आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।

IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

Sl. No.	ITA Nos.	Name of Appellant	Name of Respondent	Asst. Year
1-7.	8/RPR/2023 9/RPR/2023 10/RPR/2023 11/RPR/2023 12/RPR/2023 13/RPR/2023 14/RPR/2023	District Mining Officer, Bemtara Mining Office, Collectorate Campus Bemtara (C.G.)-491335 PAN: JBPO00856C	The Deputy Commissioner of Income Tax (TDS) Raipur (C.G)	2013-14 2014-15 2015-16 2016-17 2017-18 2018-19 2019-20
8-14.	120/RPR/2023 121/RPR/2023 122/RPR/2023 123/RPR/2023 124/RPR/2023 125/RPR/2023 126/RPR/2023	District Mining Officer, Dantewada Collectorate Campus, Anwarbhata, P.O. Dantewada (C.G)-494449 PAN : JBPO00458D	The Deputy Commissioner of Income Tax (TDS) Raipur (C.G)	2013-14 2014-15 2015-16 2016-17 2017-18 2018-19 2019-20
15-20.	64/RPR/2023 65/RPR/2023 66/RPR/2023 67/RPR/2023 68/RPR/2023 69/RPR/2023	Collector Mining, Kanker (Deputy Director Mineral Administration) Mining Office, Collectorate Campus, Kanker, PAN :JBPCO1817E	The Deputy Commissioner of Income Tax (TDS) Raipur (C.G)	2014-15 2015-16 2016-17 2017-18 2018-19 2019-20
21-23.	243/RPR/2022 244/RPR/2022 245/RPR/2022	District Mining Officer, Bijapur Collectorate Campus, Bijapur (C.G.)-494444 PAN : JBPO01406D	The Deputy Commissioner of Income Tax (TDS) Raipur (C.G)	2017-18 2018-19 2019-20

24-31.	207/RPR/2022 208/RPR/2022 209/RPR/2022 210/RPR/2022 211/RPR/2022 212/RPR/2022 213/RPR/2022 214/RPR/2022	The Deputy Director (Geology & Mining) 1st Floor, Collectorate Parisar, Kutcheri Chowk, Raipur (C.G.)-492 001 PAN :AAAGD0497B	The Deputy Commissioner of Income Tax (TDS/TCS) Raipur (C.G)	2011-12 2012-13 2013-14 2014-15 2015-16 2016-17 2017-18 2018-19
32-38.	158/RPR/2023 159/RPR/2023 160/RPR/2023 161/RPR/2023 162/RPR/2023 163/RPR/2023 164/RPR/2023	Deputy Director (Min & Admin.), Jagdalpur Mining Office, Collectorate Campus, P.O. Jagdalpur Dist. Baster. PAN : JBPC01581G	The Deputy Commissioner of Income Tax (TDS) Raipur (C.G)	2013-14 2014-15 2015-16 2016-17 2017-18 2018-19 2019-20

Assessee by :Shri G.S. Agrawal, CA
Revenue by :Shri Choudhary N.C Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing :30.06.2023/03.07.2023
घोषणा की तारीख / Date of Pronouncement : 21.07.2023

आदेश / ORDER

PER BENCH :

The captioned thirty-eight appeals filed by the aforementioned assessee's are directed against the respective orders of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, which in turn arises from the orders passed by the A.O u/ss. 206C(1C) and (6) & (7) of the Income-tax Act, 1961 (in short 'the Act') for the aforementioned assessment years. As common issues are involved in the

aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall take up the appeal in ITA No.11/RPR/2023 for the assessment year 2016-17 as the lead matter and the order therein passed shall apply *mutatis-mutandis* to the remaining cases. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "**Grounds of appeal 1.** That under the facts and the law, the learned Commissioner of Income Tax (Appeals), NFAC erred in dismissing the Appeal ex-parte though Application for Adjournment was filed, the Appellant is a Department of Chhattisgarh Government and is a regulatory authority for mining in the district., the Ld. CIT(A), NFAC further erred in not considering the material available with him on statement of facts, grounds of appeal and Assessment order. Prayed to cancel the demand of Rs.35,100/- raised u/s. 206C (1C), (6) & (7).
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> **Grounds of Appeal 2.** That under the facts and the law, the learned Commissioner of Income Tax (Appeals) further erred in confirming the Order of the Ld. AO who raised demand of Rs.2,927/- including interest at Rs. 903/-, dismissing the explanation that there was no liability u/s 206C (1 C) on the Appellant to collect tax at source on Compounding Fee received on illegal mining. Prayed that there was no liability and demand be cancelled.
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> **Grounds of appeal 3**. That under the facts and the law, the learned Commissioner of Income Tax (Appeals) further erred in confirming the Order of the Ld. AO who raised demand of Rs. 29,638/- including interest at Rs. 9,559/-, dismissing the explanation that there was no liability u/s 206C (1C) on the Appellant to collect tax at source on Compounding Fee received on illegal transporting. Prayed that there was no liability and demand be cancelled.
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> **Grounds of Appeal 4**. That under the facts and the law, the learned Commissioner of Income Tax (Appeals) further erred in confirming the Order of Ld. AO who raised demand of Rs.2,273/- which includes interest amounts at Rs.683/-,

dismissing the explanation that there was no liability u/s 206C (1C) on the Appellant to collect tax at source on contribution towards District Mineral Foundation. The appellant neither received amount towards DMF nor it go to State Revenue. Prayed that there was no liability and demand be cancelled.

Grounds of Appeal 5. That under the facts and the law, the learned Commissioner of Income Tax (Appeals) further erred in confirming the Order of Ld. AO who raised demand of Rs.262/-which includes interest amounts at Rs.82/-, dismissing the explanation that there was no liability u/s. 206C(1C) on the Appellant to collect tax at source on contribution towards National Mineral Exploration Trust. The appellant neither collected amount towards NMET nor go to coffers of State Government. Prayed that there was no liability and demand be cancelled."

CONDONATION OF DELAY:-

3. We find that out of the captioned appeals those filed by the respective assessee's in ITA Nos. 64 to 69/RPR/2013, ITA Nos. 120 to 126/RPR/2023 and ITA Nos.158 to 164/RPR/2023 involves a delay of 36 days (wrongly mentioned as 28 days), 117 days (wrongly mentioned as 272 days) and 157 days (wrongly mentioned as 351 days), respectively.

(A) As regards the delay involved in filing of the appeals in ITA Nos. 64 to 69/RPR/2013, the Ld. Authorized Representatives (for short 'AR') for the respective assessee's elaborating on the reasons leading to the delay in filing of the said appeals in its application seeking condonation of delay a/w. affidavit filed in support thereof, had come forth with multi-facet reasons, viz. (i) there was shuffling of the officers/staff members due to transfers during the relevant period; (ii) there being a skeletal staff

available in the office for looking after the multi-tasks therein assigned, viz two clerks and one inspector; (iii) substantial time was devoted by the officers/staff in the cases relating to illegal mining and transportation of minerals and compounding of the same; (iv) substantial time was exhausted for preparing of replies to the various queries raised during Vidhan Sabha Session; (v) the officers/staff having remained busy during the period i.e. November to January as regards the work that was assigned to them regarding checking of procurement of paddy of co-operative societies; (vi) change in the email-id by the earlier mining officer without making necessary information available to the Income-tax department, a fact which was not to the knowledge of the assessee, due to which the assessee remained unaware of the orders uploaded by the CIT(Appeals), NFAC; (vii) staff members of the assessee not being computer savvy had remained unaware of the Income tax proceedings; and (viii) that the fact about the order having been passed by the CIT(Appeals), NFAC, Delhi dated 25.11.2022 came to the notice of the assessee only when its counsel had opened the portal on 18.02.2023. For the sake of clarity the reasons leading of the delay mentioned in the application seeking condonation of delay involved in filing of the present appeals are culled out as under (extract):

> "3. In the year 2022, all the officers and the staff were changed due to transfers. The Deputy Director i.e. the Appellant who is filing the present appeal, i.e., Bhupendra Kumar Chandrakar jointed on 23.08.2022 as earlier officer

> Shri Pramod Kumar Naik was transferred on 18.08.2022. The Inspector Shri Deepak Kumar Tiwari joined the duties on 10.09.2022 in place of Shri Bharat Lal Banjare. Shri Rakesh Kumar Thakur joined on 18.10.2022. Assistant, Grade-3, Shri Arun Pandey joined on 02.09.2022. Presently, the royalty collected is to the tune of Rs. 20 to 25 crores per month by this office. The office works with limited staff, there is undersigned, who is Officer, there are two clerks and one Inspector. The Appellant is to pay attention in the cases detected for illegal mining & transportation and the compounding procedures to be followed, then Appellant also devotes time when there is Vidhan Sabha session for preparing replies to various questions raised. The Appellant is also given the assignment with regard to checking of procurement of paddy of Co-operative Societies during the period November to January every year. This is one of the priorities of the State Government.
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> 4. In the meanwhile, the E-mail Id which was "miningkanker@gmail.com" became full, and therefore, the earlier Mining Officer amended the same as "miningkanker2@gmaiLcom". This was not known to the Appellant. Therefore, Notices & order uploaded by Ld. CIT(A) on e-Mail could not reach the appellant, as it was not updated. Moreover, the Appellant is not computer savvy and is to rely on the person who has skill. Apart from that, the Appellant is not aware of the Income Tax proceedings. When the counsel of the Appellant opened the portal on 18.02.2023, it came to the knowledge that the Ld. CIT (Appeals), NFAC, Delhi has passed above Order dated 25.11.2022. Immediately thereafter the Appellant contacted the counsel, made the payment of Challan on 22.02.2023 and the Appeal has been prepared."

