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

(1) **ITA No.64 of 2016**

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

M/s Punjab Infrastructure Dev. Board, Chandigarh
....Respondent

(2) **ITA No.68 of 2016**

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

M/s Punjab Infrastructure Dev. Board, Chandigarh
....Respondent

(3) **ITA No.100 of 2016**

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

M/s Punjab Infrastructure Dev. Board, Chandigarh
....Respondent

Date of decision: 20.12.2016

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL**

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Present:- Mr. Denesh Goyal, Senior Standing Counsel
for the appellant(s).

Mr. Deepak Aggarwal, Advocate
for the respondent(s).

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S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

These appeals raise a common question of law and are, therefore, disposed of by a common order and judgment.

The appeals are filed against the order of the Tribunal allowing the respondents/assessees' appeal against the order of the CIT (Appeals). The appeals pertain to the Assessment Years 2008-09 to 2010-11.

The appeals are admitted on the following substantial question of law:-

> "Whether the Tribunal was right in deleting the interest charge under Section 206C(7) of the Income Tax Act, 1961?"

The contract in respect whereof the appellant/revenue contends that the provisions of Section 206C(1C) are applicable is not furnished. However, for the purpose of this judgment is not necessary to refer to the contract in detail, as we have proceeded on the basis that Section 206C(1C) applies to the contract. Suffice it to note for the purpose of the appeals that a concessionaire agreement was entered into between the assessee and the concessionaire under which the concessionaire was entitled to collect toll. Consideration is payable by the concessionaire to the assessee in respect thereof. The assessee contends that it is only a nodal agency and had entered into the contract as such for and on behalf of the Government of Punjab. It is also contended that the concessionaire was responsible for the overall operation and maintenance of the project facility and was not merely granted usage of the toll plaza. The assessee, therefore, contends that the provisions of Section 206C(1C) are not attracted so far as it is concerned. In the alternative, the assessee contended that even assuming that the provisions of Section 206C(1C) apply to it, it is not liable under sub-section (7) on account of the concessionaire having filed the returns showing nil income or a loss. The Tribunal by the impugned order held in favour of the assessee on the alternative ground alone. Having held in favour of the assessee on the alternative ground, the Tribunal did not consider the assessee's main contention that the provisions of Section 206C(1C) do not apply to it at all. In other words, according to the assessee, it was not liable to effect the collection under Section 206C(1C).

We have decided this appeal in favour of the appellant and against the assessee in respect of the assessee's alternative contention and have, therefore, answerd the question of law in favour of the Revenue. It is necessary, therefore, to afford the assessee an opportunity of having its main contention decided by the Tribunal. We have provided for the same accordingly.

Section 206C(1C) reads as under:-

> *"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 (hereinafter 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 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:

S.No.	***Nature of contract or licence or lease, etc.***	***Percentage***
(i)	Parking lot	Two per cent
(ii)	Toll plaza	Two per cent
(iii)	Mining and quarrying	Two per cent

W.e.f. 01.07.2012, a proviso was inserted. The same, however, is not applicable to the above appeals.

A plain reading of the Section indicates that the assessee is liable under sub-section (7). This is, of course, on the basis that the provisions of Section 206C(1C) are applicable to the assessee. Reliance is however, placed on the judgment of the Supreme Court in ***Hindustan Coca Cola Beverage P. Ltd. vs. Commissioner of Income-Tax***, ***2007 Vol. 293 ITR 226***, in which, it was held as follows:-

> *"Be that as it may, Circular No.275/201/95-It(B) dated January 29, 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."*

We have today, by a separate order and judgment decided in ITA No.73 of 2016 which is also the assessee's case under Section 201 including sub-section (1A) thereof. On a parity of reasoning, this appeal also ought to be decided in favour of the Revenue.

Moreover, even assuming that the judgment in *Hindustan Coca Cola* case (supra) applies to this case, the assessee's liability under sub-section (7) cannot be applied on the basis thereof. The last sentence in paragraph No.10 quoted above makes it clear that where the deductee assessee in the case of TDS had paid the tax or filed a "nil" return. The demand for the principal amount cannot be enforced. However, this would not alter the liability to pay interest under Section 201(1A) or for penalty under Section 271(C). For the same reasons, therefore, even assuming that the liability to collect tax at source cannot be enforced on account of the deductee assessee, i.e. concessionaire in this case, having paid the tax, the liability for interest under sub-section (7) would not be affected.

In the circumstances, the question of law is decided in favour of the appellant.

The appeals, are allowed, the impugned orders are set aside. The Tribunal shall, however, permit the assessee to raise its main contention namely that it was not liable to collect tax at source under Section 206 C (1C).

A photocopy of this order be placed on the files of other connected cases.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

December 20, 2016
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No