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

**Date of Decision : 18.9.2019**

**ITA No.409-2019 (O&M)**

**Punjab Infrastructure Development Board ...... Appellant**

**Versus**

**Commissioner of Income Tax-(TDS) ...... Respondent**

**ITA No.407-2019 (O&M)**

**Punjab Infrastructure Development Board ...... Appellant**

**Versus**

**Commissioner of Income Tax-(TDS) ...... Respondent**

**ITA No.413-2019 (O&M)**

**Punjab Infrastructure Development Board ...... Appellant**

**Versus**

**Commissioner of Income Tax-(TDS) ...... Respondent**

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

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

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**<u>AJAY TEWARI, J. (Oral)</u>**

1. **<u>CM-19272-CII-2019 in ITA-409-2019</u>**

This is an application for placing on record the copy of the judgment in ITA No. 73 of 2016 dated 20.12.2016 passed by this Court.

For the reasons recorded in the application, the same is allowed and abovesaid judgment is taken on record.

2. **<u>Main Cases</u>**

This order shall dispose of abovesaid appeals since common question of facts and law are involved therein. For the sake of convenience the facts are taken from ITA No. 409 of 2019.

3. This appeal has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 29.3.2019 of the Income Tax Appellate Tribunal, Division Bench 'B' Chandigarh (ITAT) upholding the order of the Assessing Officer.

4. The following question of law was framed by the ITAT :-

> "Whether the assessee namely Punjab Infrastructure Development Board (hereinafter referred to as PIDB) was required to collect TCS (tax collect at source) as per the provisions of Section 206 C (1C) of the Income Tax Act, 1961."

5. Brief facts of the case are that the Punjab Legislature had passed Punjab Infrastructure (Development and Regulation), Act, 2002 (hereinafter referred to as 'the Act') and had constituted a statutory Board called the PIDB (the appellant-Board before us). Under the powers granted to it, the appellant-Board had entered into concession agreement with the Concessionaires to develop different highways. The

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Concessionaire was entitled to collect toll from the vehicles entering that particular stretch of the highways. Out of the tolls collected, the Concessionaire had to deposit fee. The issue involved in the present case is that the Assessing Officer noticed that the appellant-assessee had received certain amounts from the contractor/concessionaire in entering into concession agreement, but being 'Person Responsible' (PR) it failed to collect TCS and held responsible under the provisions of Section 206 C (1C) of the Act. The various authorities having held against it, the appellant is before this Court.

6. Learned counsel has argued that a bare perusal of the various provisions of the Act clearly reveal that the appellant-Board is merely a nodal agency as confirming party and the agreement has been entered between Government of Punjab and the Concessionaire and the Board does not deal with the Concessionaire on principle to principle basis but acts only as an agent to the Government. He has referred to following Section :-

> ***"20. Functions and Powers of the Board***
>
> *(1) Subject to the limitations specified in sub section (3), the Board shall be the apex body in the State of Punjab for overall planning for development of infrastructure sectors and infrastructure projects.*
>
> *(2) The Board shall:-*
>
> > *(i) act as a nodal agency to co-ordinate all efforts of the State Government regarding the development of the infrastructure sectors, involving private participation and funding from sources other than those provided by State budget and will,-*
> >
> > *(a) identify infrastructure projects for private*

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*participation19;*

*(b) promote competitiveness and progressively involve private participation while ensuring fair deal to the consumers;*

*(c) identify bottlenecks in the infrastructure sectors and recommend to the State Government, policy initiatives to rectify the same;*

*(d) select, prioritise and determine sequencing of infrastructure projects;*

*(e) formulate clear and transparent policies related to the infrastructure sectors so as to ensure that project risks are clearly identified and allocated between the stakeholders; and*

*(f) identify the sectoral concessions to be offered to concessionaires to attract private participation and secure availability of viable infrastructure facilities to the consumers;*

*(ii) prepare internally or through external consultants or service providers engaged for the purpose, all necessary documents including the bid or tender documents, draft contracts including the various contractual arrangements and incentives to be offered by the State Government;*

*(iii) create a Fund to be known as Punjab Infrastructure Initiative Fund, which shall vest in the Board to carry out the pre-feasibility and feasibility studies and the preparing of reports for the proposed infrastructure projects, along with the collection of the relevant data. The Punjab Infrastructure Initiative Fund will have contributions from the Development Fund, budgetary resources of State Government, public bodies and multilateral lending agencies and financial institutions;*

*(iv) assist public infrastructure agencies and concessionaires in obtaining statutory and other approvals;*

*(v) recommend the grant of concessions to a public infrastructure agency in accordance with the provisions of*

