



interest bearing advance cannot be treated as payment for carrying out any work so as to attract Section 194C of IT Act, 1961, particularly when interest of Rs. 43.46 lacs has accrued to the appellant on the advance of Rs. 6.97 crores, as per Annexure A-7?

2. Whether the ITAT is justified in confirming the order of authorities below holding the appellant as liable u/s 194C of the Act by being swayed by the word "contract" mentioned in the MOU instead of observing the real intention of the MOU and thereby treating the supervising agency i.e. GLADA as a contractor who was actually a specialised agency of the Government to be paid for supervising the work as an arm of the appellant, and to make payments to the contractors subject to deduction of tax at source on behalf of the appellant, as per clause 1(f) of the MOU, Annexure A-4, which has duly been deducted as per Annexure A-6?

3. Whether the ITAT is justified in confirming the order of authorities below holding the appellant as liable u/s 194C of the Act despite the fact that the appellant was not at all required to deduct the tax at source on payment of interest bearing advance to GLADA which is not an expenditure on "carrying out any work" and when any payment was made out of the said advance for "carrying out the work" tax was duly deducted at, Annexure A-6?

4. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant/assessee entered into Memorandum of Understanding (MOU) on 24.3.2007 (Annexure A-4) with Punjab Urban Development Authority presently known as Greater Ludhiana Area Development Authority (GLADA), Ludhiana for supervision of the building project at the University Campus on behalf of the appellant. The project was initiated in the year 2007 and as per clause 3 of the MOU, interest bearing advance was forwarded by the appellant to the GLADA with a clear understanding that when any payment is made to the contractors executing the work, the GLADA will deduct the tax at source and the tax as per certificate dated 5.8.2010 (Annexure A-5) has been deducted by the GLADA. On 3.12.2009, a TDS inspection was carried out by the revenue. A show cause notice dated 31.12.2009 was issued to the assessee to explain as to why TDS on amount of Rs. 11,67,79,805/-, Rs. 1,26,000/- and Rs. 2,74,000/- was not deducted under Section 194C of the Act at the time of issuance of cheques to GLADA and as to why interest under Section 201(1A) of the Act be not charged. The Income Tax Officer, TDS-II, Ludhiana vide order dated 15.2.2010 (Annexure A-1) passed under Section 201(1) of the Act created demand of Rs. 29,46,570/- including interest of Rs. 2,67,870/- under Section 201(1A) of the Act. The assessee filed an appeal against the order, Annexure A-1, before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 15.10.2010 (Annexure A-2) upheld the order, Annexure A-1, and dismissed the appeal. Feeling dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 27.4.2011 (Annexure A-3) dismissed the appeal. Hence, the instant appeals.

5. Learned counsel for the appellant-assessee relied upon the certificate dated 5.9.2012 (Annexure P-8) issued by GLADA, confirming that the interest on payments received from Guru Angad Dev Veterinary & Animal Sciences University (GADVASU) for deposit works of GADVASU during the financial years 2007-08 and 2008-09 relevant to the assessment years 2008-09 and 2009-10, respectively have been added in the income of the GLADA and the income tax due on such interest amount has been paid. It has further been certified that TDS has been deducted and deposited wherever applicable on payments made to the contractors in lieu of GADVASU work executed/done.

6. It was urged by learned counsel for the appellant that the matter is required to be remitted to the Assessing Officer to ascertain the veracity of factual matrix contained in Annexure P-8 and in case it is found to be correct, then in view of the judgments of the Supreme Court in Hindustan Coca-Cola Beverage (P) Ltd. v. Commissioner of Income Tax (2007) 293 ITR 226 (SC); Karnataka High Court in Children's Education Society v. Deputy Commissioner of Income Tax (TDS) (2009) 319 ITR 409 (Kar.) and of this Court in Commissioner of Income Tax v. The Chief Electoral Officer, Chandigarh, ITR No. 183 of 1999 decided on 23.11.2010, no tax liability could be created or sustained against the assessee for non-deduction of tax at source.

7. On the other hand, learned counsel for the revenue supported the orders passed by the authorities below and prayed for dismissal of the appeals.

8. We have heard learned counsel for the parties and find substance in the submission of learned counsel for the appellant.

9. In view of the submission of learned counsel for the parties, it is considered appropriate that the matter is referred back to the Assessing Officer to examine and verify the factual matrix as urged by learned counsel for the appellant. Accordingly, the impugned orders passed by the Assessing Officer (Annexure A-1), the CIT(A) (Annexure A-2) and the Tribunal (Annexure A-3) are set aside. The matters are remanded to the Assessing Officer for examining the veracity of Annexure P-8 and decide the issue afresh in accordance with law. Needless to say that nothing observed hereinbefore shall be taken to be expression of opinion on the merits of the controversy.