

Up State Industrial Development Vs. Ito

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Court : Income Tax Appellate Tribunal ITAT Lucknow

Decided On : Sep-20-2001

Reported in : (2004)89TTJLuck669

Appellant : Up State Industrial Development

Respondent : ito

Judgement :

These seven appeals have been filed by the assessee-appellant, namely, Uttar Pradesh State Industrial Development Corporation Limited, (hereafter referred to as UPSIDC) against the combined order of Commissioner (Appeals) dated 8-1-1998 for the assessment years 1989-90 to 1995-96.

The assessee has taken seven identical grounds in all these appeals, which challenge the order of the Commissioner (Appeals) confirming the applicability of the provisions of section 194C and consequently upholding the liability of the assessee to be charged under sections 201 & 201(1A).

During the course of hearing of the appeals, the assessee- corporation have also taken additional ground (Ground No. 8), which runs as under : "8. Because the order dated 30-4-1997 passed by the Income Tax Officer-TDS, Ward 3(7) was wholly illegal, as initiation of related proceedings as also conclusion thereof was beyond the time-limit that could be said to be available to him (Income Tax Officer-TDS) for this purpose, and on a due consideration of the overall scheme of levy and collection of taxes the learned Commissioner (Appeals). Kanpur, should have

quashed the order as a whole, inter alia on this ground." Since the common grounds have been taken in all these seven appeals and common issues are involved, for the sake of convenience, we proceed to decide these appeals by a common order.

Shri S.K. Garg, F.C.A., appeared on behalf of the assessee, whereas Shri D.K. Srivastava, learned Senior Departmental Representative represented the department.

Before taking up the main issue involved in the grounds of appeal (Ground Nos. 1 to 7), we consider it proper to narrate the relevant facts concerning this matter, which are as under The assessee-corporation entered into a contract with the National Industrial Development Corporation Limited (hereinafter referred to as NIDC) for constructing its Head Office Complex Building at A-1/4, Lakhanpur, Kanpur. It may be pointed out that the assessee- corporation, is an undertaking of the State of Uttar Pradesh and the NIDC is an undertaking of Government of India.

In the agreement dated 7-8-1989, the stipulations were incorporated specifying the duties and responsibilities of both the parties to the contract. Reference to the relevant conditions of the contract shall be made at appropriate places in this order. A copy of the agreement has been placed in the paper book in these appeals.

It may be pointed out that for consideration of the services to be rendered by NIDC, its fee was fixed at 11 per cent of the actual cost of construction.

So far as the mode of payment of construction funds is concerned, in terms of para 7. 1, the funds for construction was to be placed at the disposal of NIDC on cash flow basis for payments in phased manner for disbursement to the contractors. The NIDC was also required to submit estimate of cost likely to be incurred by monthly in the first week of the month and 100 per cent of such cost was to be paid within a week.

NIDC deposited the amount for the work to be done. This deposit was to be adjusted from the 'on account' bills. On completion of the work, shown in the 'on

account bill', the NIDC was required to give audited statement of accounts, In terms of para 7.6 all payments against contracts and supplies were to be released by NIDC directly according to the terms of payment agreed with the contractors and suppliers.

In terms of the agreement, the payments were made by the assessee corporation to NIDC and NIDC in turn made payments to the contractors.

The NIDC also deducted TDS @ 2 per cent from the contractors. No deduction of TDS was made by the assessee at the time of making payments/deposits to the NEDC, The Income Tax Officer (TDS) issued a notice dated 21-6-1996, requiring the assessee to furnish the information regarding the name of the party to whom the contract for construction of the work etc. was given and the amount of TDS deposited in Government account. The assessee filed reply dated 21-6-1996 stating that the construction work was entrusted to NIDC and all the contracts were given and arranged by them. It was also informed that the tax at source from the contractors was also deducted by NIDC. In the reply dated 1-7-1996, the address of NIDC at Delhi was given and it was also stated that required information regarding deduction of TDS may be obtained from that corporation.