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*this Act, the rules and the regulations made there under;*

*(vi) assist in determining the level and structuring of investments of the State Government and public bodies into infrastructure projects with private participation including holding the investment or part thereof;*

*(vii) create special purpose vehicles for implementing infrastructure projects in terms of section 38 in co-ordination with the State Government or public infrastructure agencies; and*

*(viii) manage and administer the Development Fund and the Punjab Infrastructure Initiative Fund.*

*(3) The Board shall not play any role in the infrastructure projects undertaken by the State Government exclusively through its budgetary provision*

*(4) In order to carry out its functions consistent with the provisions of this Act, the Board shall have the powers to do all or any of the following, namely:-*

*(i) acquire, hold, develop or construct such property, both movable and immovable, as the Board may deem necessary for the performance of any of its activities related to the development of infrastructure sectors or infrastructure projects;*

*(ii) advise or recommend to the State Government acquisition of land under the Land Acquisition Act, 1894 for the purposes of infrastructure projects;*

*(iii) lease, sell, exchange, or otherwise make allotments of the property referred to in clause (i) to concessionaire and to modify or rescind allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of such allotment;*

*(iv) borrow and raise money in such manner as the Board may think fit and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of*

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*the Board's property or assets (whether present or future), and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Board of any obligation or liability, it may have undertaken or which may become binding on it.*

*(v) constitute a Project Management Team and one or more Advisory Committee or Committees or Sectoral Sub-Committee or Project Implementation Sub-Committee, or engage suitable service providers or advisors or consultants to advise the Board for the efficient discharge of its functions;*

*(vi) enter into and perform all such contracts as it may think necessary or expedient for performing any of its functions; and*

*(vii) do such other things and perform such other acts as it may think necessary or expedient for the proper conduct of its functions and for carrying into effect the purposes of this Act.*

7. In particular, learned counsel has emphasized on the opening part of Sub Section 2 of Section 20 of the Act (supra) wherein it has been mentioned that Board will act as a nodal agency to co-ordinate all efforts of the State Government regarding the development of the Infrastructure Sectors... It is his contention that this statutory stipulation as well as the terms of the concession agreement clearly lend themselves to this view.

8. In our opinion, these appeals must fail. The Tribunal has noticed not only the above quoted provisions of Section 20 of the Act, but has also noticed the provisions of Clause (i), (iii) and (iv) of Sub Section (4) of Section 20 of the Act (supra) and has come to the conclusion that despite the stipulation in the statute regarding the Board as being a nodal agency, the subsequent provisions clearly reveal that the appellant is

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acting on principle to principle basis and even a contrary stipulation in the concession agreement does not take away this essential characteristic. Moreover, if the argument of the learned counsel is to be accepted, then it would result in an anomalous situation because as per Section 206 C (1C) of the Act, any person who grants a lease or licence is the same person who collects the concession fee. But as per the case of the appellant in the present case, the grantor is the Government while the concession fee is to be collected by the appellant. Thus the appellant can well foist the liability on the Government and the Government can foist the liability on the appellant. This stipulation could result in leakage of tax. We find the judgment of the Tribunal to be well considered and confirm the finding that the mere usage of the term 'nodal agency' or 'confirming party' would not determine the facts of the present case. It may be apposite to mention here that this possibility was envisaged by a Division Bench of this Court adjudicating upon a previous round of litigation pending between between the parties in ITA No. 73 of 2016 decided on 20.12.2016 titled as ***The Commissioner of Income Tax (TDS)-1 Chandigarh vs.M/s Punjab Infrastructure Dev. Board, Chandigarh.*** when it held as follows :-

> "*7. If we answer the questions of law in favour of the assessee, the entire matter ends there. If, however, we answer the question in favour of the Revenue, as we have, it would be necessary to remit the matter to the Tribunal to decide the assessee's main contention that the provisions of Section 194C are not applicable to the case at all. We refrain from answering that question in this appeal as in our view, it ought to be decided by the Tribunal in the first*

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*instance. There is a possibility of questions of fact arising. For instance, it would be necessary to consider whether the assessee was merely a nodal agency for the Government of Punjab or whether it was acting on its own on a principle to principle basis with the concessionaire. The answer to this issue may not depend only upon the terms of the agreement."*

9. In view of these circumstances, the appeals stand dismissed.

10. Since the main cases have been dismissed, the pending CM, if any, also stands disposed of.

**(AJAY TEWARI)**
**JUDGE**

**(HARNARESH SINGH GILL)**
**JUDGE**

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|---|---|---|
| Whether speaking/reasoned | - | Yes/No |
| Whether reportable | - | Yes/No |

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