(B) Elaborating on the reasons dealing to the delay in filing of the appeal in ITA Nos. 120 to 126/RPR/2023, the assessee had filed an application seeking condonation of the same a/w. an affidavit of the Assistant Mining Officer deposing the said facts. On a careful perusal of the aforesaid application, it transpires that it is the claim of the assessee that the delay had occasioned for multi-facet reasons, viz. (i) shuffling of the concerned

staff members who were responsible for filing of the appeals; (ii) the concerned staff members not being computer savvy remained unaware of operating the income tax portal; (iii) the office of the assessee was situated in a Naxal infested area in South Bastar with poor rail and road connectivity; (iv) the concerned staff members who were responsible for filing of the appeals had remained busy in visiting various mines, inspection of illegal mining, preparation of replies to the queries raised by Vidhan Sabha, arranging protocol of the ministers etc; and (v) staff members during the relevant period remained busy in one "Jan Sunwai (Public Hearing)" carried during the year which had turned violent and was followed by stalling of working in the mines for a period of 3 days. For the sake of clarity, the reasons given by the assessee appellant for the aforesaid delay are culled out as under (extract):

> "5. As submitted earlier, Shri Yogendra Singh wh0 was earlier holding the post as Mining Officer was transferred to Raigarh on 24.08.2022. Apart from not having knowledge of passing of such Order, Shri Yogendra Singh as well as thereafter Shri Hemant Cherpa who take over charge, were all the time busy in visiting various Mines, inspection of illegal mining and taking care of that, again they had to move to other places which were in their charge viz as Sukma and Bijapur. Apart from routine work, they were also involved in preparation of replies to Vidhan Sabha questions, look to the protocol of visit of Hon'ble Ministers. Further, as submitted earlier, this area is highly affected area of Naxal activities, therefore, the movements of Govt. Officers are restricted. Detecting illegal mining is one of the challenging tasks. During the relevant period, as many as 58 cases of illegal mining and transportation were deducted. This consumes lot of time registering seizure of the vehicle and material then handing over the material & vehicle to the police station, subsequent compounding etc. This resulted in collection of revenue at Rs.10,38,423/- as Compounding Fees. Some time was also consumed in first week of November, 2022 during one

> "Jan Sunwai (Public Hearing)" case with regard to Deposit 14 wherein the production capacity was to be increased. This turned violent. The public stopped production in the Mines and that continued for 3 days. The Appellant is also required to visit various places and also head-quarters for meetings from time to time. On 8th March, 2023 there was visit of Chief Minister, and therefore, there was 'protocol duty of the Appellant. Further, to achieve the target, the Appellant was busy in month of March. This delayed filing of appeal timely."

(C) Ostensibly, a perusal of the application filed by the assessee seeking condonation of delay involved in filing of the appeal in ITA Nos.158 to 164/RPR/2023 a/w. an affidavit filed in support thereof, reveals multi facet reasons which had resulted to delay in filing of the appeals, viz. (i) the assessee was functioning in a remote place at Jagdalpur which is a tribal area and badly affected by Naxal movement, due to which, movement of government officers was highly restricted; (ii) the officers/staff members of the assessee remained busy in detecting illegal mining/transportation and attending meetings called for by the Collector from time to time a/w. preparation of replies to the questions which were raised by the Members of Legislative Assembly in the State Assembly; (iii) the officers/staff members of the assessee were not conversant with the newly introduced faceless appeal system and were not computer savvy due to which the order of the CIT(Appeals), NFAC did not come to their notice; (iv) shuffling of the staff members specifically transfer of Shri Rakesh Thakur i.e. computer operator and Assistant Programmer who was looking after the TDS matters to Kanker on 14.10.2022 followed by appointment of a new

incumbent; (v) disturbance of working during the relevant period due to strike of the staff; (vi) income tax raid at the premises of Deputy Director (Mineral Administration), viz. Shri Shiv Shankar Nag on 08.09.2022 due to which he remained very much disturbed and did not attend the office for a long period; (vii) proceedings initiated by the Enforcement Directorate against Shri Shiv Shankar Nag (supra) on 21/22.11.2022, pursuant whereto he was arrested on 25.01.2023, as a result of which, an atmosphere of fear and apprehension remained in the mind of the officers and the sub-ordinates; (viii) taking over the charge of the assessee's office by Shri Haresh Mandavi, Additional Collector, Jagdalpur on 02.02.2023 who was having additional charge of 39 other departments and had remained busy in implementing government schemes for the benefit of general public etc; (ix) officers of the assessee had remained busy in preparing replies to the question raised during the Vidhan Sabha session; and (x) that the assessee learnt about the order of the CIT(Appeals), NFAC dated 25.03.2022 only when its counsel gathered about the same from the income tax portal on 04.10.2022. For the sake of clarity the reasons given by the assessee appellant for the aforesaid delay in filing of the appeals are culled out as under (extract):

> "2) The Appellant is to look-after the regulatory functions' as per the statutes mainly Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR") and for that purpose visit various Mines sites and regularly do vigilance for the offenders who are making illegal mining, illegal transportation without valid Licence. The Appellant is also to attend

meetings called by the Collector from time to time. The Appellant is also required to give attention, leaving all the other assignments, to the questions being raised by the Members of Legislative Assembly in the Chhattisgarh State Assembly.

3) The officers of the Appellant department are not conversant with the newly introduced Faceless Appeal system. They are also not computer savvy. Government work is carried out in Hindi language. Therefore, the Order passed by the Ld. CIT (Appeals), NFAC, Delhi dated 25.03.2022 did not come to the knowledge of the Appellant.

4) The above Order was located by the counsel on the Income Tax Portal on 04.10.2022. Counsel thereafter informed about passing of above order.

5) Shri Hemant Cherpa, Assistant Mining Officer took charge on 15.03.2019 and was transferred to Dantewada on 22.08.2022. In his place Shri Shiv Shankar Nag joined as Deputy Director (Mineral Administration) on 22.08.2022. Office is managed with limited staff. There was further disturbance due to strike of the staff. The entire staff went on strike from 25.08.2022 to 01.09.2022.

6) In the meanwhile Shri Rakesh Thakur who was "copa" i.e. Computer operator and assistant programmer, and was looking after on line matters and also TDS matters was transferred to Kanker and was relieved on 14.10.2022. In his place Shri Rohan Kamble joined on 12.10.2022. He was new to working of this office.

7) The Income tax department raided the premises of above Shri Shiv Shankar Nag on 08.09.2022, as published in News Papers. Therefore, Shri Shiv Shankar Nag became very much disturbed and puzzled. He also did not attend the office, for long time. Thereafter, the Enforcement Directorate also proceeded against him and raided his office as well as residence of Shiv Shankar Nag on 21st and 22nd November 2022. Subsequently he was arrested by Enforcement Directorate on 25.01.2023. These all proceedings created atmosphere of fear and apprehension in the minds of officers and subordinates. He is still under detention.

Thereafter, Shri Haresh Mandavi, Additional Collector, Jagdalpur took additional charge on 02.02.2023. This was additional charge to the Additional Collector. He was also

> having additional charges of other departments namely Additional District Magistrate, Nazul officer, P.O. Tribe Department and was Officer in charge (OIC) of various departments numbering 39. Post at Jagdalpur of District Mining Officer is Class II Post. Apart from looking after above charges additional collector was also busy continuously in maintaining law-and-order and other day-to-day work of implementing the Government schemes for the benefit of general public, etc. Further, the office was also sometime remained busy in preparing reply to the questions raised in the Vidhan Sabha Meetings."

4. Per contra, the Ld. Departmental Representative (for short 'DR') objected to the seeking of condonation of delay involved in filing of the present appeals by the aforementioned assessee's.

