



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Reserved on : 11.11.2024
Date of Pronouncement : 20.11.2024

1. ITA No. 408 of 2019 (O&M)

Punjab Infrastructure Development Board, Chandigarh ... Appellant
versus
Commissioner of Income Tax (TDS), Chandigarh ... Respondent

2. ITA No. 410 of 2019 (O&M)

Punjab Infrastructure Development Board, Chandigarh ... Appellant
versus
Commissioner of Income Tax (TDS), Chandigarh ... Respondent

3. ITA No. 411 of 2019 (O&M)

Punjab Infrastructure Development Board, Chandigarh ... Appellant
versus
Commissioner of Income Tax (TDS), Chandigarh ... Respondent

4. ITA No. 412 of 2019 (O&M)

Punjab Infrastructure Development Board, Chandigarh ... Appellant
versus
Commissioner of Income Tax (TDS), Chandigarh ... Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Deepak Aggarwal, Advocate, for the appellant.

Mr. Amanpreet Singh, Senior Standing counsel for Income Tax
Department.

SANJEEV PRAKASH SHARMA, J.

These are four appeals which have been taken up together for adjudication. The appellant - Punjab Infrastructure Development Board is a statutory body enacted under Section 18 of the Punjab Infrastructure Development & Regulation Act, 2002. These appeals under Section 260A of the Income Tax Act, 1961 (for short, 'the Act'), have been filed by the appellant against the order passed by the Income Tax Appellate Tribunal,

VARINDER SINGH
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I attest to the accuracy and
authenticity of this
order/judgment



Chandigarh Bench, Chandigarh (hereinafter to be referred as ‘the Tribunal’), on 29.03.2019 for the assessment years 2008-09, 2009-10, 2010-2011 and 2011-12.

2. However, the facts for the purpose of adjudication of the case are being taken from ITA No. 408 of 2019, which is for the assessment year 2010-2011. The assessing officer has treated the appellant as assessee in default and interest under Section 206C (7) of the Act was charged and a demand was raised vide order dated 23.03.2012. The appeal preferred by the appellant was dismissed taking into consideration the provisions of Section 206C (7) of the Act, which obliges the person, who is responsible for collecting tax and failed to pay it, would be liable to pay simple interest @ 1%, on part thereof on the amount of such tax from the date on which such tax was collectable upto the date on which the tax was actually paid. The appellant was alleged to have received a sum of ₹ 15,19,41,000/- on account of toll fee. As per Section 206C (7) of the Act, the appellant was required to collect tax @ 2%. The tax to be collected at source (TCS), having not been collected and deposited, the appellate authority held the assessing officer to be right in treating the person responsible as assessee in default and the demand was confirmed.

3. It is stated that thereafter the assessing officer issued show cause notice dated 22.03.2013 and imposed following penalties under Section 271CA of the Act, which are as under:-

<i>Financial Year</i>	<i>Amount of Toll Fee Receipt</i>	<i>Tax to be collected u/s 206 C</i>	<i>Penalty imposable u/s 271CA</i>
2007-08	6,93,00,000	15,66,180	15,66,180
2008-09	9,68,91,319	20,444,60	20,444,60
2009-10	18,40,41,000	38,83,265	38,83,265
2010-11	1,42,05,00,00	4,77,255	4,77,255
		79,71,160	79,71,160



4. The order was passed on 22.03.2013 imposing a total penalty of ₹ 79,71,160/-. The appeal preferred before the CIT (A) was dismissed vide order dated 13.06.2014, whereafter the appellant preferred appeal before the Tribunal. It was submitted that the appellant was not required to collect TCS as already held by the Tribunal in its earlier reference order. It was submitted that as the appellant was not required to collect TCS, the penalty under Section 271CA imposed on failure to collect tax at source could not have been levied. The appeal of the appellant was allowed and the penalty levied by the assessing officer and confirmed by the CIT (A) was set aside.

5. The Tribunal held that the appellant assessee was not required to collect tax at source and it had not committed any default under the provisions of Chapter XVIIBB of the Act. The Tribunal also proceeded to hold that the penalty as imposed under Section 271CA of the Act could also, therefore, not be levied. The Revenue preferred an appeal before this Court bearing ITA No. 65 of 2016 **The Commissioner of Income Tax (TDS)-I, Chandigarh vs M/s Punjab Infrastructure Dev. Board** on the issue relating to levy of penalty under Section 271CA of the Act and interest under Section 206C (7) of the Act. The High Court vide its judgment dated 09.05.2017 remanded the case to the Tribunal as in the earlier order passed, the Tribunal had relied upon its earlier decision relating to the assessment years 2008-09, 2009-10, 2010-2011 and 2011-2012. The High Court had remanded the said cases earlier also vide its judgment dated 20.12.2016. When the appeal again came up for hearing before the Tribunal, it reached to the conclusion that the appellant Board had collected the toll fee/ concession fee as a grantor of the concession on principal to principal basis and taking into the actual activity performed by the appellant board and irrespective of the wordings of the



concession agreement, it held the appellant Board to be liable to pay interest as per Section 206C(7) of the Act and penalty under the provisions of Section 271CA of the Act and accordingly decided against the assessee board and in favour of the respondent-revenue. Feeling aggrieved, the present appeals have been filed.