Thereafter, the Income Tax Officer issued another letter dated 8-7-1996,' which was replied by the assessee vide its letter dated 10-7-996. Another reply dated 22-7-1996, was also given. Thereafter, lot of correspondence followed between the IT department and the assessee on this point. Since the department was not convinced with the reply of the assessee and the stand taken by it, the Income Tax Officer proceeded to pass the order under section 201/201(1A) of the Income Tax Act, 1961.

The assessee preferred separate appeals against the order of the assessing officer, which appeals were decided by a common order by the learned Commissioner (Appeals) by upholding his order and dismissing the appeals of the assessee. The order of the learned First appellate authority has been challenged before us in these appeals.

In this factual background of the matter, we proceed to adjudicate the issue involved in these appeals.

To state the controversy in brief, the stand of the department is that NIDC was entrusted with the entire construction work by the assessee and in terms of agreement, NIDC was to discharge its function as a contractor and, therefore, the assessee was under a legal obligation to deduct TDS from the payments made to NIDC, whereas the stand of the assessee is that NIDC was simply a consultant for designing and supervising the construction work and it gave contracts to others on behalf of the assessee and was also deducting TDS from such contractors on behalf of the assessee and, therefore, there was no liability on the part of the assessee to deduct TDS at the time of making payment to the NIDC. Shri S.K. Garg, learned counsel for the assessee submitted that the approach of the department in construing the agreement and in treating the NIDC as contractor in terms of section 194C is not legally justified. According to him, the NIDC was simply working on behalf of the assessee and for rendering services as consultant, it was to be paid a fixed fee in terms of the agreement. The learned counsel, submitted following arguments in support of his contentions raised before us- (i) The NIDC did not have any infrastructure for carrying out the contract for construction of building. It was group of engineers and architects, who were doing the work of consultants. The nature of their work is also clear from the letter head in which the following caption is given : "The National Industrial Development Corporation (A Government of India Enterprise) Consultants & Engineers." (ii) In terms of the contract, the NIDC was to be paid consultancy fee, the rate of which was also fixed.

(iii) Under section 194C, all contracts are not covered. Hence the nature of work is to be seen. So far as the professional and technical services are concerned, the same were not to be covered within the scope of section 194C. By amendment, a separate section 194J was also brought for charging TDS from professionals and technical consultants, which shows that prior to amendment, this category was not included within the purview of section 194C. (iv) The contract funds were placed at the disposal of NIDC for further disbursement. The amount was to be treated as deposit for which NIDC was required to account for. It was not contract money. No

tenders were invited from NIDC for any contract.

(v) For carrying out various works, tenders were invited by NIDC on behalf of the assessee for construction activities and for supply of material and NIDC while executing the contracts represented the assessee. The persons and agencies to whom the contracts were given, were contractors within the meaning of section 194C and, therefore, TDS @ 2 per cent was deducted by NIDC from them, in view of the provisions contained under section 194C. (vi) The agencies to whom, the contracts were given for carrying out the works were not sub- contractors. Had they been sub- contractors, then the rate of TDS deducted from payments made to them would have been only 1 per cent (vii) The NIDC was just looking after the work or supervising the work and not carrying out the contract. Thus, it functioned only as a consultant.

(viii) The money was kept or deposited with the NIDC under trust. It was not a contract receipt for them.

(ix) If the agreement is read as a whole, the only conclusion will be that the NIDC was rendering consultancy services, which were professional services and, which services were not subject to deduction of TDS under section 194(1).

The learned Senior Departmental Representative, on the other hand, invited our attention to the objects behind the scheme of TDS and the legislative intent behind section 194C. According to him, the provisions relating to deduction of TDS cast absolute liability on the assessee. According to him, these are very important provisions of the Income Tax Act and in case of breach, the penal consequences follow.

