

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
(VIRTUAL HEARING AT BANGALORE)**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.241 & 242/COCH/2024 & 928 & 929/COCH/2022
Assessment years : 2012-13 & 2013-14

St. Alphonso Timbers & Traders Pvt. Ltd., Kundannoor, Maradu (PO) – 682 304. PAN: CHNSO 6237G	Vs.	The Income Tax Officer (TDS), Kochi.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Rajeev, Advocate
Respondent by	:	Smt. Leena Lal, Sr. DR

Date of hearing	:	02.12.2024
Date of Pronouncement	:	03.01.2025

ORDER

Per Prashant Maharishi, Vice President

1. ITA No.241/COCH/2024 is filed by Alphonso Timbers & Traders Pvt. Ltd. (the assessee/appellant) for the assessment year 2012-13 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [ld. CIT(A)] dated 22.8.2022 wherein the appeal filed by the assessee against the order passed by the ITO(TDS), Cochin [ld. AO] u/s. 206C(1) & 206C(7) of the Income-tax Act, 1961 [the Act] dated 25.11.2014 raising demand of Rs.1,89,29 was dismissed.

2. ITA No.242/COCH/2024 is filed by the assessee for AY 2013-14 against the appellate order passed by the CIT(A) dated 22.8.2022 wherein the appeal filed by the assessee against the order passed by the AO on 25.11.2014 raising demand of Rs.4,13,737 was dismissed.
3. ITA No.928/COCH/2022 is filed by the assessee for AY 2012-13 against the appellate order passed by the CIT(A) dated 05.09.2022 wherein the appeal filed by the assessee against the order passed by the AO u/s. 221(1) of the Act dated 22.7.2015 was dismissed.
4. ITA No.929/COCH/2024 is filed by the assessee for AY 2013-14 against the appellate order passed by the CIT(A) dated 05.09.2022 wherein the appeal filed by the assessee against the order passed by the AO dated 22.7.2015 levying penalty u/s. 221(1) of the Act was dismissed.
5. The facts stated for AY 2012-13 show that the assessee is a dealer in imported timber who imports the timber and sells it to registered dealers. On 11.3.2013, the ITO(TDS), Cochin issued a notice to the assessee to show cause for recovery of tax and interest thereon u/s. 206C(7) of the Act for failure to collect tax at source as provided u/s. 206C of the Act for AYs 2010-11 to 2014-15. In response to notice, the assessee submitted that tax is not collected at source because assessee is a second dealer, the timber is not sold which is collected from Indian forest and imported timber is sold to the suppliers which does not attract tax collection at source u/s. 206C of the Act. The Id. AO disbelieved the explanation of assessee and passed an order u/s.

206C(1) & (7) of the Act on 25.11.2014 wherein he noted that taxable sale is of Rs.136,63,23 on which tax should have been collected of Rs.1,36,632, which the assessee has failed to do so and therefore interest u/s. 206C(7) of the Act is chargeable amounting to Rs.52,497 and accordingly total tax and interest payable was determined at Rs.1,89,129.

6. The assessee aggrieved with the same preferred appeal before the Id. CIT(A) wherein assessee contested the same arguments, and also submitted additional evidence as Form 27C is now available from the parties to whom timber is sold. The Id. CIT(A) rejected the additional evidence and did not admit it and confirmed the order of the Id. AO. The appellate order was passed on 22.8.2022 which is under challenge before us.
7. The appeals for AY 2013-14 in ITA No.242/COCH/2024 is also on similar lines. Further, the other 2 appeals are for levying penalty u/s. 221(1) of the Act on the same evidence.
8. The Id. AR submitted that the assessee is in possession of declaration in Form 27C which has been placed before the first appellate authority which were not admitted and therefore the above appeal has been filed. Though these forms could not be filed before the Id. AO, but were filed before the Id. CIT(A) and therefore they should have been admitted. He referred to the written submissions placed before us. It was the claim that identical issue arose in the case of assessee for AYs 2010-11, 2011-12 & 2014-15 which has already been decided by the

coordinate Bench by order dated 19.5.2023 wherein the issue was restored back to the file of ITO(TDS) to verify Form 27C, take them on record and if found in order, to cancel the demand raised of interest and TCS.

9. The ld. DR supported the order of ld. lower authorities.
10. We have carefully considered the rival contentions and perused the orders of ld. lower authorities. We find that when the survey was carried out, a demand was raised u/s. 206C (1) & (7) with respect to 4 different assessment years. The appeals of the assessee for AY 2010-11 & 2011-12 as well as 2014-15 travelled before the coordinate Bench wherein in order dated 19.5.2023 on identical facts and circumstances, following the decision of coordinate Bench in ITA No.118 to 120/COCH/2017 dated 11.9.2017, the coordinate Bench in the case of assessee also set aside the impugned orders and restored the issue back to the file of AO to examine and verify Form 27 and thereafter, if found in order, cancel the amount of short collection of tax at source and interest thereon.
11. As there is no change in the facts and circumstances and the issue involved is on the same survey wherefrom it was found that assessee has failed to collect tax at source on sale of imported timber, we also, respectfully following the order of the coordinate Bench, direct the assessee to submit Form 27C before the ld. AO and direct the ld. AO to decide the issue in terms of para 7 of the order of the coordinate Bench dated 19.5.2023. Accordingly, ITA Nos. 241 & 242/COCH/2024 for

AYs 2012-13 & 2013-14 involving similar issues are allowed for statistical purposes.

12. ITA Nos.928 & 929/COCH/2022 are with respect to levy of penalty u/s. 221(1) of the Act for failure to collect tax at source for AYs 2012-13 & 2013-14. The coordinate Bench in assessee's own case in ITA Nos.927 & 930/COCH/2022 for AYs 2010-11, 2011-12 & 2014-15 has cancelled the penalties for the reason that the original appeal for failure to collect tax at source u/s. 206C(1) and consequent interest thereon is restored to the file of Id. AO for verification of Form 27C. As the penalties are also levied for the same offence of non-collection of tax at source, we also cancel the penalties levied u/s. 221 for the above two assessment years respectfully following the decision of the coordinate Bench. Accordingly, we set aside the penalty orders by the AO u/s. 221(1) of the act for both these years.
13. In the result, ITA Nos.241 & 242/COCH/2024 are allowed for statistical purposes and ITA Nos.928 & 929/COCH/2022 are allowed.

Pronounced in the open court on this 03rd day of January, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Bangalore,
Dated, the 03rd January, 2025.

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT

By order

Assistant Registrar
ITAT, Cochin.