

आयकर अपीलीय अधिकरण
IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR e-BENCH, NAGPUR
(Through Video Conference at MUMBAI)

सर्वश्री आर.के. गुप्ता, न्या.स / एवं श्री राजेन्द्र, ले.स.
BEFORE SHRI R.K. GUPTA, JUDICIAL MEMBER /AND
SHRI RAJENDRA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 36/NAG/2011

निर्धारण वर्ष /Assessment Year 2005-06

आयकर अपील सं. / ITA No. 37/NAG/2011

निर्धारण वर्ष /Assessment Year 2006-07

आयकर अपील सं. / ITA No. 38/NAG/2011

निर्धारण वर्ष /Assessment Year 2007-08

The Collector, Collector Office, Camp Amravati.	Vs.	I.T.O. (TDS), Ward-2(2), Amravati.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri S.R. Kirtane

सुनवाई की तारीख / Date of Hearing : 21-01-2013
घोषणा की तारीख / Date of Pronouncement : 30-01-2013

आदेश / ORDER

PER RAJENDRA, AM

The appellant has filed these appeals against the order dt. 16-12-2010 of the CIT(A)-II, Nagpur raising following common grounds of appeal for all the three Assessment Years (AYs):

1] Learned C.I.T.(A) in holding that the Collector Amravati is a "Person" and consequently erred in holding that the provisions of section 206C(1C) are applicable to the Collector also.

2] Learned C.I.T.(A) failed to properly appreciate the various submissions made in written submission dt.13.12.2010 and erred in rejecting each of the points raised therein.

3] Collection of tax on income can be compelled or required to be collected by a person only where there is actual income accruing to the licensee. When there is no

income accruing to the licensee when the royalty is collected there cannot be any question of collecting tax on so called non-existent income, or remote possibility of income in future.

4] Learned C.I.T.(A) failed to see that merely collecting sand from river bed does not amount to quarrying mining and hence also section 206C(1C) is not applicable to Collector when he grants licence for collecting sand to the licensee.

5] Learned C.I.T.(A) failed to see that every licensee for collecting sand is not for the purpose of doing business by

6] Learned A.O. erred in charging interest U/s.206C(7) and C.I.T.(A) erred in confirming the same because at the relevant time section was applicable to the Seller and since the Collector was not the Seller said section was not applicable and hence no interest was chargeable from the Collector. Learned C.I.T.(A) erred in holding that substitution of word "Person" in place of "Seller" from 01.04.2007 was merely clarificatory.

7] Assessee craves leave to urge additional grounds at the time of hearing as may be necessary.

2. The case was originally fixed for hearing on 14-12-2012. Appellant was informed about hearing vide RPAD letter dt. 09-11-2012. On 14-12-2012 nobody appeared nor any application was filed to adjournment. So, case was again fixed for hearing on 21-01-2013. This time also there was no representation from the appellant's side. After going through the available record, we are deciding the appeal on merits. As the issue raised in all the three appeals are same and arguments advanced by the appellants before the CIT(A) were common and CIT(A) has also passed a single order deciding the appeal for AYs.2005-06, 2006-07 & 2007-08, so for sake of convenience we are passing a common order. Brief facts of the case can be summarised as under:

Pieces of information gathered by the AO revealed that tax was not being collected at source in accordance with the provisions of Act on account of lease/license or transfer of right under contract in mines or quarry. A survey u/s. 133A of the Act was carried out on 06-07-2007. During the survey, he found that Tax Collected at Source (TCS) was not collected from the lessees or the licensees while debiting their account with the amount payable by them for the lease or license or at the time of receipt of amounts so payable during the financial year 2004-05, 2005-06 and 2006-07. Referring to provisions of Section 206C(1C) 206C(3), 206C(6) and 206C(7). AO held that provisions for TCS were automatic in operation, that person granting the license or the lease in respect of mine or quarry had to collect tax prescribed by the Act, that if he failed to collect the same from the lessee or the licensee, he became automatically liable to pay the tax, that Collector, Amravati (Lessor) had failed to collect the TCS. He issued Show Cause Notices for charging interests u/s. 206C(7) for all the three AYs. After considering the submissions of the lessor, AO held that lessor was a person responsible for collecting tax u/s. 206C of the Act, that provisions of Chapter-XVII were applicable to Government as well, like any other assessee, though the Government itself was not an assessee, that for the purpose of Chapter-XVII the word 'person' was used in the sense a person responsible for deduction of tax at source or a person responsible for collecting tax at source. Finally, he held that lessor was responsible for collecting the Tax at Source,

that he failed to comply with the provisions of Section 206C(1C) of the Act. He held the lessor is liable to pay TCS as per the provisions of Section 206(C) along with interest amounting to Rs. 6.42 Lakhs.