5. We have given a thoughtful consideration to the explanation of the aforementioned assessees as regards the delay involved in filing of the captioned appeals before us. The government officers who were concerned/responsible for filing the captioned appeals ought to have been vigilant for filing the same within the stipulated time period prescribed under the statute. At the same time we cannot remain oblivion of the aforesaid multi-facet reasons, which in our considered view are not merely an eye-wash and inspires confidence as regards veracity of the explanation of the assessee about the reasons leading to delay in filing of the captioned appeals. Admittedly, it is a matter of fact that the procedure of framing faceless assessments/disposing off the appeals during the relevant period were in its infancy stage. Also, the offices of the aforementioned assessees

during the period under consideration was functioning in far flung areas with skeletal staff, which as brought to our notice was neither computer savvy not had any exposure about the obligations under the Income-tax Act, had witnessed transfers/shuffling that had adversely hit its functioning. Inadvertent failure of the concerned staff members to access the email account had resulted to the order of the CIT(Appeals), NFAC going unnoticed, which thereafter was brought to its knowledge by their counsel who had learnt about the same from the income tax portal. Considering the aforesaid multiple reasons which as stated by the respective assesses in their applications seeking condonation of delay involved in filing of the appeals a/w. supporting affidavits, we are of the view that as the delay therein involved has certain justifiable reasons as demonstrated by the aforementioned assesses, which do not smack of any malafide intention or lackadaisical approach on their part, therefore, we deem it fit to condone the same without imposing any cost. Once again, as a word of caution, we may herein observe that the officers/staff members in the times to come should remain extra vigilant about affecting compliance to the statutory requirements/obligations within the prescribed time period contemplated under law.

ON FACTS:

6. Succinctly stated, the office of the assessee, i.e. District Mining Officer ("DMO", for short), a department of the State Government of Chhattisgarh was subjected to a TDS survey u/s. 133A(2A) of the Act on 24.09.2018.

7. During the course of aforesaid proceedings the survey officials came across certain issues, viz. (i) the assessee by not collecting tax at source (TCS) on the amount of compounding fees that was received from illegal miners and transporters of minerals had violated the provisions of Section 206C(1C) of the Act; (ii) the assessee had failed to collect tax at source (TCS) as per Sec. 206C of the Act on the amount deposited by the lease holders in the District Mining Fund (DMF); and (iii) the assessee had failed to collect tax at source (TCS) as per Section 206C of the Act on the amount deposited by lease holders in the National Minerals Exploration Trust (NMET).

8. On being queried about its failure to collect tax at source on the compounding fees received from illegal miners and transporters of minerals, it was submitted by the assessee that no liability was cast upon it to collect any tax at source on the said receipts. Elaborating on its aforesaid claim, it was submitted by the assessee that no direction to collect tax at source on the compounding fees/penalty received from the illegal miners and transporters of minerals was issued by the Directorate

of Mining, State Government of Chhattisgarh. However, the aforesaid explanation of the assessee did not find favour with the A.O. The AO was of the view that as the amount received by the assessee from the illegal miners and transporters of minerals was towards royalty and market value of mineral, therefore, as per the mandate of Sec. 206C(1C) of the Act it was obligated to have collected tax at source (TCS) on the said amount. Referring to the fact that the very mechanism for computing the amount of compounding fees in itself was based on the amount of royalty which the assessee would have otherwise recovered, the AO was of the view that the amounts recovered by the assessee from the illegal miners/transporters of minerals was not in the nature of penalty but was a compensatory payment. Also the AO rejected the claim of the assessee that as per Section 23A of Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act", for short) as the amounts collected from illegal miners and transporters was for compounding of offence, therefore, no obligation was cast upon it to collect tax at source on the same. It was further observed by the A.O that as the assessee had failed to provide any bifurcation of the amounts that were received on the compounding of the offence of illegal mining and transportation of minerals, viz. (i). amount of penalty/fine; (ii). value of minerals; and (iii). receipts on account of other factors, thus, he had failed to distinguish the amounts, if any, which it had collected towards penalty/fine vis-a-vis that received towards value of minerals. The

A.O on the basis of his exhaustive deliberations concluded that as the assessee as per the mandate of sub-section (1C) of Section 206 of the Act had failed to collect tax at source on the amounts received from the illegal miners and transporters of minerals, therefore, it was to be held as an "assessee-in-default" within the meaning of sub-sections (6) and (6A) of Section 206C of the Act. Accordingly, the A.O raised a consequential demand towards collection of tax at source (a/w. interest) w.r.t amounts collected by the assessee from the illegal miners and transporters of Rs.32,564.81/- [Rs.2927.09 (TCS a/w. interest as regards the compounding fees collected w.r.t illegal mining) (+) Rs.29,637.72/-(TCS a/w. interest as regards the compounding fees collected w.r.t illegal transportation)].

9. It was further observed by the A.O that the State and Central funds were created in each mining district of the state. It was observed by him that the Central Government in exercise of the powers conferred by sub-section (5) & (6) of Section 9B of the Mining and Minerals (Development and Regulation) Act, 1957 had pursuant to Notification F. No.16/7/2015-M.VI dated 17.09.2015 created "District Mineral Foundation" ("DMF", for short) in December 2015. Also, it was observed by him that the Ministry of Coal in exercise of powers conferred by sub-section (2), (3) and (4) of Section 9C and Section 13 of the Mining and Minerals (Development and Regulation) Act, 1957, had vide Notification F. No.11/8/2015-M.I dated

14.08.2015 created "National Minerals Exploration Trust" ("NMET", for short) on 14.08.2015.

10. The AO further observed that the assessee had to collect amounts from the lease holders towards the aforesaid funds, viz. (i). 30% of the amount of royalty collected during the year for DMF; and (ii). 2% of the amount of royalty collected during the year for NMET. Carrying his observations further, it was noticed by the A.O that the aforesaid funds were utilized for the development of mining area and also for funding other agencies under the control of District Collector for various development works of that district. The AO further observed that though the amounts collected by the assessee towards the aforesaid Central government and State government funds would vary from year to year as the same would be dependent on the quantity of mineral explored and royalty received during the year, but the percentage of the apportioned amount was static. It was further observed by him that the aforesaid amounts which the lease holders had to pay towards the aforesaid funds were in addition to royalty that was separately collected from them. Adverting to the mechanism that was adopted, it was observed by the A.O that the lease holders remained under an obligation to deposit the amounts separately and submit copy of challans of the amounts deposited in the aforesaid funds a/w. challan for royalty paid with the Mining Officer. It was observed by him that it was only on receipt of the aforesaid challans that the Mining Officer would

issue a pit-pass to the lease holder for exploring minerals. Referring to the aforesaid methodology that was adopted for collection of the aforesaid funds, it was observed by the A.O that the District Mining Officer (DMO) i.e. the assessee while calculating its gross revenue from mineral exploration had failed to include the aforesaid amounts that were collected from lease holders towards their respective contributions to DMF and NMET. It was observed by the A.O that the DMO i.e. the assessee during the course of assessment proceedings had admitted that it had not collected tax at source on the aforesaid additional revenue i.e. the amounts that were collected from the lease holders towards their contributions to DMF and NMET.

11. The AO observed that as per Section 206C of the Act the assessee remained under a statutory obligation to collect tax at source on any "Amount Payable" by the lease holders and it was not to be restricted only to the amount of royalty. Elaborating further, the A.O observed that the "Amount Payable" as envisaged in Section 206C(1C) of the Act was well defined in Section 9 of the Mining Act and took within its sweep royalty, fine, penalty, dead rent and any amount authorized by State or Central notification. The AO held a conviction that as the amounts collected from the lease holders for funding DMF and NMET were on the basis of the State and Central notifications and in accordance with the provisions of Section 9 of the Mining Act, therefore, the same fell within the meaning of

the term “Amount Payable” provided in Section 206C of the Act, and thus, were exigible for collection of tax at source.

12. The A.O held a conviction that as the additional amounts collected from the leaseholders i.e. towards their respective contributions to DMF and NMET were a part of the value of mineral explored and the income of the mining department, therefore, the same being a revenue receipt was liable for being subjected to collection of tax at source under Section 206C of the Act. Referring to the provisions of Section 206C of the Act, it was observed by the A.O that as the assessee i.e DMO had failed to comply with the statutory obligation of collecting tax at source (TCS) on the amount of contributions made by the lease holders towards DMF and NMET, thus on the said count also it was liable to be held as an ‘assessee-in-default’ u/s. 206C(6) of the Act.

