

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 485 of 2015

Date of Decision: 16.3.2016

The Commissioner of Income Tax (TDS)-I, Chandigarh
....Appellant.

Versus

Canara Bank, Sector 17-C, Chandigarh
...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Denesh Goyal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 15.4.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1128/CHD/2014, for the assessment year 2012-13, claiming the following substantial questions of law:-

Whether the ITAT was right in law in deleting the demand created u/s 201(1) & 201(1A) in respect of Punjab Infrastructure Development Board, treating the assessee in default for not deducting the tax at

source, as compulsory required u/s 194A of the Act, whereas no automatic exemption is available, even if the assessee is exempted u/s 10(23C)(iv) of the Act?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. A TDS Inspection/ Survey under Section 133A of the Act was carried out at the business premises of the assessee on 14.5.2013. During the course of said survey, it was noticed that the assessee had made payment of interest without deduction of tax at source to the following persons:-

- (i) Director, PEC University of Technology, Chandigarh (Salary Account);
- (ii) Director, PEC University of Technology (PF Trust Fund);
- (iii) PEC University of Technology (Pension Fund Trust); and
- (iv) Punjab Infrastructure Development Board.

3. The Assessing Officer questioned the assessee for non-deduction of tax on interest payments, who produced lower deduction certificate for the financial year 2012-13 in respect of some of the persons but failed to produce the same for the financial year 2011-12 being not traceable. As the lower deduction of tax certificate was not produced by the assessee, the Assessing Officer held the Person Responsible (PR) as 'assessee in default' and created demand of ₹ 74,03,620/- under Sections 201(1) and 201(1A) of the Act for non-deduction of tax at source on total interest payment of ₹ 6,01,92,037/-. Further, the assessee had also not deducted tax at source on payments made to three individuals (NNND Agents) hired by the bank for daily

collection purposes in respect of pigmy deposits. The Assessing Officer treated the payment made to the three individuals as commission under Section 194H of the Act and by holding the PR as 'assessee in default' for non-deduction of tax at source created the demand of ₹ 98,944/- under Section 201(1)/201(1A) of the Act. The Assessing Officer vide order dated 28.2.2014 (Annexure A-1) created a total demand of ₹ 75,02,564/- for non-deduction of tax at source. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Chandigarh [for brevity "the CIT(A)"]. The CIT(A) vide order dated 31.10.2014 (Annexure A-2) partly allowed the appeal of the assessee and deleted the demand. Against the order, Annexure A-2, the assessee as well as revenue filed appeals before the Tribunal who vide order dated 15.4.2015 (Annexure A-3) upheld the order of the CIT(A) and dismissed both the appeals. Hence, the present appeal.

3. Learned counsel for the appellant-revenue submitted that the assessee was required to deduct TDS under Section 194A of the Act and having failed to do so, was liable for additional demand under Sections 201(1) and 201(1A) of the Act.

4. We have heard learned counsel for the revenue and are not impressed with the argument raised by him.

5. The CIT(A) has noticed that the assessee had made payments of interest to the following persons without deduction of tax at source:-

- (i) Director, PEC University of Technology, Chandigarh (Salary Account).
- (ii) Director, PEC University of Technology (PF Trust Fund).

(iii) PEC University of Technology (Pension Fund Trust).

(iv) Punjab Infrastructure Development Board.

6. In the case of entity at Sr. No.(i), the assessee was not liable to deduct TDS as the income of the recipient was exempt under Section 10(23)(iiiab) of the Act. As regards Sr. No. (ii), the fund being recognized by the Commissioner of Income Tax, Chandigarh whereas the income of organization at Sr. No. (iv), was exempt under Section 10 (23C)(iv) of the Act, thus, no TDS was required to be deducted by the assessee. Further, the tax was required to be deducted in respect of three individuals NNND Agents, hired by the banks for daily collection purpose qua pigmy deposits by treating the payment as 'salary' in view of letter dated 12.12.2007 issued by the Under Secretary (ITB). Since the person at Sr. No. (iii), i.e. PEC University of Technology (Pension Fund Trust) was not exempt from tax under Section 10(23AAA) of the Act as on date, the tax was required to be deducted on interest paid to it. Accordingly, the CIT(A) treating the assessee in default in respect of payment made to the person at Sr. No. (iii) confirmed the demand of ₹ 12,56,023/- created under Section 201(1)/(1A) of the Act and deleted the rest of the demand of ₹ 62,46,541/-. The relevant findings recorded by the CIT(A) read thus:-

“5. I have considered facts of the case. As per the documents filed by the appellant, tax was not required to be deducted at source on interest paid to the following:-

(i) PEC University of Technology, Chandigarh (Salary Account), since its income is exempt u/s 10

(23C)(iiiab) of the Act.

(ii) PEC University of Technology (PF Trust Fund), since the fund is recognized by the Commissioner of Income Tax, Chandigarh.

(iii) Punjab Infrastructure Development Board, since its income is exempt u/s 10(23C)(iv) of the Act.

5.1. Tax was required to be deducted by treating the payment as 'salary' in respect of three individuals NNND Agents, hired by banks for daily collection purpose in respect of Pigmy deposits, in view of the letter dated 12.12.2007, issued by Under Secretary (ITB) from F. No. 275/75/2007-ITB. The Assessing Officer has wrongly treated the payment made of these individuals as commission u/s 194H of the Act.”

On appeal the said findings were affirmed by the Tribunal.

7. The CIT(A) and the Tribunal on appreciation of material on record have concurrently recorded that if an organization is exempted from payment of tax there was no need for deduction of tax at source by the assessee. Learned counsel for the revenue was not able to demonstrate that the approach of the CIT(A) and the Tribunal was erroneous or perverse or that the findings of fact recorded were based on misreading or misappreciation of evidence on record. The view of the CIT(A) and the Tribunal is in conformity with the decision of the Apex Court in **M/s Hindustan Coca Cola Beverage v. Commissioner of Income Tax, (2007) 293 ITR 226 (SC)**, where it has been held as under:-

“10. Be that as it may, the circular No. 275/201/95-IT

(B) dated 29.1.1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy. The circular declares “no demand visualized under Section 201(1) of the Income-tax Act 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) of the Act till the date of payment of taxes by the deductee-assessee or the liability for penalty under Section 271C of the Income-tax Act.”

8. In view of the above, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 16, 2016
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(RAJ RAHUL GARG)
JUDGE