3. Appellant preferred an appeal before the First Appellate Authority (FAA). After considering the submission of the assessee, FAA held that in the matter of Government of Madhya Pradesh v/s. ITO (217 CTR 137) similar question had arisen, that Hon'ble M.P. High Court had held that State Government comes within the purview of person as contemplated u/s. 206C(1C) of the Act and is liable to collect tax at source from lease holders, that Government authorities should deposit the TCS with the Central Government in accordance with the provisions of sub-section (3) of the provisions of 206C of the Act.

3.1. In the appeal filed before us, challenging the order of the FAA, Ground No.1 is about treating the Collector Amaravati, a 'person' under the provisions of the Act. As per the other limb of the ground Sec. 206C(1C) of the Act was not applicable to him being a state government authority. Before us, Departmental Representative (DR) submitted that provisions of TCS were applicable to state government authorities, that there was failure on part of the appellant in collecting the tax at sources, that AO and the FAA had rightly levied / confirmed interest on TCS for the AYs. consideration. We have perused the arguments submitted by the appellant before the AO and FAA. We have also gone through the Forms no 35 and 36 and filed by the appellant before the FAA and us.

4. After considering the submission made by the appellant before the Revenue Authorities, we are of the opinion that State Authorities have been rightly held 'a person' by the AO and the FAA. Word 'person' in taxation-law has its own meaning in addition to the grammatical and generic meanings. While defining the word person Courts have held that it includes artificial/ juristic entities also. The Hon'ble M.P. High Court in the case of Government of Madhya Pradesh (supra) has held as under:

"Art. 289 exempts property and income of the State Government from taxation by the Union of India. In the present case, the proposed action of the respondent Department or the Union of India is not to tax property or income of the State Government. What is being taxed in this case is income accrued by the lease holders to whom lease is granted by the State Government. It is, therefore, taxing of the income earned by the lease holders on the basis of grant made by the State Government. Accordingly the provision of Art. 289 of the Constitution of India will not apply, in the facts and circumstances of the present case as income or property of the State Government is not being taxed by the impugned action. "Person" is defined in s. 2(31) and it includes an individual, an HUF, a company, a firm, an AOP or a BOI, whether incorporated or not, a local authority and every artificial juridical person, not falling within any of the preceding sub-clauses. If the entire scheme of s. 206C is evaluated and the process of deducting tax at source, its accounting and submission of return is evaluated it would be seen that a person collecting tax is required to submit a return with regard to the tax deducted at source under these provisions. Sub-s. (5A) contemplates that every person collecting tax as per the section is required to prepare return and deliver the tax collected to the prescribed IT authority. Sub-s. (5B) contemplates a provision for submission of returns. The proviso to sub-s. (5B) clearly indicates that where the person collecting tax as per the provisions of sub-s. (1C) of s. 206C is a company or the Central Government or the State Government, such person is required to deliver or cause to be delivered, within the prescribed time returns as contemplated there. Complete reading of these provisions indicate that the person collecting tax under s.206C would include not only a company but also the

Central Government and the State Government and therefore the word "person" appearing in s. 206C would include both the Central Government and the State Government as these authorities are required to submit returns in accordance to this provision. Complete reading of this section along with definition of "person" clearly indicates that the State Government comes within the purview of "person" as contemplated under s.206C(1C) and is liable to collect tax at source from lease holders and deposit it with the Central Government in accordance with the provisions of sub-s. (3) of s. 206C. State Government would be a juristic person when it comes to right of the State to institute proceedings or for instituting proceedings against the State. Similarly when the legislative intents for providing Scheme for deducting income-tax at source as contemplated under s. 206C is evaluated, it would be clear that every person including the State Government which is granting lease is liable to deduct income earned by any person under the lease and deposit it with the Central Government. So far as the arguments with regard to word "every person" missing after the word "seller" is concerned, the words 'seller' and 'every person' under ss. 206C(1) and 206C(1C) are used with regard to different purpose. Mere absence of the word "every person" in the definition of "seller" as contained in Explanation cl. (c) to s. 206C cannot be construed to mean that the provisions of s. 206C do not apply to the State Government."

Similarly Hon'ble High Court of Patna, in the matter of State of Bihar v. Central Board of Direct Taxes, while discussing the scope of section 206C of the Act, has held as under:

"....it was incumbent on the State Government to collect tax at source in accordance with the law in force at that point of time in terms of section 206C of the Act.....That article 289(1) which exempts the State Government from Union taxation in so far as its property and income is concerned, was inapplicable to the facts and circumstances of the case because neither the property nor the income of the State had been sought to be taxed by the Union of India. Tax collection at source is only a method of collection of tax. It was an advance collection of tax on behalf of the Revenue with respect to the income of the assessee. It was a collection of tax at source in relation to the income of the retailers.....That the Revenue did suffer on account of inaction on the part of the State Government to realise the tax collected at source at the time of sales to the retailers."(336 ITR506)

Even a Hindu diety has been treated by the Hon'ble Supreme Court on individual for taxation purposes in the case of official trustee of West Bengal Vs. Commissioner of Income-tax (93 ITR 348).Income Tax is a code in itself and for levying taxes certain terms have been defined in a particular manner and they carry special meanings. Word 'person' is one among them. So, in our humble opinion, State Government is a person for purposes of collecting tax at sources as per the provisions of Sec 206C of the Act.