13. On being queried as to why tax was not collected at source on the amount of contributions by the lease holders towards DMF and NMET, it was submitted by the assessee that there were no directions from their senior authority to collect any such amount on the contributions made by the leaseholders towards the said respective funds. Observing, that the assessee i.e. DMO had failed to come forth with any explanation for not having collected tax at source on the amounts collected towards DMF and NMET from the lease holders, the A.O after treating the assessee as

'assessee-in-default' under sub-section (6) to Section 206C of the Act saddled it with an obligation to make good the said non-collection of tax at source amounting to Rs.2534.60/- [Rs.2273.00/- (TCS a/w. interest on DMF) (+) Rs.261.60/- (TCS a/w. interest on NMET)].

14. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) on both the aforesaid issues, viz. (i) saddling it with the liability for failure to collect tax at source (TCS) on the amount of compounding fees received from illegal miners/transporters of minerals; and (ii) saddling it with the failure to collect tax at source (TCS) on the contributions made by the lease holders towards DMF and NMET. However, the CIT(Appeals) not finding any infirmity in the view taken by the A.O, upheld the same. For the sake of clarity the relevant observations of the CIT(Appeals) are culled out as under:

> "**As per Section 206(1C)**
>
> (1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax"
>
> From a plain reading of the above section there is an onus on "every person", who grants a lease or a license or enters into a contract for the purpose of business B & U, (emphasis supplied) at the time of debiting of the amount payable by the licensee or assessee to the account of the license or assessee or at the time of receipt

of such amount from the license or assessee in cash or by the issue of a cheque or draft or by any other made, whichever is earlier, collect from the licensee or assessee in cash or by the issue of a cheque or draft or by any other mode, a sum equal to the percentage specified,

The above section clearly provides that every person as stated above is responsible for collecting the tax at the prescribed rates. This is mandatory and there stands no element of discretion in law. Also in this particular case the mining office of the district is a "Person "under this section as such the district mining officer being the Principal Officer should have discharged his responsibility on behalf of the state government. He was rightly the lessor within the meaning of this section. The plea of the appellant assessee before the AO and now that the state Directorate has not issued directions for tax collection on the amount are invalid when the provisions of TCS are amply clear.

As per section 206 (6)

“Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).”

206 (7)

Without prejudice to the provisions of sub-section (6), if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3):

Thus 206(6) clearly provides that any person responsible for collecting the tax, even if he fails to collect the tax in accordance with the provisions of the said section, shall not withstanding such failure, be liable to pay the tax to the credit of the Central Government. In such a case of failure, this section fixes the liability of the collector , who in case of failure too is required to pay the tax to the Central Government.

The provisions of TLS are unambiguous. It was the statutory liability of the District mining Officer to have collected and credited the tax. Having failed to do so the AO aptly held him liable to pay the TCS amount and interest under 206c (6) and (7) of the Act. It goes without saying that such failure leads to initiation of penalty. The penalty is not a subject matter of this appeal and may be agitated in a separate appeal.

Reliance is placed on the following cases-

a. **IN THE ITAT AGRA BENCH in case of Agra Development Authority vs. Assistant Commissioner of Income-tax (TDS) Agra [2012] 25 taxmann.com 187 (Agra)** held as under:

Even where these is no written contract, liability to TCS arises- Even where assessee city development authority allotted contractors parking lots to run same

without executing any written contracts between them, it would not affect liability of assessee to make collection of tax at source under section 206C(1C)

"Section 206C of the Income Tax Act, 1961, read with Section 2(h) and 10 of the Contract Act, 1872-Collection of tax at source-Assessment year 2007-08 to 2009-10-Assessee, City development authority, auctioned for running of parking lots and allotted same to different persons-As assessee defaulted in collecting taxes at source, Assessing Officer raised demand under Section 206C(1C) along with interest-Assessee pleased that though auction was held for parking lots, but no contract was executed in terms of auction and contractors did not sigh any contract and continued to charge parking charges and therefore, provisions of Section 206C(1C) could not be applied-Whether since an agreement could be oral in view of Section 2(h) and Section 10 of Contract Act, plea of assessee was be upheld-Held yes [in favour of the Revenue]

b. **In the High Court of Madhya Pradesh in the case of Executive Engineer, PWD (nh) Divisions. Recovery Officer, tds. ii, Indore**

For failure to collect tax at source (TCS), assessee would be liable to pay interest on amount of tax not collected by assessee and not on tax liability of deductees.

Section 206C of the Income-tax Act, 1961 - Collection of tax at source - Assessment years 2005-06 and 2006-07 - Assessee was awarded a contract for collecting toll - It had not collected tax at source while collecting amount of licence fees from contractors (deductees) - Whether in view of section 206C(7) interest was required to be paid on tax which was not collected by appellant and not on tax liability of deductee-contractors - Held, yes [In favour of revenue].

c. **Girijan Co-op. Corporation Ltd, Vs. Assistant Commissioner of Income-tax, Range-2(TDS), Visakhapatnam**.

Section 206C of the Income-tax Act, 1961 - Collection of tax at source - Assessment year 2005-06 Assessee was cooperative society engaged in collection of forest produce and selling them to various organization - During relevant assessment year, assessee sold minor forest produce and agriculture produce for certain sum - Assessing Officer noticed that product sold by assessee fell under category of forest produce and assessee was required to collect tax at source - He raised demand under section 206C - Assessee contended that sales were made to buyers who had already been assessed to tax and who had filed their Income-tax returns disclosing impugned transaction arid, therefore, assessee was not liable under section 206C since buyers had already paid tax thereon - Whether as per section 206C(6), person being seller of specific goods, is not deemed to be an assessee-in-default; however, is made liable to pay TCS amount - Held, yes - Whether, therefore, assessee was liable to pay demand raised under section 206C(6) - Held, yes [In favour of revenue].

D. **Divisional Forest Officer Vs. Income Tax Officer (TDS), Haldwani**

"Section 206C of the Income Tax Act, 1961-Collection of tax at sources (Sale of forest produce)-Assessment year 2008-09-Whether furnishing of Form No.27C by

buyer at the time when collection of tax at source is contemplated under section 206C, has to be construed as mandatory-Held Yeas-whether therefore, where assessee failed to collect tax at source from buyers of Lisa without receipt of Form 27Cs at the time of debiting their accounts or receiving amounts, whichever was earlier, it was to be regarded as assessee-in-default in terms of Section 206C(6A)-Held yes [Para 6.2. and 9) (in favour of revenue).

The appellant has quoted the case of the **Hindustan Coca Cola Beverage (P.) Ltd. Vs. Commissioner of Income Tax [2007] 163 Taxman 355(SC).**

"Circular No. 275/201/95/1T(B), dated 29.1.1997 issued by the Central Board of Direct Taxes would put an end to the controversy. The circular declares that no demand visualized under section 201(1) should be enforced after the tax deductor has satisfied the officer- in- charge of TDS That taxes due have been paid by the deductee- assessee. However, this will not alter the liability to charge interest under section 201(1A) till the date of payment of taxes by the deductee-assessee or the liability for penalty under section 271C. In the instant case, the assessee had paid the interest under section 201(1A) and there was no dispute that the tax due had been paid by 'P' it was not disputed that the circular was applicable to the facts situation at hand[para11].

Thus it is clear that the satisfaction of the TDS officer in charge has been upheld.

Reliance is placed on the case law of

Girijan Co-op. Corporation Ltd. Vs. Assistant Commissioner of Income Tax-Range-2(TDS), Visakhapatnam.[2011] 13 taxmann.com42 (Visakhapatnam [2011] 47 SOT 323 (Visakhapatnam)/[2012] 143TTJ 256 (Visakhapatnam [02.06.2011]

In this case law it has been held-

"In this context, it is observed that with reference to section 201 of the Act where an assessee is deemed to be an assessee in default in case of failure to deduct tax at source on payments made by him on which he was liable to deduct tax that the Hon'ble Supreme Court in the case of HindustanCocacola Beverage (P.) Ltd. V. CIT293 ITR 226 unequivocally stated that where the payees have already paid tax on the income on which there was a short deduction of tax at source, recovery of tax cannot be made once again from the tax deductor. While rendering the above decision, the Hon'ble Supreme Court took into account Circular No. 275/201/95-IT(B), dt. 24 January, 1997 issued by the CBDT wherein it was clarified "no demand visualized under section 201(1) of the IT Act should be enforced after the tax deductor has satisfied the officer incharge of TDS, The taxes due have been paid by the deductee assessee. However, this will not alter the liability to charge interest under 201C1A) of the IT Act till the date of payment of taxes by the deductee assessee or the liability for penalty under section 271C of the IT Act". However, this is the position of law insofar as, the provisions of section 201(1) and 201(1A) are concerned section 206C(6) and section 201(1) are not similarly worded. While section 201(1) treats an assessee AS who fails to deduct the tax at source or after deduction, does not pay the same to the Government as an assessee in default, section 206C(6) clearly provides that any person responsible for collecting the tax who falls to collect the tax in accordance to the provisions of the said section, shall, not withstanding such failure, be liable to pay the tax to the

credit of the Central Government. Thus, in case of failure to effect the TCS, becomes the liability of the collector of such tax and he is mandatorily required to pay the same to the Central Government as the word used in the said section is "shall". Under section 206C(6) we are basically concerned with the liability of the assessee-collector and not with the liability of the assessee from whom tax was liable to be collected. Further, in case of failure to deduct tax at source on certain payments, such payments become receipts in the hands of persons, whereas in the case of tax collection at source on certain sales, the same become an expenditure in the hands of the persons who purchase such goods. Therefore, the case law relating to section 201(1) wouldnot be applicable to the cases covered under section 206C(6) of the Act. In view of the above, this argument of the appellant is not accepted and this ground of appeal is dismissed".