The learned Senior Departmental Representative submitted detailed argument in explaining the meaning of term "any work" appearing in section 194C and also to the term 'contractor' appearing in that section. According to him, the term "any work" should be construed in its plain meaning and as Noun. After -referring to the Black's Law Dictionary, 7th Edn., p. 1598 and Iyer's Law Lexicon and other dictionaries, he contended that the word "any work" includes all types of physical and mental exertions aimed to attain an end. Referring to the nature of the work

entrusted to the NIDC in the context of relevant clauses of the agreement, he submitted that the NIDC was carrying out the work as contractor as defined under section 194C and, therefore, the assessee was liable to deduct TDS at the time of making payments to such a contractor and in not doing so, the assessee had committed breach of legal obligations. In support of his contention, the learned Senior Departmental Representative also submitted following arguments : (a) The term 'contract' covers all types of activities including consultancy and professional works.

(b) The NIDC was entrusted by the assessee to accomplish the entire work of construction and in substance, it had to ensure the completion of the work. Thus, it was the contractor. The total implementation of the project was the responsibility of the NIDC and, therefore, it was to work as a contractor irrespective of the fact that it was taking work from the other sub-contractors or agencies.

(c) The time was the essence of the contract as agreed between the parties and on this basis also, the NIDC was a contractor.

(f) The approach of the assessee that NIDC was simply consultant and not a contractor cannot be justified, because consultancy is limited to advice on certain points, whereas the NIDC was to undertake and ensure the entire work. The contract was, therefore, for work and not for consultancy. The NIDC also provided all management services and supervision etc.

The learned Senior Departmental Representative also placed reliance on the decision of the Supreme Court of India in the case of Associated Cement Co. ITD. v. CIT (1993) 111 CTR (SC) 165 : (1993) 201 ITR 435 (SC), wherein the Hon'ble Supreme Court had held that the term "work" in sub-section (1) of section 194C is not intended to be confined or restricted to "works contract". "Work" as observed by the Hon'ble Supreme Court of India, has a wide import and covers "any work", which one or the other of the organizations specified in the subsection can get carried out through a contractor under a contract and further it includes obtaining by any of such organisations supply of labour under a contract from a contractor.

The learned Senior Departmental Representative also submitted that the cases relied upon by the learned counsel for the assessee were distinguishable on facts, The learned Senior Departmental Representative also placed reliance on the decisions in Grindlays Bank ITD. v. CIT (1992) 193 ITR 457 (Cal), Bennet Coleman & Co. Ltd. v. V.P.Damle, Third ITO (1986) 157 ITR 812 (Bom) and Associated Cement Co.

Ltd. case (supra).

In reply to the arguments of the learned Senior Departmental Representative, the learned counsel for the assessee submitted that the amendment and incorporation of section 194J sufficiently shows that prior to amendment the professionals and technical consultants were not covered within the definition of 'any work'. According to him, the Consultants and Engineers engaged in the profession and consultancy services in various fields including the Project Management came to be covered within the scheme of TDS by insertion of section 194J as inserted by the Finance Act, 1995.

In this regard, he also made reference to Circular No. 17, dated 14-8-1995. According to the learned counsel, the department in placing reliance on the decision of Hon'ble Supreme Court of India in the case of Associated Cement Co. Ltd. (supra), misapplied the decision and issued Circular No. 666, dated 8-10-1993 and Circular No. 681, dated 8-3-1994, which were held to be invalid. Subsequently, by various High Courts. In this regard, he placed reliance on the following decisions : (i) Chamber of IT Consultants v. CBDT (1994) 120 CTR (Bom) 209 (1994) 209 ITR 660 (Bom) (iii) All Gujarat Federation of Tax Consultants v. CBDT (1995) 214 ITR 276 (Guj) (iv) Madras Bar Association & Ors. v. CBDT & Ors. (1995) 216 ITR 240 (Mad) (vi) Rajasthan Tax Consultants Association v. CBDT (1998) 229 ITR 657 (Raj) He also made reference to the decision of Hon'ble Supreme Court of India in the case of Birla Cement Works v. CBDT (2001) 248 ITR 216 (SC).

