sabarkantha-383001 PAN : AAALO 0111 G	Vs	Income Tax Officer (TDS), 401, Udyog Bhawan, Sector-11, Gandhinagar
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.N. Divatia, AR
Revenue by :		Shri Mukesh Thakwani, Sr. DR

सुनवाई की तारीख/Date of Hearing : 14/07/2022
घोषणा की तारीख /Date of Pronouncement: 22/07/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-8, Ahmedabad ["CIT(A) in short]" dated 28.01.2020 passed *ex-parte* for Assessment Year 2011-12.

2. The assessee, in the present case, is a department of Government of Gujarat which is engaged in carrying on geological work including granting lease of mining. As per the information received by the Assessing Officer from the office of the Commissioner of Geology and Mining, total royalty of Rs.28,48,94,129/- was received by the assessee during the year under consideration without collection of tax at source and there was a clear contravention of provisions of Section 206C of the Income-tax Act, 1961 ("the Act" in short) by the assessee. The Assessing Officer, therefore, issued a show-cause notice under Section 206C(6A) and 206C(7) of the Act to the assessee on 23.11.2017. In response to the said notice, a reply was filed by the assessee stating that the returns for all the quarters of the year under consideration were regularly filed and a sum of Rs.30,40,032/- was also deposited as TCS for the year under consideration. The Assessing Officer, however, found

that the assessee was required to collect tax at source to the tune of Rs.56,93,883/- being 2% of the royalty receipts amounting to Rs.28,46,94,129/- as against the tax collected at source by the assessee amounting to Rs.30,40,032/-. According to the Assessing Officer, there was thus a shortfall of Rs.26,53,851/- in collection of tax at source by the assessee; and, in the absence of any satisfactory explanation offered by the assessee in this regard, he treated the assessee as in default for the shortfall of Rs.26,53,851/- on account of TCS along with interest thereon for the period from 01.04.2010 to 19.03.2018 amounting to Rs.23,61,789/- vide an order dated 20.03.2018 passed under Section 206C(6A) r.w.s. 206C(7) of the Act.

3. Against the order passed by the Assessing Officer under Section 206C(6A) r.w.s. 206C(7) of the Act, an appeal was filed by the assessee before the learned CIT(A). The said appeal was fixed for hearing before the learned CIT(A) on 24.09.2019, 30.10.2019, 07.11.2019 and 24.01.2020. As noted by the learned CIT(A) in his impugned order, although the assessee sought adjournment on 07.11.2019 by filing an application in writing, there was no compliance on the part of the assessee to the notices issued by him fixing the hearing on 24.09.2019, 30.10.2019 and 24.01.2020. The learned CIT(A), therefore, proceeded to dismiss the appeal of the assessee vide his appellate order dated 28.01.2020 passed *ex-parte* and upheld the order passed by the Assessing Officer under Section 206C(6A) r.w.s. 206C(7) of the Act treating the assessee as in default for Rs.50,15,640/- on account of shortfall in TCS along with interest payable thereon. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised by the assessee in this appeal challenging the impugned order passed by the learned CIT(A) *ex-parte*, the learned Counsel for the assessee has submitted that adjournment application dated 22.01.2020 was uploaded by the assessee on the email of the learned CIT(A) seeking adjournment of the hearing fixed on 24.01.2020. He has contended that the learned CIT(A), however, proceeded to

dismiss the appeal of the assessee vide his impugned order passed *ex-parte* on 28.01.2010 without taking into consideration the application of the assessee for adjournment. He has contended that there is thus a gross violation of principle of natural justice inasmuch as the appeal filed by the assessee before the learned CIT(A) has been dismissed by the learned CIT(A) vide his impugned order passed *ex-parte* without giving proper and sufficient opportunity of being heard to the assessee. Even the learned DR has not been able to dispute this position which is clearly evident from the record. We, therefore, consider it fair and proper and in the interest of justice to set aside the impugned order passed by the learned CIT(A) *ex-parte* and remit the matter back to him for disposing of the appeal of the assessee on merit in accordance with law after giving the assessee a proper and sufficient opportunity of being heard.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 22nd July, 2022 at Ahmedabad.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad, Dated 22/07/2022

SR

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad

