

Reserved on 02.08.2018

Delivered on 09.08.2018

Court No. - 35

Case :- INCOME TAX APPEAL No. - 10 of 2016

Appellant :- Apar Mukhya Adhikari

Respondent :- Income Tax Officer (Tds), Allahabad

Counsel for Appellant :- Chhaya Gupta

Counsel for Respondent :- S.C., Ashish Agarwal, Shubham Agarwal

Hon'ble Bharati Sapru, J

Hon'ble Dinesh Kumar Singh, J.

(Per: Dinesh Kumar Singh, J.)

1. Present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) has been filed by the appellant-assessee against the order dated 28th September, 2015 passed by the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as “Tribunal”) in ITA Nos. 09, 10, 11/Alld/2015.

2. The relevant Assessment Years are 2010-11, 2011-12 and 2012-13.

3. The following questions of law have been formulated in memo of appeal for decision by this Court:

“A. Whether the “Tahbazari” comes within the ambit of Section 206C(1C);

B. Whether the term “Parking Lot”, “Toll Plaza”, “Mining and quarrying” include “Tahbazari”;

C. Whether the Apar Mukhya Adhikari,

Zila Panchayat was responsible for collecting the tax at source under Section 206C(1C) of Income Tax Act; and

D. Whether the term “person” as defined under Section 2(31) includes “the Apar Mukhya Adhikari Zila Panchayat’.

4. The appellant is Apar Mukhya Adhikari, Zila Panchayat constituted under the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as “Adhiniyam”). In order to regulate its functions, a policy was formulated whereby Tahbazari, Tahbazari-Vahan Stand and Balu-Morang, Gitti Bolder-Vahan Shulk is auctioned and authority letter is issued to the highest bidder.

5. The Assessing Officer (hereinafter referred to as “A.O.” conducted a survey under Section 133-B of the Act on 3rd May, 2012. It was noticed that there were three kinds of auctions: (i) Tahbazari (ii) Tahbazari-Vahan Stand (iii) Balu-Morang and Gitti Bolder-Vahan Shulk.

6. The Zila Panchayat had issued licences to different persons (through tender and auction) for collection of Tahbazari etc.

7. The A.O. was of the view that the amount collected by the Zila Panchayat fell under/within the

scope of Tax collected at source (hereinafter referred to as “TCS”).

8. The A.O. worked out the amount of short collection and amount of interest under Section 206 (7) of the Act as under:

FY 2009-10

	Amt	Tax	Int	Total
764 Tahbazari	-	-	-	-
765 Tahbazari-Vahan Stand	44,28,620/-	88,572/-	38,972/-	1,27,544/-
766 Balu, Morang, Gitti vahan Shulk	-	-	-	-
Total	44,28,620/-	88,572/-	38,972/-	1,27,544/-

FY 2010-11

	Amt	Tax	Int	Total
764 Tahbazari	13,20,100/-	26,402/-	8,448/-	34,850/-
765 Tahbazari-Vahan Stand	29,91,600/-	59,832/-	19,146/-	78,978/-
766 Balu, Morang, Gitti vahan Shulk	19,04,000/-	38,080/-	12,186/-	50,266/-
Total	62,15,700/-	1,24,314/-	39,780/-	1,64,094/-

FY 2011-12

	Amt	Tax	Int	Total
764 Tahbazari	41,21,200/-	82,424/-	16,485/-	98,909/-
765 Tahbazari-Vahan Stand	76,95,500/-	1,53,910/-	30,782/-	1,84,692/-
766 Balu, Morang, Gitti vahan Shulk	1,27,86,000/-	2,55,720/-	51,144/-	3,06,864/-
Total	2,46,02,700/-	4,92,054/-	98,411/-	5,90,465/-

9. Heard Ms. Chhaya Gupta, learned counsel appearing for the appellant, and Mr. Shubham

Agrawal, learned counsel appearing for the respondent.

10. Under Section 206C(1C) of the Act every person, who grants a lease or a licence is required to collect tax at the prescribed rate from the licensee for granting lease/licence or otherwise transferring any right or interest to any other person with respect to parking lot, toll plaza, mine or quarry. The Section 206C (1C) is extracted hereinbelow:-

“Section 206C (1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table blow, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount

as income tax:

11. The Tahbazari is not an item which is provided under this Section for collecting TCS. If a licence or lease is issued in favour of any other person for collecting the Tahbazari, it cannot be said that lessee is collecting toll on such licence or lease, as the case may be. We are required to construe the taxing provisions strictly and cannot give liberal interpretation to a taxing provision.

12. We are, therefore, of the view that the toll plaza does not include Tahbazari inasmuch as there is no toll set up for collecting the Tahbazari when licence for collecting the Tahbazari is issued. The Tahbazari has different connotation and it is not a toll as held by the Tribunal. We do not agree with the view taken by the Tribunal that Tahbazari is nothing but a toll or it is not different from Toll Plaza. We, therefore, set-aside the impugned order and allow the appeal.

13. The questions formulated in the appeal are, thus, answered in favour of the appellant-assessee and against the Revenue.

Order Date :- 9th August, 2018
MVS Chauhan/-