So far as the stand of the assessee is concerned, the learned counsel made reference to the various, letters, the details of which are given in para 11 of written synopsis (pp. 1 to 12 of the paper book) and submitted that in terms of agreement,

the NIDC was simply working as agent on behalf of the assessee for supervising the work and it could not be treated as contractor. He emphatically pleaded that NIDC had deducted TDS from the contractors and the same was deposited by it in the Government account.

We have carefully considered the facts and circumstances relating to this matter, the entire material including the case laws to which our attention was invited and the rival submissions. After going through the agreement dated 7-5-1989 entered into between the assessee and the NIDC, the relevant circular letters and the case laws cited before us, we find sufficient force in the contention raised by Shri S.K. Garg on behalf of the assessee. The department's stand, in our view, in treating the NIDC as a contractor is not sustainable. We are also of the view that so far as the liability to deduct TDS by the assessee is concerned, that also is fully carried out by the assessee, as TDS was deducted on its behalf by NIDC at the rates prescribed under law. In our view, therefore, the approach of the departmental authorities in holding the assessee liable for payment of TDS under section 194C/201, is not legally justifiable. We assign the following reasons in support of our conclusions : A. The contract dated 7-8-1989 between the UPSIDC and NIDC cannot be treated to be a contract for carrying out contract work by a contractor and contractee. The intention of the parties is to be gathered from the relevant stipulations of the Deed, which are reproduced below : "Whereas UPSIDC intends to construct its office complex in Kanpur (hereinafter referred to as 'Project') : And whereas in this connection UPSIDC desires to engage the services of NIDC as the consultants to the project to perform the work hereinafter set forth; And whereas NIDC represents that it is ready, willing and able to provide such services; " "1. 1 For the above objective, UPSIDC has appointed NIDC as the consultants for providing design, engineering, supervision and construction management services for the total implementation of the project." 5.1 In consideration of the services to be rendered by the NIDC stipulated under Art. II above, NIDCs fee shall be @ 11 per cent (Eleven per cent) of the actual executed cost of the project if the same is within Rs. 3.0 crores. In case the actual executed cost of the project goes beyond Rs. 3.0 crores, fee shall be @ 10.per cent (Ten per cent) of the total actual executed cost of project. However, the minimum fee shall be Rs. 25 lakhs (Rs. twenty five lakhs). The charges towards the soil investigation, site survey and

advertisement for selection of contractors, in case required, shall be extra.

(a) All payments made to the contractors/suppliers and other agencies engaged on behalf of UPSIDC for the execution of allotted works and payments as a result of arbitration award made by UPSIDC to the contractors/suppliers or any other agency engaged for timely and satisfactory completion of the works as per accepted rates and terms and conditions of the contract with the contractors.

6.1 The fee stipulated in clause 5.1 of this agreement shall be paid by UPSIDC to NIDC for the services rendered by the NIDC in the following manner (i) 15 per cent of the fee as an advance on signing of the agreement between UPSIDC and NIDC.(ii) 5 per cent of the fee on submission of layout plan and sketch drawings including all other intervening activities upto item B III of Annexure-I (iii) 15 per cent of the fee on submission of estimates and issue of tender documents including all other intervening activities as per Annexure-I 7.1 The funds for construction of the project shall be placed at the disposal of NIDC on cash flow basis for payments in a phased manner for disbursement to contractors/suppliers. The NIDC shall submit an estimate of cost in proforma attached as Annex. II, likely to be incurred bi-monthly in the first week of first month. 100 per cent of such estimated cost shall be paid within a week to the NIDC as deposit for the work to be done." The above conditions sufficiently proved that NIDC was to work as a consultant and was also entrusted to get the work done through other contractors on behalf of the assessee, for which purposes, the funds were also placed at their disposal.

B. It may be pointed out that NIDC was entering into contract on behalf of the assessee and deducting TDS @ 2 per cent In this regard, the position was repeatedly clarified by the assessee in its letter written to the departmental authorities. The relevant extract of the letters are reproduced below : "Kindly refer to your above letter for verification of tax at source under section 194(c) of the Income Tax Act, 1961, regarding construction of UPSIDC Head Office Complex building being done at A-1/4, Lakhanpur (Kanpur). In this connection, it is to inform you that the construction work of UPSIDC Head Office building at Lakhanpur, Kanpur, was entrusted to the National Industrial Development Corporation Limited

(NIDC), New Delhi as Consultants and all the contracts have been given and arranged by the NIDC, New Delhi. The tax at source from the contractors has also been deducted by NIDC. NIDC is a Government of India undertaking and their address is as below." "2. Yeh ki iske Mukhalaya Hetu Ek Bhawan Nirman Rashtriya Audyogik Vikas Nigam, New Delhi, jo ki Kendriya Sarkar ka Upkrarn Hai Ne banwaya. Humne nahin banwaya. Unhone hee humse samay samay par lagti Rs. lekar nirman Thekadaro ko anubandhit kiya aur bhugtan bhi kiya.

Hamse nirman karne wale Thekedaron athwa labour adi se koi samvida ya sambandh nahin raha hai aur na hi hamne unhe koi bhugtan kiya hai.

3. "Yeh ki hame jankari hui hai ki unhone hi thekedaron se TDS katkar, New Delhi, main jama bhi kiya hai. unka pata nimna hai

(ii) That it is reiterated that. NIDC was not our contractors for building. These were simply consultants and there was no TDS on consultants prior to 1-7-1995. However, we have made TDS after that date, from payment of consultancy charges to NIDC @ 5 per cent as requisite rules.

(4) It is once again reiterated that no contract of construction of the building was given to them. They were merely advisors, managers and supervisors and were only entitled to consultancy charges. You may please note that NIDC is not a builder or building contractor. It is clear from the letter head on which we have filed their certificate dated 20-7-1996 which says they are "Consultants & Engineers".

(5) It is also very relevant and material to note that no cost of construction or any amount (Theka Money) was settled with them. Please verify it from the copy of agreement required by you and enclosed herewith.

(6) It is for this reason that all the money placed at their disposal for making payments. to the persons to whom they had given Theka.

Placement of money cannot be taken to be payment to contractors by us.

It was simply placement of the funds and not a payment.

(7) It is not understood why and insistent is being thrust upon us for not making TDS when NIDC has already made TDS @ 2 per cent on payments made by them to the contractors from our funds placed at their disposal.

(4) That event if NIDC is taken/assumed to be our agent, for payment to the contractors who constructed the building, they have deducted TDS @ 2 per cent and there was no question of double deduction. NIDC as reported, had duly deposited it in Delhi which please verify and desist from any misconceived and illegal action.

C. The NIDC had also clarified the position by issuing a certificate dated 20-7-1999. The relevant extract of the certificate is reproduced below "This is to certify that the National Industrial Development Corporation Limited (Hereinafter called NIDC) is a Central Government Undertaking, engaged in providing consultancy services in various fields, including construction management, project management, and making payments to contractors/suppliers on behalf of various clients, from the funds provided by the clients. TDS deductions are also made as per provisions of the Income Tax Act. It is further certified that NIDC have already deposited the TDS deducted upto 31-3-1996, with the Central Government and annual return submitted to the IT Authorities (Income Tax Officer TDS Wd. 23(2) vide Diary No. 001952 dated 28-6-1996)" It may further be pointed out that NIDC has further clarified the entire position by its letter dated 16-2-2000, copy placed at p. 32 of the paper book (Volume II of the assessee). In this letter, the NIDC has certified that they undertook consultancy work of providing Engineering and Construction Management Services to the UPSIDC for their Complex at Kanpur vide agreement dated 7-8-1989, on a fee @ 10 per cent of the executed cost of the works as per the agreement executed with UPSIDC. In para 3 of the letter, it is specifically stated that NIDC as consultant of UPSIDC as per agreement and awarded contracts on behalf of the UPSIDC. Paras 3, 4 and 5 are reproduced below: "3. That we as consultant of UPSIDC as per agreement, awarded contracts on behalf of the UPSIDC to following contractors TDS from above parties @ 2 per cent under section 194C of the Income Tax Act, was deducted (excluding NBCC and Best & Crompton Engg. Ltd. who hold exemption certificate of the IT department photocopy of which is enclosed herewith) and was deposited with the

IT department. Our tax deduction A/c No. is N-0557B.4. That we booked Rs. 98,31,076 as consultancy fee of the National Industrial Development Corporation Limited in terms of the agreement referred at Sl. No. 2 above on the above project which was duly taken to our P&L A/c of the years 1989-90 or 1995-96 and income was assessed/taxed by the IT department in the respective years.

5. That UPSIDC deducted TDS on the payment of consultancy fees paid to NIDC after 1-7- 1995, since when the TDS came into force on fee for professional and technical services under section 194J of the Income Tax Act." It may be pointed out that despite the categoric version of the assessee and that of the NIDC regarding payment of TDS by NIDC on behalf of the assessee, the department did not prefer to verify the amount and rate of TDS deductions and the fact of deposit of the same by NEDC. However, since this aspect is not in dispute the uncontroverted version of the assessee and that of NIDC regarding deduction of TDS by NIDC and payment of the same by it has to be accepted.

It may also be pointed out that the department has not considered this plea Of the assessee on this aspect of the matter. Had the NIDC been treated as a contractor and other agencies as sub- contractors, then the rate of TDS would have been different. So far as such agencies are concerned and in that situation, whereas the TDS was demanded from the assessee, excess amount deducted by NIDC should have been refunded.

As per the understanding between the assessee and the NIDC, NIDC was a consultant and not contractor and, therefore, in view of the subsequent amendment for charging TDS on payments to professionals, the assessee deducted TDS from NIDC. The details of such payment have been given in Annex. 10 according to which a total sum of Rs. 61,00,219 was deducted as income-tax and Rs. 9,183 as surcharge. This also fortifies the stand of the assessee. Had the NIDC been taken as a contractor, the percentage of TDS would have been only 2 per cent and not 5 per cent, which was rate fixed for TDS so far as the professionals were concerned.

Coming to the contentions of the learned Senior Departmental Representative and particularly the argument that section 194C covers the activities of consultants and

professionals, we may point out that this contention is not acceptable on the following reasons (a) The reliance placed by the Senior Departmental Representative on the decision of the Hon'ble Supreme Court in the case of Associated Cement Co. Ltd. (supra) is misplaced. As explained by the Hon'ble Bombay High Court in the case of Chamber of IT Consultants (supra) the decision of the Hon'ble Supreme Court was not properly understood by the Board, while withdrawing Circular Nos. 86 & 93 and para 11 of Circular No. 108. The Hon'ble Bombay High Court, after considering the judgment in the case of Associated Cement Co. Ltd. (supra) has made the following observations: "The conclusion arrived at by us that section 194C does not apply to payments made by way of professional fees also gets support from the fact that in the year 1987, the Finance Bill, 1987, provision was sought to be made to provide for deduction of tax at source from payments by way of professional fees by insertion of a new section, viz., section 194E. The said proposal was, however, dropped at the time of passing of the said Bill. The legislative intent of section 194C becomes further clear from the fact that while incorporating section 194H in the Act in the year 1991 to provide for deduction of tax at source in respect of payments made by way of commission, Brokerage, etc. "payments made for professional services" were specifically excluded from the-scope and ambit of the said section.

It is clear from the above discussion that section 194C is not applicable to payments by way of professional fees.

(b) The position was further clarified by Hon'ble Punjab & Haryana High Court in the case . of Rakesh Raj & Associates (supra) wherein the following observations were made by the Hon'ble High Court : "The impugned circular issued by the Board is held to be beyond the scope of section 119 and the result of misreading of d. 194C of the Act. The Board had earlier taken a different view about the applicability of section 194C while issuing directions in its two circulars dated 29-3-1972, and 26-9-1972, but, later on, giving an erroneous and misconceived interpretation to the observations of the Supreme Court in Associated Cement Co. Ltd. v. CIT (1993) 201 ITR 435 (SC), the Board issued unsustainable and illegal directions (Circular No. 681, (see (1994) 206 ITR (St) 299 dated 8-3-1994. The intention of the legislature, while enacting section 194C, is clear and unambiguous

and it shall have to be seen in the background of subsequent legislative acts which have already been discussed earlier. Once a provision by way of enactment of section 194E was attempted to be made in the Act in the year 1987, and since that effort did not materialise, a new provision ultimately came to be inserted in section 194J in the year, 1995. The impugned Circular No. 681, (see (19,94) 206 ITR (St) 2991, dated 8-3-1994, is, therefore, quashed.

Thus, the legal position is clear that the provisions of section 194C would not be applicable to the services rendered by the professionals.

Honble Delhi High Court has also adopted a similar approach in the case of S.R.F Finance Ltd. (supra) and has held that vide Circular No. 666, dated 8-10-1993, and Circular No. 681, of 8-3-1993, CBDT has missed the real purport of the decision of the Supreme Court in the case of Associated Cement. According to the Court, section 194C of the Income Tax Act does not govern the deduction of tax at source from payments of the fees towards professional or technical services. The Hon'ble court has also made following observations: "The term 'any work' in section 194C is aimed at the type of work resulting in tangible material and by virtue of the special inclusion, supply of labour to carry out any work also is brought into the net of tax deduction at the source. This inclusive clause ropes in the consideration for the supply of labour. The word supply' connotes the meaning of 'procuring', 'securing' or 'bringing in', and not rendering of one's own professional or technical services. To the extent that the circulars govern payments to commission agents and brokers for the services rendered by them, they travel beyond the provisions of section 194C and have no legal force and the authorities functioning under the Act are not beyond by them.

The intention of the legislature is also to be derived from the legislative history behind incorporation of section 194J with effect from 1-7-1995. The amendment made through section 194J goes to show that category of professional and technical services was excluded from the purview of section 194C. There is another aspect of the matter. As pointed out earlier, TDS @ 2 per cent was deducted by NIDC, which fact also stands established from the certificates issued by the NIDC. To iterate, it not the case of the department that the TDS was not

deducted at the prescribed rate for the contract works or it was not deposited. Since the amount deductible as TDS, had actually been deducted by NIDC on behalf of the assessee, there was no loss to the revenue and if without refunding TDS earlier deducted on behalf of the assessee, the assessee is again required to deposit TDS with interest, then it shall be undue enrichment of the revenue. In the case of the CIT v. Manager Madhya Pradesh State Co-operative Development Bank Ltd. (1982) 137 ITR 230 (MP), it was held that where the regular assessment of an employee was completed and the amount of tax fully paid by him, the Income Tax Officer Salary Circle, had no jurisdiction under section 201 of the Income Tax Act, 1961, to demand further tax from the employer in respect of the tax alleged to have been short deducted at source in respect of the employee.

In the case of CIT v. Life Insurance Corpn. (1987) 166 ITR 191 (MP), following its earlier decision, the Hon'ble Madhya Pradesh High Court has held that where a regular assessment of an employee had been completed and the amount of tax was fully paid by him, the Income Tax Officer, TDS, had no jurisdiction under section 201 of the Act to demand further tax from the employer in respect of the tax short deducted relating to such employee.

