

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

[Coram:Pramod Kumar AM and A.D. Jain JM]

I.T.A. Nos. 40 to 43/Asr/2015
Assessment years:2007-08 to 2010-11

Executive Officer, **Appellant**
Jalandhar Improvement Trust,
Model Town Road, Jalandhar.

[PAN:AAATJ 4768 N]

Vs.

Income-tax Officer TDS-II, **Respondent**
Jalandhar

Appearances by:

Ashwani Gupta for the appellant
Tarsem Lal for the respondent

Date of concluding the hearing: June 05, 2015
Date of pronouncing the order : June 10, 2015

ORDER

Per Pramod Kumar:

1. These four appeals, filed by the assessee, are directed against the consolidated order dated 31st October 2014 in the matter of tax withholding demand raised on the assessee under section 201(1) and 201(1A) r.w.s. 194C of the Income Tax Act 1961, for the assessment years 2007-08, 2008-09, 2009-10 and 2010-11. As all these appeals arise out of common set of facts, deal with a common legal issue and pertain to the same impugned order, all these appeals are being disposed of by way of this common order. Grievances raised by the assessee are as follows :

A.Y. 2007-08:

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has misdirected himself in law, in sustaining the order of Ld ITO, TDS-II by upholding the Trust (JIT) as 'PR' and further 'assessee in default' in terms of sec 201(1) for alleging failure to deduct tax at source amounting Rs.57334/- on payment made on account of financial transactions bounded by statute, to Punjab Water Supply & Sewerage Board.

2. That, the Ld CIT(A) has grossly erred in law and on facts and circumstances in confirming that payment on account of financial transactions bounded by statute for laying of sewerage pipe lines, water supply lines made to Punjab Water Supply & Sewerage Board, for work undertaken as entrusted by statutory law, was in pursuance of a contract and therefore, liable to deduction of tax at source u/s. 194C.

3. That in the facts and circumstances of the case, even the levy of interest u/s. 201(1A) was not sustainable.

4. That the orders and findings of authorities below, to the extent disputed herein above, are against law and facts of the case."

2. The grievances raised by the assessee in other three appeals pertaining to assessment years 2008-09, 2009-10 and 2010-11 are altogether common, barring the amounts of TDS which stand at Rs.61,843, Rs.3,03,777 and Rs.61,843 respectively.

3. To adjudicate on these appeals, only a few material facts need to be taken note of. The assessee before us is a public trust set up under Punjab Towns Improvement Act, 1922. A TDS survey was carried out on the premises of the assessee on 4th February 2010 and 5th February 2010. During this survey, it was noted that the assessee was making payments to Punjab Water Supply and Sewerage Board, but has not deducted tax source from these payments. It was in this background and proceeding on the basis that the

assessee was under an obligation, under section 194C, to deduct tax at source from these payments, that demands under section 201(1) and 201(1A) r.w.s. 194C were raised on the assessee. Aggrieved assessee carried the matter in appeal before the CIT(A) but not with complete success. While learned CIT(A) upheld the action of the Assessing Officer in principle, he restricted the demand only to the extent principal liability of the recipient remained unpaid and in respect of the delay in eventual realization of tax. The assessee is not satisfied and is in further appeals before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. There is no dispute that the appellant has made payments to Punjab Water Supply and Sewerage Board for execution of work relating to sewerage pipe lines and for treatment of polluted water of the city. However, as learned counsel for the assessee rightly points out, such payments are out of legal obligations rather than contractual arrangements, and it is only when payments are made "in pursuance of a contract" that the provisions of section 194C come into play. The contract may be oral or written, express or implied but there must be a contract nevertheless. In the present case, however, the payment is on account of legal obligation under section 24(1) of the Punjab Water Supply and Sewerage Board Act 1976 which provides as follows :

"24(1). The cost of investigation, preparation and execution of any scheme undertaken by the Board shall be initially incurred by the Board out of its funds but it shall be recoverable from the concerned local

authority or local authorities in such manner and in such instalments as may be prescribed."

6. For the reasons set out above, the provisions of section 194C did not come into play on the facts of this case. Clearly, therefore, the impugned demands under section 201(1) and 201(1A) r.w.s. 194C are wholly devoid of any legally sustainable merits. We quash these demands.

7. As the appellant succeeds in the above grounds, we see no need to deal with the other issues raised by the assessee and the grounds on which the partial relief has been granted by the CIT(A). That aspect of the matter is wholly academic at this stage.

8. In the result, the appeals are allowed in the terms indicated above. Pronounced in the open court today on 10th day of June, 2015

Sd/-
A D Jain
Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

Dated: the 10th day of June 2015
*aks/-

Copies to: (1) The appellant (2) The respondent
(3) Commissioner (4) CIT(A)
(5) Departmental Representative (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Amritsar Bench, Amritsar