6. Learned counsel for the appellant has relied on the Finance Bill, 2012, whereby the provisions were inserted under Sections 201, 206C and 40 (a)(ia) of the Act and provisions of rationalization of tax at source and tax collection at source were made. It was submitted that the person shall be deemed to be assessee in default in respect of non/short deduction of tax only in cases where the payee failed to pay the tax directly. A deductor cannot be treated as assessee in default in non/ short deduction of tax if the payee has discharged his tax liability. The payer would be liable to pay interest under Section 201 (1A) of the Act on the account of non/short deduction of tax from the date on which such tax was deductible to the date on which the payee has discharged his tax liability directly. There was no clarity and Section 201 of the Act was amended and interest under Section 201 (1A)(i) of the Act shall be payable from the date on which such tax was deductible to the date of furnishing of return of the income by such resident payee. Similarly amendments were also made to Section 206C of the Act relating to TCS for clarifying the deemed date of discharge of tax liability. These amendments were brought into force with effect from 2012. Learned counsel, therefore, submitted that the appellant had reasonable cause for not collecting TCS under Section 206C (ic) of the Act. The penalty under Section 271CA of the Act was unwarranted.



7. Learned counsel for the appellant, thus, submitted that the learned Tribunal was not justified in summarily dismissing the appeals of the appellant. More so, as there was no notice under Section 271CA of the Act and the penalty ought to have been deleted.

8. Learned counsel for the respondent, however, supports the orders passed by the Tribunal. It is stated that interest as per the provisions of Section 206C(7) of the Act have been deposited.

9. We have considered the submissions.

10. We find that the appellant is just a nodal agency as conforming party. The agreement has been entered between the Government of Punjab and the Concessionaire. The Tribunal has erroneously held that the agreement is just a paper document and the appellant board itself would be acting as a guarantor. Taking into consideration, the penalty was imposed. However, we find that the document which has been executed between the Government of Punjab and the Concessionaire could not have been ignored nor its nature could be changed by the Tribunal. If the appellant Board is collecting the toll fee, concession fee, the same would be on behalf of the Government of Punjab. Usage of such an amount to certain extent by the Board, would not mean that the Board is liable for the same and for the purpose of depositing the TCS. The findings arrived at by the Tribunal with regard to imposition of penalty under Section 271CA of the Act are, therefore, found to be without any basis and are set aside.

11. We find that the issue regarding Section 271C of the Act has been considered by the Supreme Court in **Commissioner of Income Tax, New Delhi vs Eli Lilly and Company (India) Private Limited** (2009) 15 SCC 1, wherein it was held as under:-



“93. Section 271-C inter alia states that if any person fails to deduct the whole or any part of the tax as required by the provisions of Chapter XVII-B then such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct. In these cases we are concerned with Section 271-C(1)(a). Thus Section 271-C (1)(a) makes it clear that the penalty leviable shall be equal to the amount of tax which such person failed to deduct. We cannot hold this provision to be mandatory or a compensatory or automatic because under Section 273-B Parliament has enacted that penalty shall not be imposed in cases falling thereunder. Section 271-C falls in the category of such cases.

94. Section 273-B states that notwithstanding anything contained in Section 271-C, no penalty shall be imposed on the person or the assesses for failure to deduct tax at source if such person or the assessee proves that there was a reasonable cause for the said failure. Therefore, the liability to levy of penalty can be fastened only on the person who does not have good d sufficient reason for not deducting tax at source. Only those persons will se liable to penalty who do not have good and sufficient reason for sot deducting the tax. The burden, of course, is on the person to prove such good and sufficient reason.”

We find that in the present case too deduction of tax at source was on bonafide reasons and, therefore, imposition of penalty was wholly uncalled for.

12. Accordingly, penalties imposed under Section 271CA of the Act amounting to ₹ 15,66,180 for the financial year 2007-08, ₹ 20,44,460/- for the financial year 2008-09, ₹ 38,83,265/- for the financial year 2009-10, and ₹ 4,77,255/- for the financial year 2010-11 are quashed and set aside.



- 13. All the appeals are accordingly allowed.
- 14. All pending applications stand disposed of.
- 15. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

20.11.2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No