Ground No.1 is decided against the appellant.

5. Ground No.2 is of general nature and hence needs no independent adjudication.

6. In the next Ground of appeal, appellant submitted that no income was accruing to the licensee when royalty was collected. Therefore, there was no question of collecting tax on it. FAA, in the appellate proceedings; after discussing the legislative intent behind the introduction of provisions of section 206C of the Act; has held that tax had to be collected at sources @ 2% with regard to the activities mentioned in the section, that there was no intention to tax the income of the State Government, that

State Government authorities were required to collect tax at a prescribed rate from parties to who were allowed to explicit resources of the State.

Following the decision of State of Bihar v. Central Board of Direct Taxes delivered by the Hon'ble Patna High Court (supra), we are of the opinion that by asking to State authorities to collect tax at source from the lessees/licensees and charging interest are provided in the Act. AO has been authoised to implement the self regulated mechanism. So, in principle, the powers of AO to levy interest as per the provisions of Sec. 206C are not outside the jurisdiction assigned to him by the statute.

6.1. The lessor had admitted before the AO that whatever amount he was crediting into Government A/c from private parties for permitting them to excavate minerals excavate minor minerals was royalty it was not sale proceeds. Before considering the issue whether the activity in question was sale or not we would like to borrow the definition of word minor-mineral from the MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957(As amended up to 10th May, 2012) (MMDR Act) issued by the Controller –General, Indian Bureau of Mines, Nagpur. Section 3(e) of the Act defines the said word as under:

"minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral."

So, if the lessor had allowed the licence-holders to excavate minor minerals he should have collected TCS, because without quarrying or mining minor minerals cannot be used.

6.2. Grounds 3 and 4 are about sand (Reti) from the surface of river bed. As far as sand is considered we find that before the FAA no arguments were submitted by the AR in this regard, so FAA had dismissed the said grounds of appeal. Thus, said grounds of appeal are not arising out of the order of the FAA. Secondly, MMDR Act includes sand in mineral mineral. We find that in the case of Som Datt Builders Ltd. Hon'ble Supreme Court has recently dismissed the appeals of against the Allahabad high court judgement raising the question if 'ordinary earth' used for filling or levelling in construction of embankments, roads, Railways and building are 'minor minerals' inviting royalty. The Hon'ble Allahabad High Court had held that Government of India, in a 2000 notification under the MMRD Act, had specified minor minerals as an item which attracted royalty. In this matter, appellant-company had entered into a contract with the National Highway Authority of India for widening G T Road in Kanpur region. It bought earth from the farmers and land holders. The Centre demanded royalty on the earth, claiming it to be minor minerals. The company moved the high court which dismissed its petitions. Therefore, we are of the opinion that on merits and on facts of the cases under consideration grounds raised by the appellant about sand are not tenable in the eyes of law.

Grounds Nos. 3,4 and 5 are decided against the appellant.

7. Next Ground of Appeal is about holding the lessor a 'Seller'. Lessor had submitted before the FAA that he could not be called a seller and therefore the order

passed by the AO was illegal. After considering his submissions FAA held that word 'Seller' been substituted with the word 'Person' responsible for collecting tax in Section 206C (7) w.e.f. 01-04-2007, that the substituted provision for clarificatory in nature, that provision of Section 206C(1C) clearly referred to other person who mandate lease or license.

7.1. After going through the order of the FAA and the submissions made by the lessor before him, we are of the opinion that order of the FAA is in accordance with the provisions of Law. We agree with the FAA that substituted provisions were clarificatory, not substantive in nature, and hence were applicable for the AYs. 2005-06 to 2007-08.

Ground No.6 is also decided against the assessee.

As a result, appeals filed by the appellant for all the three AYs. stand dismissed.

Order pronounced by e-Bench at Mumbai on this 30th Day of January, 2013
मुंबई स्थित ई-बेंच द्वारा 30 जनवरी 2013 को आदेश घोषित किया गया.

Sd/-

(आर.के. गुप्ता / R.K. GUPTA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai,

दिनांक Date: 30th January, 2013

TNMM

Copy to:

1. Appellant
2. Respondent
3. The concerned CIT (A)
4. The concerned CIT
5. DR, ITAT, Nagpur
6. Guard File

सत्यापित प्रति //True Copy//

BY ORDER,

ASST. REGISTRAR, ITAT