

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

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.432/CTK/2014
Assessment Year : 2013-14

Income Tax Officer (TDS), Aayakar Bhawan, Uditnagar, Rourkela	Vs.	M/s. Mangalam Metals & Ore Ltd., Pan chwati, AT/PO: Barbil, Dist: Keonjhar
PAN/GIR/TAN: BBNMO 0332 D		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri B.N.Das, DR

Date of Hearing : 30/05/ 2017
Date of Pronouncement : 31/05/ 2017

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of CIT(A)-1, Bhubaneswar, dated 23.9.2014, for the assessment year 2012-13 on the following grounds:

"1. "The Learned CIT (A) does not appear to be justified in holding that the delay in submitting 27C Form by the buyer to the seller only entails initiation of penal provisions u/s. 272A(2)(j) of I.T. Act and not treating the assessee as an assessee default.

2. As per the provision of section 206C, the seller of the minerals shall at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of the such payment

from the said buyer in cash by the issue of the cheque or draft or by any other mode, whichever is earlier, collect from the buyer a sum equal to 1% as tax collection at source. This implies that the buyer has to furnish Form No. 27C to the seller before or at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer. The Ld. CIT (A) does not appear to be justified in holding that Form No. 27C can be filed at any time by the buyer to the seller.

3. The Ld. CIT(A) does not appear to be justified in holding that the delay in filing declaration i.e. Form No. 27C or the delay in collecting Form No. 27C are technical / procedural in nature which can only give rise to penalty provisions and not treating the seller as an assessee in default."

2. When the case was called for hearing, none was present on behalf of the respondent-assessee and neither any application for adjournment was filed despite service of notice through Speed Post. Therefore, we proceed to dispose of the appeal of the revenue *ex parte* qua the respondent-assessee after hearing *Id D.R.* and on the basis of materials available on record.

3. Brief facts of the case are that the assessee company is engaged in the business of trading of iron ore in the name and style of M/s.Mangalam Metals & Ores Ltd. During TDS inspection, the Assessing Officer found that the assessee has sold iron ore worth Rs.39,62,42,155/- during the period July to November, 2012. As per the Sale Invoice Register, the assessee was required to deduct 1% tax on sale of iron ore of Rs.39,62,42,155/- from the buyers of Rs.39,62,422/- u/s.206C (1) of Income Tax Act, 1961. In the course of inspection, it was submitted by the assessee that due to submission of declaration form(s) No.27C no TCS was collected referred at page 1 of the assessment order and the Revenue found that these forms

were not forwarded to the Chief Commissioner as per the provisions of section 206C(1B) of the Act. In respect of other buyers, the assessee has neither furnished declarations forms 27C nor collected tax. In reply to show cause notice issued by the Assessing Officer, the assessee in a written submissions filed a statement showing TCS deposit month wise and declarations in Forms 27C . The contention of Id A.R. has been considered and examined and the Assessing Officer dealt at page 4 on the provisions and explanations in respect of section 206C(1) of the Act in the assessment order. Further, the Assessing Officer is of the opinion that the assessee has contravened the provisions of section 206C(1) of the I.T.Act, 1961 by not collecting tax at source (TCS) from buyers on sale of iron ore, therefore, the assessee is liable to pay interest @ 1% per month for the sale of iron ore in accordance with the provisions from the date on which such tax was collectible to the date on which the tax was actually paid and raised demand of Rs.41,37,981/- and passed order u/s.206C(6)/206C(7) of the Income tax Act, 1961 on 31.1.2013.

4. Aggrieved by the order, the assessee has filed appeal with the CIT(A). Ld A.R. argued and reiterated the submissions made during the TDS proceedings. The assessee filed written submission dated 8.8.2013 and remand report was called for by the CIT(A) and a copy of the remand report was furnished to the assessee for comments and the assessee filed submission dated 11.9.2014 referred at pages 4 to 11 of the order. The

CIT(A) has dealt exhaustively on the provisions, judicial decisions and submissions of the assessee and observed that all parties Form 27C were not available during the TDS inspection and the reasons were also explained for not filing and further the staff present during the inspection was not conversant with TCS issues. The assessee at the time of inspection has explained that forms were collected and could not be filed. The CIT(A) found that the assessee has complied the conditions of obtaining Forms 27C and there is delay in filing the Forms with the Income tax department and for such default in filing, the assessee has to be penalized under other provisions of the Act. Whereas the Assessing Officer treated the assessee in default for TCS amount of Rs.39,62,42,155/-. The CIT(A) is of the opinion that the delay in collecting the Forms 27C are technical in nature and any contravention shall invite appropriate penal provisions and also there is no reason for the ITO (TDS) to treat assessee in default and finally with these observations, the CIT(A) allowed the appeal of the assessee.

5. Aggrieved by the order of the CIT(A), the assessee has filed appeal before the Tribunal. Before us, Id D.R. argued that the CIT(A) is not justified in holding that the delay in submitting the Forms 27C cannot be a reason to treat assessee as in default and further provisions of section 206C(1) of the Act has to be considered. The CIT(A) has relied on the submissions of the assessee without considering the fact that the assessee has delayed in

collecting Form No. 27C and, prayed to restoring the order of the Assessing Officer. Ld A.R. relied on the order of the CIT(A).

6. We heard the rival submissions and perused the orders of lower authorities and materials available on record. The sole crux of the issue is that the assessee has delayed in collecting the Forms 27C to deposit with Income tax Department, whereas the Assessing officer treated assessee as "assessee in default" . The CIT(A) has dealt on merits at page 4 of the order explaining that the assessee could not be penalized and there are other separate provisions for levy of penalty u/s.272A(i) of the Act. Whether TCS is liable to be made or not depends on the merits of each case and not technical violation based on non-submission of Forms. Further, before treating as an assessee in default, the ITO (TDS) is required to consider the conditions and proviso to section 206C(6A) and also no TCS is made in respect of buyers on filing declarations in Form No.27C. The only objection of the revenue was delay in submitting the declarations with the Revenue, we find delay in collecting the said declarations are technical/procedural in nature and contravention shall invite appropriate penal provisions. Accordingly, we consider the apparent facts and the material on record on obtaining Form No.27C and are not inclined to interfere with the order of the CIT(A), who has discussed elaborately vis-à-vis the explanations of the assessee on the disputed issue and allowed

the appeal and we uphold CIT(A)'s order and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced on 31 /05/2017

Sd/-

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 31 /05/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Income Tax Officer (TDS),
Aayakar Bhawan, Uditnagar, Rourkela
2. The Respondent. M/s. Mangalam Metals &
Ore Ltd., Pan chwati, AT/PO: Barbil, Dist:
Keonjhar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack