(2019) 05 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (T) No. 66 Of 2018

Injland Power Limited — APPELLANT

Vs

Central Coalfields Limited And Ors — RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Income Tax Act, 1961 — Section 206C, 206C(1A)
Income Tax Rules, 1962 — Rule 37C

Citation : (2019) 05 JH CK 0034

Hon'ble Judges : Aniruddha Bose, CJ;Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Rahul Lamba, A.K. Das

Final Decision : Disposed Off

Judgement

1. We are of the opinion that the Income Tax authorities are necessary parties to this writ petition.

2. Mr. Lamba, learned Advocate appears on behalf of Principal Chief Commissioner of Income Tax (TDS Circle), Central Revenue Building, 5A, Main Road, Ranchi, P.O. G.P.O., P.S. Kotwali, Ranchi and accepts service of the writ petition on his behalf.

3. The cause title of the writ petition may be amended here and now by the learned counsel for the writ petition for the purpose.

4. In this writ petition, the petitioner has challenged legality of a notice issued by the Central Coalfields Limited seeking to implement the provisions of Section 206C of the Income Tax Act, 1961 read with Rule 37C of the Income Tax Rules, 1962. The subject relates to collection of tax at source. The writ petitioner is a bulk purchaser of coal and claims to be the end user of such coal itself for its own power generating unit.

5. Under the provisions of Sub-section (1A) of Section 206C of the 1961 Act, a

consumer of coal for self-use is exempted from making payment of tax at source on compliance of certain conditions. In the notice/circular dated 14th December, 2017, copy of which has been made annexure to the writ petition, the Central Coalfields Limited, who under normal circumstances would be the collector of tax at source, has made it mandatory for all consumers to deposit such tax at source and sought recovery of earlier deposit which remained uncollected. The writ petitioner seeks quashing of this notice.

6. This Court had the occasion to examine this very question in W.P.(C) No.46 of 2018 (M/s. Atibir Industries Co. Ltd. Vs. The Central Coalfields Limited and others) decided on 3rd December, 2018. Along with that writ petition, several other writ petitions having near identical issues were also decided. In that judgment, this Court had held and directed:-

"19. We accordingly hold, while disposing of these writ petitions:-

(a) The two notices issued by the C.C.L. bearing no.CCL/M&S/CSC/2017-18/TCS/13227-34dated2nd November, 2017 and CCL/M&S/CSC/2017-18/15377-80 dated 14th December, 2017 would not ipso facto be applicable to all the writ petitioners in the event they comply with the provisions of Sub-section (1A) of Section 206C of the Income Tax Act, 1961 read with Rule 37C thereof by furnishing the declaration in Form 27C. In such a situation, the buyers shall be entitled to the benefits contemplated in the provision of Section 206C (1A) of the Act.

(b) In the event such forms are not furnished as per the statutory requirement, it shall be open to C.C.L. to insist on TCS as per the statutory provisions.

(c) If C.C.L. has any doubt that the coal is not being used for self-consumption by any of the buyers claiming relaxation in terms of Section 206C (1A) of the Act, it would be open to C.C.L. to take up the matter with individual buyers and insist on TCS if circumstances justify such insistence. But to deny the benefits contemplated in Section 206C(1A) of the Act, so far as the individual writ petitioners are concerned, it would have to be examined first if as buyers or any of them have furnished declarations or verifications under Form 27C or not. If declarations are filed and there is no material to conclude that such declaration is false, then the provisions of Section 206C (1A) would be applicable. On the other hand, if C.C.L. finds that any misdeclaration is made by any individual buyer, then it shall be open to them to take such steps as may be permissible in law.

(d) So far as the sum collected in pursuance of the two notices issued by the Central Coalfields Limited as TCS is concerned, in the event it is found that in individual cases the buyers were not required to deposit such sum it shall be adjusted by the Income Tax authorities against future payment of income tax by such buyers. If tax has been deposited under the TCS scheme by a coal buyer who otherwise does not fulfil the requirement of waiver or relaxation from the TCS scheme, then the amount so deposited shall be dealt with as payment of income tax in accordance with law. In those cases, the coal company shall issue

TCS certificate in terms of the provisions of Income Tax Act. Such certificates shall be issued on application made by the individual buyers within a period of eight weeks from the date of making of the application.

(e) If there is finding to the effect that there has been misdeclaration by any of the writ petitioners, then it shall be open to the Income Tax authorities as also C.C.L. to take steps against them as may be permissible under the law. It shall be open to Income Tax authorities as also C.C.L. to make enquiries in respect of individual writ petitioners to ascertain if there has been any wrong or misdeclartion on their part."

7. In the present writ petition, the same issues are involved. Mr. Lamba appearing for the tax authorities has not pressed any other point. The issues involved in this writ petition, thus, are squarely covered and no more res integra. We accordingly dispose of this writ petition in the same terms as in the case of M/s. Atibir Industries Co. Ltd. (supra).

8. There shall be no order as to costs.