In view of the foregoing discussion, we are also of the view that the ratio of decision of Hon'ble Supreme Court in the case of Hindustan Coco Cola Beverages (P) Ltd. (supra) cannot be applied to the facts of the instant case. Further the provisions of section 206(6) are very specific and we have already discussed about the effect of that section. Hence we are in agreement with the decision of Learned CIT(A) in holding that the assessee is liable to pay the demand raised under section 206(6) of the Act. Accordingly, we confirm his order on this issue.

Thus, in the above facts and circumstances of appellant case, the completion of assessment at demand of Rs. 35,100/- for the A.Y 2016-17 is hereby confirmed and grounds raised by appellant is dismissed.

Ground of appeal no. 1 & 7 are general in nature which do not require separate adjudication.

6. In the result, the appeal of the assessee is dismissed."

15. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

16. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements a/w. the various statutory enactments, viz (i). The Mines and Minerals (Development and Regulation), Act 1957 (Act No. 67 of 1957), (ii). Chhattisgarh Minor Minerals Rules, 2015 (Extract); and (iii). The Coal

Bearing Areas (Acquisition and Development) Act. 1957 (Extract) as had been pressed into service by the ld. AR.

17. Controversy involved in the present appeal lies in a narrow compass, viz. (i) that as to whether or not the assessee i.e. DMO was liable for collection of tax at source (TCS) u/s. 206C of. the Act on the amount of compounding fees received from persons involved in illegal mining and transportation of minerals; and (ii) that as to whether or not any obligation was cast upon the assessee to have collected tax at source (TCS) on the amount of contributions made by the lease holders i.e. lessees towards DMF and NMET.

18. Before dealing with the aforesaid issue, it would be relevant to cull out the provisions of Section 206C(1C) of the Act, which reads as under:

> "(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:
>
> TABLE
>
> | *Sl. No.* | *Nature of contract or licence or lease, etc.* | *Percentage* |
> |---|---|---|
> | *(1)* | *(2)* | *(3)* |

(*i*)	Parking lot	Two per cent
(*ii*)	Toll plaza	Two per cent
(*iii*)	**Mining and quarrying**	**Two per cent.**

Explanation 1.—For the purposes of this sub-section, "mining and quarrying" shall not include mining and quarrying of mineral oil.

Explanation 2.—For the purposes of *Explanation 1*, "mineral oil" includes petroleum and natural gas.

(1D) [***]

(1E) [***]

(1F) Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to one per cent of the sale consideration as income-tax.

[90]**[***(1G) Every person,—*

*(*a*) being an authorised dealer, who receives an amount, for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;*

*(*b*) being a seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package,*

shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, collect from the buyer, a sum equal to five per cent of such amount as income-tax:

Provided *that the authorised dealer shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year and is for a purpose other than purchase of overseas tour program package:*

Provided further *that the sum to be collected by an authorised dealer from the buyer shall be equal to five per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for a purpose other than purchase of overseas tour program package:*

Provided also *that the authorised dealer shall collect a sum equal to one half per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education."*

It transpires on a careful perusal of the aforesaid statutory provision that the same in clear and unequivocal terms contemplates that **every person**, **who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any** parking lot or toll plaza or **mine** or quarry, **to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such** parking lot or toll. plaza or **mine** or quarry **for the purpose of business shall**, **at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by issue of a cheque or draft or by any other mode**, **whichever is earlier**, **collect from the licensee or lessee of any such license, contract or lease of the nature specified, a sum equal to the percentage i.e. @ 2%**.

19. Being guided by the rule of strict literal interpretation and on carefully scrutinizing the aforesaid statutory provision, it transpires that an obligation to collect tax at source is not only to be restricted to cases where lease or license or contract had been entered into between the parties; but would clearly be applicable in a case where a person had even *otherwise* transferred any right or interest, either in whole or in part, inter alia, in a mine to another person for use of such mine for the purpose of business. Also, it would be relevant and pertinent to point out that any

person to whom either whole or any part of right or interest in a mine is transferred, whether granted on the basis of a lease or license or entering into contract or otherwise, are as per the legislative intent to be similarly construed and have been collectively referred to in the aforesaid statutory provision as "licensee or lessee".

20. On the basis of the aforesaid mandate of law, we are of the considered view that the obligation cast upon an assessee to collect tax at source (TCS) u/s 206C(1C) of the Act does not presupposes the existence of a lease or license or a contract, but would also be applicable to a case where a person had transferred any right or interest, either in whole or in part, inter alia, in a *mine* to another person. Claim of the Ld. AR that as there is no lease deed/license/contract executed between the assessee, i.e. DMO and the illegal miners/transporters of minerals, therefore, in absence of satisfaction of the said pre-condition no obligation for collection of tax at source U/s 206C(1C) of the Act could have been fastened upon the assessee w.r.t the amount of compounding fees received from the aforesaid persons is devoid and bereft of any force of law and cannot be accepted. As observed by us hereinabove, what is material for triggering the aforesaid statutory provision is as to whether or not the assessee i.e. DMO had transferred any right or interest either in whole or in part in a *mine*, to another person, for use of the same for the purpose of business. Albeit, the Ld. AR's claim that in absence of any legal transfer of any right or interest

by the assessee to the illegal miners/transporters of minerals the provisions of sub-section (1C) of Section 206C could not be invoked, at the first blush appeared to be very convincing, but on a careful perusal of the aforesaid statutory provision which states otherwise the said claim does not merit acceptance and is liable to be rejected.

21. We shall now deal with the issue that as to whether or not the assessee had transferred any right or interest either in whole or in part in the *mine* to the illegal miners/transporters of the minerals. As no definition of the term "transfer" can be traced in Section 206C of the Act, therefore, the general meaning provided in Section 2(47) of the Act would come into play. As per Section 2(47) of the Act the term "transfer" in relation to a "capital asset" as used in the Act, unless context otherwise requires, reads as under:

> "2(47) transfer", in relation to a capital asset, includes,-
>
> (i) the sale, exchange or relinquishment of the asset; or
>
> (ii) the extinguishment of any rights therein; or
>
> (iii) the compulsory acquisition thereof under any law; or
>
> (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock- in- trade of a business carried on by him, such conversion or treatment;] [6] or]
>
> (v) [7] any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 1 (4 of 1882); or

