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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 283/2024

COMMISSIONER OF INCOME TAX (TDS)-2 .....Appellant

Through: Mr. Vipul Agrawal, SSC along with Mr. Gibran Naushad, Ms. Sakashi Shairwal, JSCs and Mr. Dilpreet Singh, Adv.

versus

M/S STERLING INFRASTRUCTURE PVT. LTD. .....Respondent

Through: Mr. Arvind Nigam, Sr. Adv. with Mr. Kotla Harshavardhan, Ms. Mansi Sood, Mr. Jaspal Sethi, Mr. Anmol Gupta and Mr. Rohan Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **22.08.2024**

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal [‘**Tribunal**’] dated 22 November 2023 and posits the following questions of law for our consideration:-

> “A. Whether the ld. ITAT erred in deleting the applicability of tax deduction on EDC payment made to HUDA?
>
> B. Whether the Hon’ble ITAT erred in not remanding the case back to the AO to decide the applicability of the tax deduction under the provisions of Income-tax Act, 1961 afresh on merits considering the nature of payment made to HUDA?”

2. We find from a reading of the judgment rendered by the Tribunal that it has essentially held that External Development Charges [‘**EDC**’] charges would not be subject to a deduction of tax at source.

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3. That issue stands conclusively answered by us in our decision rendered in **Puri Constructions Pvt. Ltd. vs. ACIT & Ors.** [(2024) SCC OnLine Del 939]. We take note of the following conclusions which were ultimately rendered by us in that context:-

> "**58.** As we read the communication of 19-6-2018, it becomes manifest that all payments were made to HSVP albeit under the directives of the DTCP. Those payments clearly appear to be directed towards subserving an arrangement existing between HSVP and the Government of Haryana for external development work being carried out by the former. While it is true that this arrangement does not stand encapsulated in a formally executed contract or instrument, there clearly appears to be in existence an understanding between the State Government and HSVP for external development work being executed by it and for the funds remitted to it being utilised for the said purposes. It is in the aforesaid context that the decision of the Supreme Court in *Shree Choudhary Transport Co.* v. *CIT* [*Shree Choudhary Transport Co.* v. *CIT*, (2021) 13 SCC 401 : (2020) 426 ITR 289] assumes significance.
>
> **59.** <u>As is manifest from the passages of that decision extracted hereinabove, Section 194-C was explained to embody an obligation on the person responsible to make a payment to a sub-contractor being liable to deduct tax at source. The Supreme Court held that an underlying contract which could otherwise be discerned from the arrangement between parties and their conduct would be sufficient even though it may not have been reduced in writing. The arrangement and conduct of parties led the Supreme Court to hold and observe that since the hiring of the sub-contractor was only for the purposes of fulfilling the principal contract which the appellant had with the specified person, the provisions of Section 194-C were satisfied. It was thus the conduct of parties which led to the Supreme Court coming to the conclusion that all essentials of the creation and existence of a contract existed.</u>
>
> **60.** In the facts of the present case, and as we construe the provisions of the HDRUA read along with the rules as also the statutory obligations placed upon HSVP, it becomes apparent that there was in existence an understanding or an arrangement between HSVP and the Government of Haryana for the execution of external development works. <u>The phrase "in pursuance of a contract" as finding place in Section 194-C would have to necessarily be construed bearing in mind the salient principles which were propounded by the Supreme Court in *Shree Choudhary Transport Co. case* [*Shree Choudhary Transport Co.* v. *CIT*, (2021) 13 SCC 401 : (2020) 426 ITR 289] . If the existence of a contract were to be</u>

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gleaned from the arrangement which existed between HSVP and the Government of Haryana and is also duly acknowledged by the DTCP itself, the absence of a written or codified agreement would not be relevant for the purposes of Section 194-C being applicable.

61. We further note that not only the provisions of the HDRUA but also the forms and bilateral agreements executed by the applicants, mandated that all payments of EDC were to be drawn in favour of HSVP. Although they were routed through the DTCP, those payments undoubtedly were to the account of HSVP. The statute as well as the licence conditions thus placed the petitioners under a binding obligation to advance all EDC payments in favour of HSVP. The aforesaid clearly qualifies the responsibility which Section 194-C places upon a payer who is contemplating making payments to a contractor.

62. The submission of a lack of privity between the writ petitioners and HSVP is noticed only to be rejected since Section 194-C does not contemplate the existence of a contractual relationship between a person who is responsible for paying a sum and the contractor as defined in that provision. The existence of a contract is only envisaged to be a factor pertinent to an arrangement which the contractor may have with a specified person. Thus merely because EDC is determined and directed to be paid by the DTCP, the same does not deprive the payment of its intrinsic characteristic, namely, of being a payment made to HSVP.

63. In our considered opinion the fact that EDC is determined, computed or is recoverable by the DTCP is wholly inconsequential since Section 194-C is solely concerned with a payment being made to a contractor who has an arrangement with a specified person. Merely because an exercise of quantification is undertaken by the specified person, the same would have no bearing on the applicability of Section 194-C. We would thus be of the opinion that the moment the petitioners effected a payment in favour of HSVP in connection with the external development work which was to be executed by it pursuant to the arrangement that existed between the said entity and the State Government, the provisions of Section 194-C stood attracted."

4. However, we find that in the facts of the present case, the appellant had sought to rest its claim of an obligation to deduct tax by referring to Section 194I of the Income Tax Act, 1961 ['**Act**']. We had in *Puri Constructions* itself taken note of the judgments rendered by the Court in **BPTP Limited vs. Principal Commissioner of Income**

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Tax and Another [2019 SCC OnLine Del 12358] and **DLF Homes Panchkula Pvt. Ltd. vs. Joint Commissioner of Income Tax (OSD)** [2023 SCC OnLine Del 2026] where challenges to notice under Section 194I of the Act had succeeded.

5. We had in *Puri Constructions* also laid emphasis on the principles which must govern the framing of a notice when an assessee is sought to be held liable to comply with an obligation to pay tax.

6. In view of the aforesaid and while the view expressed by the Tribunal is clearly not in consonance with the position of law which was enunciated in *Puri Constructions,* since the respondents here had taken resort only to Section 194I of the Act, we find no justification to interfere with the judgment rendered by the Tribunal and which stands impugned herein.

7. This would however be subject to liberty being reserved to the appellant to adopt such remedies as may be otherwise permissible in law bearing in mind the limited liberty which stood reserved by us while disposing of *Puri Constructions*.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 22, 2024/RW

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