IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **ITA No.66 of 2016**

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

versus

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

(2) **ITA No.71 of 2016**

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

versus

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

(3) **ITA No.99 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 are filed against the order of the Tribunal dismissing the Revenue's appeals against the order of the CIT(Appeals) pertaining to the Assessment years 2009-10 to 2011-12.

The question of law raised by the appellant is irrelevant. It is probably on account of having copied the question of law from certain other appeals which we in fact disposed of by a separate order and judgment passed today. The question of law that arises in these appeals is as follows:-

> "Whether the provisions of Section 206C(1C) are applicable to the assessee's case making it liable to collect tax at source as provided for thereunder?"

The agreement on the basis of which the Revenue contends that the provisions of Section 206C(1C) are applicable is not furnished. It is, however, not necessary for the purpose of this judgment. Suffice it to note, that it is a common ground that a Built Operate-Transfer agreement was entered into between the assessee and a third party referred to therein as the concessionaire under which the latter was to build operate and transfer roads.

The Revenue contends that the agreements were entered by the assessee on its own behalf whereas assessee contends that it is only a nodal agency for and on behalf of the Government of Punjab. The assessee also raised an alternate contention that even assuming that the provisions of Section 206C(1C) are applicable, it is not liable under the provisions thereof on account of the concessionaire having paid the taxes after having taking into account, the amounts payable by it to the assessee. In these appeals, the

CIT(Appeals) and the Tribunal held in favour of the assessee only on the basis of the main contention and did not consider the assessee's alternate contention.

The Assessing Officer merely held that the assessee was liable to collect tax at source without furnishing any reason therefor. The CIT (A), on the other hand, held that the assessee was not liable as the provisions of sub-section(7) of Section 206C were not applicable, but again without furnishing any reason whatsoever. The only observation is that the amounts received under the contract were a concession fee and not as a toll fee and that, therefore, the provisions of Section 206C(7) could not be applied to the amount received. The Tribunal also upheld the order of the CIT without furnishing any reasons.

The construction/interpretation of the contract referred to by the parties as concessionaire agreement would be of vital importance in ascertaining whether the assessee entered into the same on its own account and for and on behalf itself or whether it did so as a nodal agency for and on behalf of the Government of Punjab. That contract has not even been produced before us. Further the matter may not end by a mere reading of the contract. It may be necessary to consider the surrounding circumstances if the terms thereof are not clear. It is impossible, therefore, in these appeals to determine the issue.

We have decided the alternate issue in certain other appeals against the assessee by a separate order and judgment passed by us today in ITA No.73 of 2016 which is also the assessee's case. It would, however, be necessary for the Tribunal to decide both the issues.

In the circumstances, the impugned orders are set aside and remanded to the Tribunal for a fresh decision in accordance with law.

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