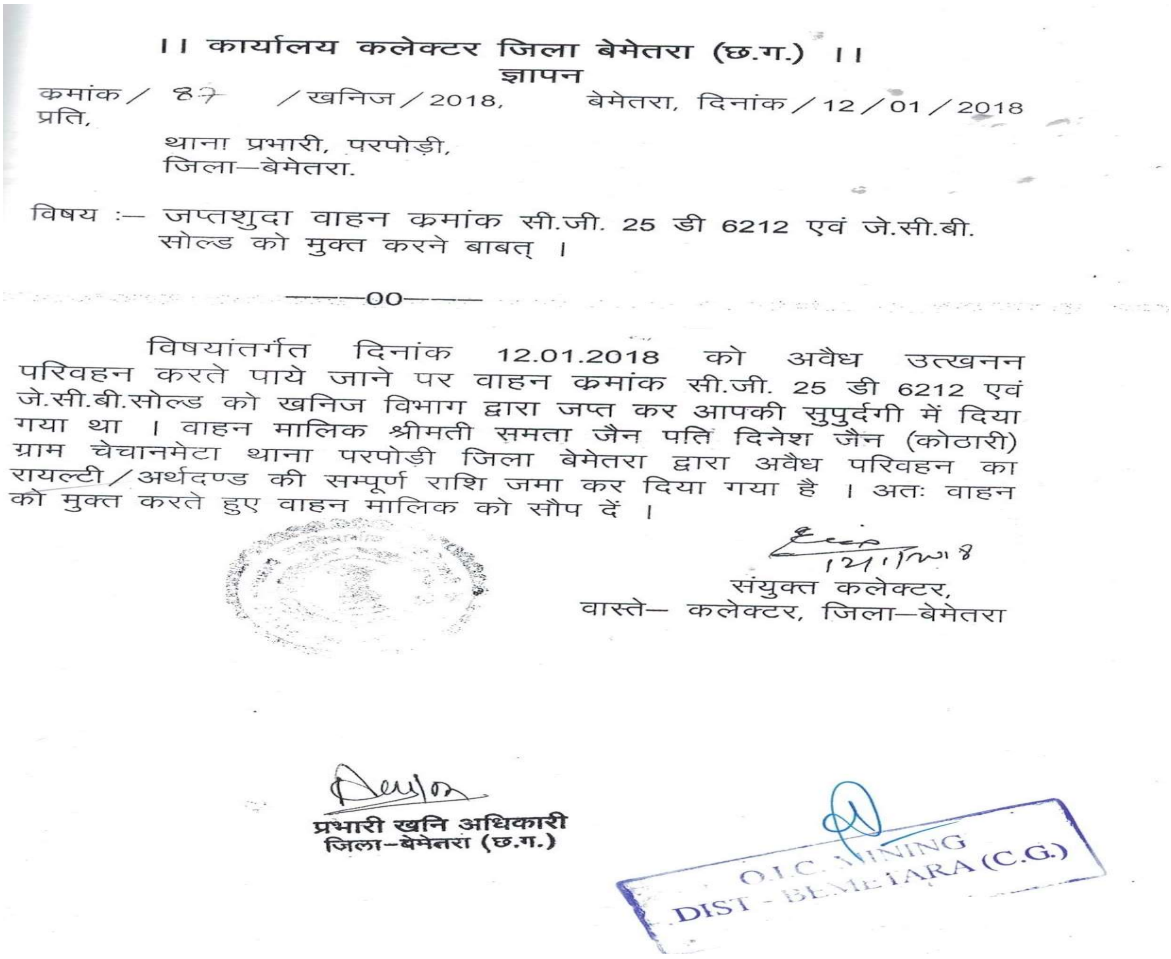
> (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co- operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.
>
> [Explanation.-1] For the purposes of sub- clauses (v) and (vi)," immovable property" shall have the same meaning as in clause (d) of section 269UA;]
>
> **[Explanation-2]- For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India]".**
>
> **(emphasis supplied by us)**

Before analysing the scope and gamut of the term "transfer" in so far the facts involved in the present case are concerned in the backdrop of its definition in sub-section (47) of Section 2 of the Act, it would be relevant to briefly cull out the nature of compounding fees collected by the assessee i.e. DMO from persons carrying out illegal mining /transportation of minerals.

22. As brought to our notice by the Ld. AR an Inspector of Mining Department on detection of illegal mining would as per sub-section (2) of Section 71 of the Chhattisgarh Miner Mineral Rules, 2015 (for short 'CMMR') prepare a report as regards the said activity, i.e. illegal extraction

or illegal transportation of minerals so carried out by the said person. Our attention was drawn by the Ld. AR to the CMMR a/w. copy of the report of the Mining Inspector, Bemetara wherein the latter had reported an instance of detection of illegal mining carried out by a person, viz. Shri Dinesh Kothari, Parpaudi, Page 24 of APB. It transpires on a careful perusal of the aforesaid report of the Mining Inspector that the same, inter alia, refers to the quantity of the minerals extracted by the illegal miners, viz. Shri Dinesh Kothari (supra) a/w. amount of royalty as regards the same i.e. Rs. 9,000/-. Further, as per the aforesaid report the illegal miner, viz. Shri Dinesh Kothari (supra) as per Rule 71(5) of CMMR was called upon to pay royalty of Rs. 90,000/- i.e. @ 10 times of the amount of royalty on the extraction, Page 24 of APB. Also, the Ld. AR had taken us through a proposal of the aforesaid illegal miner/transporter of the minerals, viz. Shri. Dinesh Kothari (supra) wherein he had sought for compounding of his aforesaid offence, Page 25 of APB. Further, the Ld. AR had taken us through an order of the Mining Inspector, Bemetara, wherein it was observed by him that the transport vehicles that were used by the illegal miner, viz. Shri Dinesh Kothari (supra) were seized and handed over to the police department, Page 26 of APB. Also, as observed by us hereinabove, the aforesaid illegal miner viz. Shri Dinesh Kothari (supra) had as per Section 71(5) of the CMMR, 2015, inter alia, proposed to deposit compounding fees of Rs.90,000/- (supra). Also the aforesaid person had

proposed that his vehicles JCB machine and hywa (CG 25 D 6212) that were seized and handed over to the police authorities may also be released on payment of an amount of Rs.6200/-, Page 26 of APB. We find on a perusal of the record that working of compounding charges for releasing the aforesaid seized vehicles against payment of Rs.6200/- (supra) was, inter alia, worked out by taking royalty on the quantity of mineral seized as a basis i.e. 5 times of the amount of royalty of the quantity of minerals that were seized from the said vehicle a/w. fine of Rs.5000/-, Page 33 of APB. The Ld. AR had also taken us through respective challans which were deposited by the aforesaid illegal miner/transporter of minerals towards compounding fees for carrying out the illegal mining/transportation of minerals i.e Rs.96,200/- [Rs.90,000/- (towards illegal mining) (+) Rs.6,200/- (towards transportation of minerals)], Page 38-39 of APB. Further, the Ld. AR had taken us through a letter dated 12.01.2018 that was issued by the Deputy Collector, District-Bemetara, i.e. a letter of the assessee addressed to the police officer, P.S.-Parpaudi, District-Bemetara wherein it was stated that as the illegal miner/transporter, viz. Shri Dinesh Kothari (supra) had deposited the amount of royalty/fine, therefore, his vehicles viz. Hywa (CG 25 D 6212) and JCB machine may be released and handed over to him, Page 40 of APB. As contents of the aforesaid letter would have a strong bearing on the adjudication of the issue in hand, therefore, the same is culled out as under:



।। कार्यालय कलेक्टर जिला बेमेतरा (छ.ग.) ।।
ज्ञापन

कमांक/ 8?/खनिज/2018, बेमेतरा, दिनांक/12/01/2018

प्रति,

थाना प्रभारी, परपोड़ी,
जिला–बेमेतरा.

विषय :– जप्तशुदा वाहन कमांक सी.जी. 25 डी 6212 एवं जे.सी.बी. सोल्ड को मुक्त करने बाबत् ।

———00———

विषयांतर्गत दिनांक 12.01.2018 को अवैध उत्खनन परिवहन करते पाये जाने पर वाहन कमांक सी.जी. 25 डी 6212 एवं जे.सी.बी.सोल्ड को खनिज विभाग द्वारा जप्त कर आपकी सुपुर्दगी में दिया गया था । वाहन मालिक श्रीमती समता जैन पति दिनेश जैन (कोठारी) ग्राम चेचानमेटा थाना परपोड़ी जिला बेमेतरा द्वारा अवैध परिवहन का रायल्टी/अर्थदण्ड की सम्पूर्ण राशि जमा कर दिया गया है । अतः वाहन को मुक्त करते हुए वाहन मालिक को सौप दें ।

12/1/2018

संयुक्त कलेक्टर,
वास्ते– कलेक्टर, जिला–बेमेतरा

प्रभारी खनि अधिकारी
जिला–बेमेतरा (छ.ग.)

O.I.C. MINING
DIST - BEMETARA (C.G.)

23. Referring to Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957, Page 55 of APB, it was submitted by the Ld. AR that the lease holders of land remained under a statutory obligation to pay royalty in respect of any minerals removed or consumed from the leased area at the rate that was for the time being specified in the "Second Schedule" in respect of those minerals. It was the claim of the Ld. AR that as the assessee i.e. DMO had neither granted any lease to the illegal miners/transporters of minerals nor they had any obligation to pay royalty

in respect of any minerals removed or consumed from the leased area at the specified rates contemplated in Section 9(2) of the Mines and Mineral (Development and Regulation) Act, 1957, therefore, the amount that was received towards compounding fees from the said illegal miners /transporters of minerals could by no means be placed at par as against royalty that was otherwise received as per the mandate of law from the lease holders.

24. Also the Ld. AR had drawn support from Section 4 of the Chhattisgarh Miner Mineral Rules, 2015, as per which, there was a clear prohibition on prospecting or carrying out quarry operations in absence of a prospecting license or quarry license or quarry permit. Also, it was submitted by him that Section 71 of the Chhattisgarh Miner Minerals Rules, 2015 provides for a penalty for unauthorized extraction and transportation of minerals. Further, it was stated by him that as per sub-section (5) of Section 71 of the Act the offence of unauthorized extraction and transportation of minerals could be compounded by certain specified authorities, either before or after initiation of prosecution on payment of market value of mineral so extracted or transported, and such fine may though extend to double the market value of minerals so extracted or transported, but in no case the same would be less than Rs.5000/- or 10 times of royalty of minerals so extracted, whichever was higher.

