IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA No.56 of 2009 a/w ITA Nos.57 to 61 of 2009, ITA Nos. 36 & 44 of 2010 & ITA Nos.3 and 14 of 2011

Decided on: 10.08.2023

ITA No.56 of 2009

Asstt. Excise & Taxation Commissioner,
Bilaspur, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Palampur,
Camp at Shimla …. Respondent.

ITA No.57 of 2009

Asstt. Excise & Taxation Commissioner,
Una, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Palampur, HP …. Respondent.

ITA No.58 of 2009

Asstt. Excise & Taxation Commissioner,
Bilaspur, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Palampur,
Camp at Shimla …. Respondent.

ITA No.59 of 2009

Asstt. Excise & Taxation Commissioner,
Bilaspur, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Palampur,
Camp at Shimla …. Respondent.

ITA No.60 of 2009

Asstt. Excise & Taxation Commissioner,
Bilaspur, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Palampur,
Camp at Shimla …. Respondent.

ITA No.61 of 2009

Asstt. Excise & Taxation Commissioner,
Bilaspur, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Palampur,
Camp at Shimla …. Respondent.

ITA No.36 of 2010

Asstt. Excise & Taxation Commissioner,
Sirmour, District Sirmour, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Nahan, District Sirmour,H.P. …. Respondent.

ITA No.44 of 2010

The Asstt. Excise & Taxation Commissioner
Kangra at Dharamshala, H.P. …. Appellant.

Versus

The Income Tax Officer (TDS), Palampur, H.P. …. Respondent.

ITA No.3 of 2011

Asstt. Excise & Taxation Commissioner,
Chamba, H.P. …. Appellant.

Versus

Income Tax Officer (TDS), Palampur …. Respondent.

ITA No.14 of 2011

Asstt. Excise & Taxation Commissioner,
Shimla, H.P. …. Appellant.

Versus

Asstt. Commissioner of Income Tax (TDS) Shimla …. Respondent.

Coram

The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?

For the appellants : Mr. Anup Rattan, Advocate General, with M/s Rakesh Dhaulta, Pranay Pratap Singh, Additional Advocate Generals and M/s Arsh Rattan, Sidharth Jalta, Deputy Advocate Generals, with Mr. Rakesh Sharma, Standing Counsel, in all the appeals.

For the respondents: Mr. Vinay Kuthiala, Senior Advocate, with Ms.Vandana Kuthiala and Mr. Diwan Singh Negi, Advocates, in all the appeals.

M.S. Ramachandra Rao, Chief Justice (Oral)

In all these appeals, following substantial questions of law arise for consideration:-

"*(i) That collection of toll by lease or the person employed by him on behalf of the Govt. under HP Tolls Act, 1975 is only delegation of collection of tax levied under authority of State and the same does not fall within ambit of section 206C (IC) of the Income Tax Act, 1961.*

(ii) That delegation of function of collection of toll under section 3-A of HP Tolls Act, 1975 is clothed with statutory authority and is not a business as defined under section 2(13) of the Income Tax Act, 1961.

(iii) That collection of Toll under HP Tolls Act, 1975 is not a toll plaza under section 206C (IC) of the Income Tax, 1961.

(iv) The collection of toll under HP Tolls Act, 1975 has been

levied under Entry 59 of List-II of Seventh Schedule to the constitution of India irrespective of whether collected by the Govt. machinery or other agents of the Govt., levy remains an income of the State exempted from Union Taxation by virtue of Article 289(1) of the Constitution.

(v) That Income Tax, if any, is to be assessed on the income of the toll lessees and not on the tax collection of the State and for which the State is not responsible in any manner."

2) The background facts are that State of Himachal Pradesh enacted the Himachal Pradesh Tolls Act, 1975 (for short 'the Act') to provide for the levy and collection of tolls on mechanical vehicles passing over any road infrastructure in the State of Himachal Pradesh.

3) Tolls barriers have then been established on road infrastructure in certain districts under Section 6 of the said Act by the State Government by issuing Notifications from time to time.

4) Under Section 3-A of the said Act, power has been conferred upon the State Government to grant lease of rights to any person to collect toll levied under Section 3 of the Act for respective financial years by auction or tender or combination of both or any other mode on such terms and conditions as the Excise & Taxation Commissioner may determine and the amount of auction is received in installments. The

installments are deposited directly in the Government Treasury by the lessee.