Similar view was taken by the Hon'ble Madhya Pradesh High Court in the case of CIT v. M.P. Agro Morarji Fertilizers Ltd. (1989) 176 ITR 282 (MP), wherein, following the decision in the case of Gwalior Rayon Silk Co. Ltd. v. CIT (1983) 140 ITR 832 (MP), it was held that if a regular assessment of an employee is completed, and amount of tax was fully paid by him, the Income Tax Officer had no jurisdiction under section 201 of the Act to demand further tax from the employer. If we apply the principle laid down in the above cases to the present case, it will be found that the required amount of TDS was duly deducted by NIDC and also deposited by it and, therefore, if further TDS is demanded from the assessee, then it will amount to undue enrichment of the revenue.

On the basis of above reasons, we uphold the contentions of the learned counsel for the assessee and hold that there was no relationship of contractor and contractee between the assessee and NIDC and, therefore, the assessee was not under any legal obligations to deduct TDS while placing funds at the disposal of

NIDC for getting the works done through other agencies by NIDC and on behalf of the assessee and secondly, the required TDS was deducted on behalf of the assessee through NIDC and, therefore, the demand to charge tax from the assessee is not justified.

In view of the above, ground Nos. 1 to 7 are decided against the department and in favour of the assessee. These are, therefore, allowed.

The learned counsel for the assessee, Shri S.K. Garg submitted that the order demanding tax under section 201 of the Income Tax Act, 1961, cannot be passed after the expiry of normal time-limit for completion of assessment.

According to him, the demand of tax is a part of assessment process and is aimed at collection of taxes. In support of his contention, he placed reliance on the decision of Hon'ble Delhi High Court in the case of Delhi Development Authority v. ITO (1998) 147 CTR (Del) 385: (1998) 230 ITR 9 (Del). According to the learned counsel for the assessee, the order passed on 19-3-1997, demanding tax upto the financial year 1992-93 relevant to assessment year 1993-94, could not have been passed as the normal time-limit for passing an order of assessment as provided in section 153 had expired on 31-3-1996. In this regard, the learned counsel also placed reliance on the decision in the case of Gujarat Narmada Valley Fertilizers Corpn. v. ITO (2000) 66 TTJ (Ahd) 121. The learned counsel for the assessee also placed reliance on the following decision Raymond Woollen Mills Ltd. v. ITO (1996) 57 ITD 536 (Bom) The learned Senior Departmental Representative on the other hand, submitted that this ground is not maintainable inasmuch as it was not raised before the learned Commissioner (Appeals). He also pointed out that the decision in the case of Delhi Development Authority's case (supra), is not applicable to the facts of the present matter.

We have carefully considered the facts and circumstances relating to this matter and the rival submissions. At the outset, we may observe that no time limit is fixed for passing orders under section 201(1A) of the Income Tax Act, 1961, and in any case the delay of three or four years in passing the orders for demanding interest under section 201(1A) cannot be treated to be unreasonable, in view of the various decisions on the subject.

In the case of Raymond Woollen Mills Ltd. (supra) also a period of four years from the end of the relevant previous year was treated to be a reasonable period for levy of interest under section 201(1A) of the Act for delay in depositing the tax deducted at source. However, in that case, the time gap A between the end of relevant previous year and levy of interest under section 201(1A) of the Act ranging from four years to eleven years, was found to be unjustified. So far as the present case is concerned, the delay is, therefore, not unjustified and the order for demanding interest cannot be quashed on that ground alone.

However, we have to examine the issue from a different angle. The charging of interest under section 201(1A) is consequential. Since the demand of TDS from the assessee is not maintainable, in our view, no question arises for charging of interest under section 201(1A). Hence, this ground is decided accordingly and in favour of the assessee.

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