25. The Ld. AR on the basis of the aforesaid facts had tried to impress upon us that not only the assessee i.e. DMO had transferred any right in the mine to the illegal miners/transporters of minerals, but in fact as carrying out of any such unauthorized mining/transportation of minerals was an offence, therefore, the amount collected on compounding of the said offence cannot be construed as a royalty. To sum up, it was the claim of the Ld. AR that as the compounding fees received from illegal miners/transporters of minerals was not royalty, therefore, no obligation was cast upon the assessee to collect tax at source (TCS) on the said amounts u/s. 206C(1C) of the Act.

26. Considering the aforesaid multi-facet contentions of Shri G.S. Agrawal, Ld. AR, we shall now deal with the issue that as to whether or not any obligation was cast upon the assessee to collect tax at source (TCS) on the amounts that were received by it as compounding fees (as claimed by the assessee) from the illegal miners/transporters of minerals in the backdrop of the mandate of Section 206C(1C) of the Act r.w. Section 2(47) of the Act, i.e. definition of the term “transfer”.

27. At the very outset, it may be observed that what is relevant and determinative as regards the obligation of the assessee, i.e. DMO to collect tax at source (TCS) u/s. 206C(1C) of the Act, is as to whether any right or

interest, either in whole or in part in the *mine* was transferred to another person for use of the same for the purpose of business. Existence of a valid lease or license or contract is not a *sine qua non*, but rather on construing as per the principle of *noscitur a sociis* the term "... ***or otherwise***..." used by the legislature in all its wisdom in Section 206C(1C) of the Act, it can safely be concluded that even in absence of any lease or license or contract, if there is any transfer by the assessee of any such right or interest in the *mine*, then, the case of the assessee would clearly fall within the meaning of Sec. 206C(1C) of the Act.

28. Now this takes us to the scope and gamut of the term "transfer" in so far the facts involved in the case of the assessee are concerned. As observed by us hereinabove the "Explanation 2" to Section 2(47) of the Act, as had been made available on the statute vide the Finance Act, 2012 with retrospective effect from 01.04.1962 would be applicable to the case of the assessee for the year under consideration. As per the "Explanation 2" (supra) the term "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or **creating any interest in any asset in any manner whatsoever**, directly or indirectly, absolutely or conditionally, voluntarily **or involuntarily or otherwise**, by way of an agreement or otherwise. Now a bare perusal of the aforesaid meaning of the term "transfer" reveals that the same not only

takes within its sweep parting of any interest in an asset or creating any interest in any asset in any manner....voluntarily or involuntarily, but also dispenses with the existence of an agreement. In fact, the term "or otherwise" as used in the aforesaid statutory provision can also be traced in Section 206C(1C) of the Act.

29. On the basis of the aforesaid broad meaning of the term "transfer" as had been made available on the statute vide the Finance Act, 2012 w.r.e.f 01.04.1962, we shall now look into the aspect that as to whether or not the assessee i.e. DMO had transferred to the illegal miners/transporters of minerals any interest in the *mine*.

30. Although it is the claim of the Ld. AR that there is no transfer either of the asset i.e. land or any interest in the same by the assessee i.e. DMO in favour of the illegal miners/transporters of minerals, but a careful perusal of the manner of computing and receipt of compounding fees by the assessee from such illegal miners/transporters of minerals clearly militates against the said claim. As observed by us hereinabove the report of the Mining Officer, Bemetara w.r.t a person, viz. Shri. Dinesh Kothari (supra) who was found extracting and transporting minerals in contravention of the provisions of CMMR in itself reveals that the illegal miner/transporter of minerals was called upon by the assessee to pay 10 times of the amount of royalty in the form of compounding fees. In sum

and substance the illegal miner/transporter of minerals as per Rule 71(5) of the CMMR was required to make payment of market value of mineral so extracted or transported a/w such fine which may extend to double the market value of minerals so extracted or transported but the same in no case was to be less than Rs.5000/- or 10 times of royalty of minerals so extracted, whichever was higher. As per Rule 71(5) of the CMMR an amount i.e. 10 times of royalty of minerals so extracted is collected by the assessee from the illegal miners/transporters of minerals. Our observation is fortified by the aforesaid instance referred to by the Ld. AR wherein an amount of Rs.90,000/- i.e. 10 times of royalty of Rs.9000/- had been collected by the assessee from the illegal miner/transporter of minerals i.e. Shri Dinesh Kothari (supra), Page 24 of APB. Apart from that a reference to a letter dated 12.01.2018 of the Deputy Collector, District-Bemetara i.e. DMO which is addressed to the Police Officer, P.S.-District: Bemetara (as reproduced by us hereinabove), Page 40 of APB, the assessee had itself stated that as the royalty/fine for the illegal mining/transportation of minerals had been received from the illegal miners/transporters, viz. Shri Dinesh Kothari (supra), therefore, his vehicles may be released.

31. On a perusal of the aforesaid facts, we are of the considered view that the assessee by receiving the aforesaid amount i.e. 10 times of royalty from the illegal miners/transporters of minerals had, in turn, clearly

vested/parted with the interest and right in the mine in their favour, which the latter had undeniably used for the purpose of her business. Considering the fact that the orders w.r.t amounts collected by the assessee i.e. DMO from illegal miners/transporters of minerals in itself states that an amount i.e. 10 times of the royalty amount is to be recovered from the illegal miners/transporters, therefore, we are unable to comprehend that as to on what basis it is averred by the Ld. AR that the said amounts so received by the assessee would not fall within the realm of Section 206C(1C) of the Act. As the assessee in the case before us had not only received royalty from the illegal miners/transporters of minerals as it would have in the normal course received in case of a regular lease or license, but in fact was in receipt of 10 times of royalty amount from them, therefore, the contention of the Ld. AR that the assessee was not exigible for collection of tax at source (TCS) on the amounts received from the illegal miners/transporters of minerals being devoid and bereft of any substance is liable to be rejected. We, thus, in terms of our aforesaid observations, finding no infirmity in the view taken by the lower authorities that the assessee who was liable to collect tax at source (TCS) on the amounts received from illegal miners/transporters, having failed to do so, was to be treated as 'assessee-in-default' u/s. 206C(6) of the Act, uphold the same. Thus, the **Ground of appeal No.1** raised by the assessee is dismissed in terms of our aforesaid observations.

32. Apropos the observation of the A.O that the assessee was obligated to have collected tax at source (TCS) on the amounts deposited by the lease holders towards DMF, it would be relevant to refer to Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 which reads as under:

> "[9B. District Mineral Foundation.—(1) In any district affected by mining related operations, the State Government shall, by notification, establish a as a non-profit body, to be called the District Mineral Foundation.
>
> (2) The object of the District Mineral Foundation shall be to work for interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.
>
> (3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government:
>
> [Provided that the Central Government may give directions regard-_ composition and utilisation of fund by the District Mineral Foundation.]
>
> (4) The State Government while making rules under sub-sections (2) and shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (40 of 1996) and the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007).
>
> **(5) The holder of a mining lease or a [composite licence] granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015[other than those covered under the provisions of sub-section (2) of Section 10A], shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operation are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second**

Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 and those covered under the provisions of sub-section (2) of Section 10A], shall, in addition to the royalty, pay to the District Mineral Foundation of thedistrict in which the mining operations arecarried on,an amount not exceedingtheroyalty paid in terms of the Second Schedule in such manner and subject to the mining lease and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government."

(emphasis supplied by us)

33. On a perusal of the sub-section (5) and (6) of Section 9B, it transpires that the leaseholders shall in addition to the royalty pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the "Second Schedule" not exceeding one third of such royalty, as may be prescribed by the Central Government. It transpires on a careful perusal of the aforesaid statutory provision that an obligation is cast upon the lease holders to pay an amount to DMF, which, though is to be computed at a specified percentage of the amount of royalty as may be prescribed by the Central Government. Nothing is discernible from a bare reading of the aforesaid statutory provision that the lease holders were required to make payment of the aforesaid amounts to the assessee, i.e. DMO; nor there is anything which would reveal that it was the assessee i.e. DMO who had deposited the aforesaid amounts with the DMF. In sum and substance, we are of the considered view that now

when the lease holders had made the payments towards DMF, therefore, in absence of satisfaction of the pre-condition set out in Section 206C(1C) of the Act, i.e. *"…shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee……*, an obligation to collect tax at source would stand triggered either at the stage of debiting of the amount payable to the account of the licensee or lessee; or at the time of receipt of such amount by the issue of a cheque or draft or by any other mode, whichever is earlier. To sum up, now when the assessee i.e. DMO had neither debited any amount of lessees contributions towards DMF to the account of the lease holders; nor at any stage received any amount of contribution towards DMF from the lease holders, therefore, on the said count itself it could not have been saddled with any obligation for collecting any tax at source on the said amounts. Admittedly, a pit-pass would be issued by the assessee to the lease holders only after he would produce evidence of having paid the amount of royalty a/w. payments towards DMF/NMET, but on the basis of the said fact on a standalone basis *de-hors* satisfaction of the aforesaid requisite conditions contemplated in sub-section (1C) of Section 206C of the Act, no obligation could have been saddled upon the

assessee to collect tax at source (TCS) on the amount of DMF paid by the lease holders.

34. Although we are principally clear that as per Sec. 9B of the Mines and Minerals (Development and Regulation) Act, 1957 the lease holders remained under an obligation to pay the specified amount of DMF, and no involvement of the assessee can be traced in the scheme of the MMDR Act, but we are afraid that the said factual position cannot be gathered on a perusal of the accounts of the assessee as had been placed before us. We, say so, for the reason that a perusal of the "Receipts and Payments account" of the assessee i.e. DMO for the year ending 31.03.2017 reveals reference of "District Mineral Foundation Trust" on the same, Page 38 to 41 of APB. Also, a similar position prevails in the audited accounts of the assessee for the immediately succeeding year ending 31.03.2018. Apart from that, we find that in the accounts of the assessee i.e. DMO for the immediately succeeding year i.e. F.Y.2017-18 the payments made by the lease holders towards "Contribution funds" are reflected. As the accounts of the assessee *prima-facie* militates against the aforesaid observations arrived at by us by looking into the provisions of Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957, therefore, in our considered view the matter in all fairness requires to be revisited by the A.O. The A.O is directed to verify as to whether the assessee was in receipt

of contributions towards DMF from the leaseholders; or as claimed by the assessee the amounts were paid by the respective lease holders directly to the DMF. In case the claim of the assessee i.e. the lease holders were directly making payments to DMF is found to be in order, then as observed by us hereinabove no obligation would be cast upon the assessee to collect tax at source (TCS) on the contributions made by the lease holders to DMF. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

35. Apropos the observation of the A.O that the assessee was obligated to have collected tax at source (TCS) on the contributions made by the lease holders towards NMET, it would be relevant to refer to Section 9C of the Mines and Minerals (Development and Regulation) Act, 1957 which reads as under:

> "9C. National Mineral Exploration Trust. (1) The central Government shall by notification establish a trust, as a [non-profit autonomous body], to be called the National Mineral Exploration Trust.
>
> (2) The object of the trust shall be to use the funds accrued to the Trust for the purpose of regional and detailed exploration in such manner as may be prescribed by the central government.
>
> (3) The composition and functions of the Trust shall be such as may be prescribed by the central government.
>
> (4) The holder of a mining lease or a [composite license] shall pay to the Trust, a sum equivalent to two per cent of the royalty paid in terms of the second schedule, in such manner as may be prescribed by the central government."

36. It transpires on a perusal of sub-section (4) of Section 9C, that the holder of a mining lease or a [composite license] shall pay to the Trust, a sum equivalent to two per cent of the royalty paid in terms of the "Second Schedule", in such manner as may be prescribed by the Central Government. Nothing is discernible from a bare reading of the aforesaid statutory provision that the lease holder was required to make payment of the aforesaid amount to the assessee i.e. DMO; nor there is anything which would reveal that it was the assessee i.e. DMO who had deposited the aforesaid amounts with the NMET. In sum and substance, we are of the considered view that now when the leaseholder had made the payment towards NMET, therefore, in absence of satisfaction of the pre-condition set out in Section 206C(1C) of the Act, i.e. *"…shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee……*, an obligation to collect tax at source would stand triggered either at the stage of debiting of the amount payable to the account of the licensee or lessee; or at the time of receipt of such amount by the issue of a cheque or draft or by any other mode, whichever is earlier. To sum up, now when the assessee i.e. DMO had neither debited the amount of lessee's contribution towards NMET to the account of the lease holders; nor at any stage received any amount of

contribution towards NMET from the lease holders, therefore, on the said count itself it could not have been saddled with any obligation for collecting any tax at source on the said amount. Admittedly, a pit-pass would be issued by the assessee to the lease holder only after he produced evidence of having paid the amount of royalty a/w. payments towards DMF/NMET, but on the said standalone fact *de-hors* satisfaction of the requisite conditions contemplated in sub-section (1C) of Section 206C no obligation could have been saddled upon the assessee to collect tax at source (TCS) on the amount of NMET paid by the lease holders.

37. Although we are principally clear that as per Sec. 9C of the Mines and Minerals (Development and Regulation) Act, 1957 the lease holders remained under an obligation to pay the specified amount of the NMET, and no involvement of the assessee can be traced in the scheme of the MMDR Act, but we are afraid that the said factual position cannot be gathered on a perusal of the accounts of the assessee as had been placed before us. We, say so, for the reason that a perusal of the "Receipts and Payments account" of the assessee i.e. DMO for the year ending 31.03.2017 reveals reference of "District Mineral Foundation Trust" on the same, Page 38 to 41 of APB. Also, a similar position prevails in the audited accounts of the assessee for the immediately succeeding year ending 31.03.2018. Apart from that, we find that in the accounts of the assessee

i.e. DMO for the immediately succeeding year i.e. F.Y.2017-18 the payments made by the lease holders towards "Contribution funds" are therein reflected. As the accounts of the assessee prim-facie militates against the aforesaid observations arrived at by us by looking into the provisions of Section 9C of the Mines and Minerals (Development and Regulation) Act, 1957, therefore, in our considered view the matter in all fairness requires to be restored to the file of the A.O. The A.O is directed to verify as to whether the assessee was in receipt of contributions towards NMET from the lease holders; or as claimed by the assessee the amounts were paid by the respective lease holders directly to NMET. In case the claim of the assessee, that the lease holders were directly making payments to NMET is found to be in order, then as observed by us hereinabove, no obligation would be cast upon the assessee to collect tax at source (TCS) on the amounts paid by the lease holders to NMET. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

38. In the result, appeal of the assessee in ITA No. 11/RPR/2023 for A.Y.2016-17 is partly allowed for statistical purposes.

ITA Nos. 8 to 10, 12 to 14/RPR/2023
ITA Nos. 120 to126/RPR/2023
ITA Nos. 64 to 69/RPR/2023
ITA Nos. 243 to 245/RPR/2022
ITA Nos. 207 to 214/RPR/2022

ITA Nos. 158 to 164/RPR/2023

39. As the facts and issues involved in the captioned appeals remains the same as were there before us in ITA No.11/RPR/2023 for A.Y.2016-17, therefore, our findings recorded while disposing off the appeal in ITA No.11/RPR/2023 for A.Y. 2016-17 shall *mutatis-mutandis* apply for disposing off the captioned appeals, i.e. ITA Nos. 8 to 10, 12 to 14/RPR/2023, ITA Nos. 120 to126/RPR/2023, ITA Nos. 64 to 69/RPR/2023, ITA Nos. 243 to 245/RPR/2022, ITA Nos. 207 to 214/RPR/2022, ITA Nos. 158 to 164/RPR/2023. Accordingly, we dispose off the captioned appeals on the same terms as were recorded by us while adjudicating the respective issues in ITA No.11/RPR/2023 for A.Y.2016-17.

40. Resultantly, the appeals of the respective assessee's in ITA Nos. 8 to 10, 12 to 14/RPR/2023, ITA Nos. 120 to126/RPR/2023, ITA Nos. 64 to 69/RPR/2023, ITA Nos. 243 to 245/RPR/2022, ITA Nos. 207 to 214/RPR/2022, ITA Nos. 158 to 164/RPR/2023 are partly allowed for statistical purposes in terms of our aforesaid observations.

41. In the combined result, all the appeals of the captioned assessees are partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 21st day of July, 2023.

Sd/-	**Sd/-**
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; **दिनांक** / Dated : 21st July, 2023
***SB

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

1. **अपीलार्थी** / The Appellant.
2. **प्रत्यर्थी** / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. **विभागीय प्रतिनिधि**, **आयकर अपीलीय अधिकरण**, **रायपुर बेंच**, **रायपुर**/ DR, ITAT, Raipur Bench, Raipur.
6. **गार्ड फ़ाइल** / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, **रायपुर** / ITAT, Raipur.