5) Thus, after the auction is conducted, the successful bidder is required to pay installments of part thereof of the lease money by the due date into Government Treasury of the district.

6) The Income Tax Department made inspection of the office of the said Department and noticed that there was no Tax Collection at Source (in short 'TCS') being made by the representatives of the said Department who were authorized to receive payment in installments in respect of toll money.

7) Accordingly, notices were issued under Section 156(3) of the Income Tax Act, 1961 against the Department of Excise & Taxation.

8) Orders were passed on 30.06.2008 for the year 2004-05 to 2008-09, and according to the Income Tax Department huge demand is due on this count.

9) Against the orders passed on 30.06.2008, the Department preferred appeals before the Commissioner of Income Tax ((Appeals), Shimla, H.P., who dismissed the said appeals on 25.02.2009, upholding the demands raised by the Department.

10) This order of the CIT (Appeals) was further challenged by the Department in ITA Nos.273 to 277 before the Income Tax Appellate Tribunal, Chandigarh.

11) The said Appellate Tribunal vide order dt. 28.05.2009 dismissed the appeals and upheld the orders passed by the Assessing Authority and other Authorities referred to above.

12) Challenging the same, these appeals are filed.

13) Though, learned counsel for the Excise & Taxation Department of the State of Himachal Pradesh, which is the appellant herein contended that Section 206 C(1-C) of the Income Tax Act is not attracted since the collection of toll under the Himachal Pradesh Tolls Act, 1975 is not in force at a Toll Plaza, but said contention is not pressed and it is however contended that the provisions of TCS is similar to that of TDS, and if the assessee/ lessee had already paid tax to the Income Tax Department on the sale turn over for the respective assessment years, then the appellant cannot be mulcted with liability to again pay tax thereon.

14) Reliance has been placed by the appellant on the decision in ***Commissioner of Income Tax, New Delhi*** Versus ***Eli Lilly and***

Company (India) Private Ltd [1]***, Singapore Airlines Limited*** Versus ***Commissioner of Income Tax, Delhi*** [2] and ***Hindustan Coca Cola Beverage (P) Ltd.*** Versus ***Commissioner of Income Tax***[3].

15) In all these cases it was held that the recipient of the income on which TDS has not been deducted, even though it was liable to such deduction under the Income Tax Act, had already included that amount in its income and paid taxes on the same, the assessee can no longer be proceeded against the recovery of the short fall in TDS. However, it was held that it would be open to the revenue to seek payment of interest under Section 201 (1-A) of the Act for the period between the date of default in deduction of TDS and the date on which the recipient actually paid income tax on the amount for which there has been a short fall in such deduction.

16) Therefore, before any liability is imposed on the appellant for payment of tax, it is required to be verified as to whether respective toll lessees of the Himachal Pradesh Government had in fact paid taxes on their income/ sale turn over while collecting tolls at the barriers erected by

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[1] *(2009) 15 SCC 1*

[2] *(2003) 1 Supreme Court Cases 497*

[3] *(2007) 8 Supreme Court Cases 463*

the State Government or not. In the event such toll lessees had already paid tax on their income, even if the appellant had not deducted the TCS on such income, then the appellant cannot be mulcted with the liability to again pay the tax. In the event of the Assessing Officer finding that the toll lessees had not paid the tax which ought to have been deducted as TCS by the appellant when it had filed its return, the appellant shall be held liable to pay the same.

17) Therefore, the appellant is directed to share with the respective Assessing Officers the details of the toll lessees including their PAN number for the respective assessment years in question within four weeks. On receipt of such information, within eight weeks the Assessing Officer shall verify the return filed by the respective toll lessees , and in the event he comes to the conclusion that the said toll licencee had already paid tax which ought to have been deducted as TCS by the appellant, then he shall not levy any tax on the appellant. If not, he may proceed to collect the same from the appellant Department.

18) However, the appellant is held liable to pay interest under Section 206C (7) of the Act to the Department for the period between the date of default in deduction of TCS *and* the date on which the toll licencee had actually paid the income tax on the amount for which there had

been a short fall in such deduction, within eight weeks of notification of the same by the Assessing Officer to the appellant.

19) The appeals are disposed of accordingly.

20) Pending miscellaneous applications, if any, also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Ajay Mohan Goel)
Judge

August 10, 2023
(rishi)