

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU**

**&**

**HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA**

**WP. No.13421 of 2021**

**Between:-**

**GOVT. CHANDRA VIJAY COLLEGE  
THROUGH ITS PRINCIPAL DR. S.K.  
BARMAN, HIGHER EDUCATION  
DEPARTMENT, DISTRICT DINDORI  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI ASHISH ANAND BARNARD, ADDITIONAL  
ADVOCATE GENERAL)***

**AND**

**OFFICE OF THE INCOME TAX OFFICER  
THROUGH INCOME TAX OFFICER  
(TDS-2,) C.R. BUILDING ROOM NO. 102,  
ANNXE BUILDING, NAPIER TOWN  
JABALPUR (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI SANJAY LAL, ADVOCATE)***

**WP. No.13429 of 2021**

**Between:-**

**GOVT. CHANDRA VIJAY COLLEGE  
THROUGH ITS PRINCIPAL DR. S.K.  
BARMAN, HIGHER EDUCATION  
DEPARTMENT, DISTRICT DINDORI  
(MADHYA PRADESH)**

WP. No.13421 of 2021 & connected matters

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.....PETITIONER

*(BY SHRI ASHISH ANAND BARNARD, ADDITIONAL  
ADVOCATE GENERAL)*

AND

OFFICE OF THE INCOME TAX  
OFFICER THROUGH INCOME TAX  
OFFICER (TDS-2,) C.R. BUILDING  
ROOM NO. 102, ANNXE BUILDING,  
NAPIER TOWN JABALPUR (MADHYA  
PRADESH)

.....RESPONDENT

*(BY SHRI SANJAY LAL, ADVOCATE)*

WP. No.13438 of 2021

Between:-

GOVT. CHANDRA VIJAY COLLEGE  
THROUGH ITS PRINCIPAL DR. S.K.  
BARMAN, HIGHER EDUCATION  
DEPARTMENT, DISTRICT DINDORI  
(MADHYA PRADESH)

.....PETITIONER

*(BY SHRI ASHISH ANAND BARNARD, ADDITIONAL  
ADVOCATE GENERAL)*

AND

OFFICE OF THE INCOME TAX  
OFFICER THR INCOME TAX OFFICER  
(TDS-2,) C.R. BUILDING ROOM NO. 102,  
ANNXE BUILDING NAPIER TOWN  
JABALPUR MP (MADHYA PRADESH)

.....RESPONDENT

*(BY SHRI SANJAY LAL, ADVOCATE)*

**WP. No.13441 of 2021**

**Between:-**

**GOVT. CHANDRA VIJAY COLLEGE  
THROUGH ITS PRINCIPAL DR. S.K.  
BARMAN, HIGHER EDUCATION  
DEPARTMENT, DISTRICT DINDORI  
(MADHYA PRADESH)**

**.....PETITIONER**

*(BY SHRI ASHISH ANAND BARNARD, ADDITIONAL  
ADVOCATE GENERAL)*

**AND**

**OFFICE OF THE INCOME TAX  
OFFICER THR INCOME TAX OFFICER  
(TDS-2,) C.R. BUILDING ROOM NO. 102,  
ANNXE BUILDING, NAPIER TOWN  
JABALPUR MP (MADHYA PRADESH)**

**.....RESPONDENT**

*(BY SHRI SANJAY LAL, ADVOCATE)*

**WP. No.13445 of 2021**

**Between:-**

**GOVT. CHANDRA VIJAY COLLEGE  
THROUGH ITS PRINCIPAL DR. S.K.  
BARMAN, HIGHER EDUCATION  
DEPARTMENT, DISTRICT DINDORI  
(MADHYA PRADESH)**

**.....PETITIONER**

*WP. No.13421 of 2021 & connected matters*

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***(BY SHRI ASHISH ANAND BARNARD, ADDITIONAL  
ADVOCATE GENERAL)***

**AND**

**OFFICE OF THE INCOME TAX  
OFFICER THR INCOME TAX OFFICER  
(TDS-2,) C.R. BUILDING ROOM NO. 102,  
ANNXE BUILDING, NAPIER TOWN  
JABALPUR MP (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI SANJAY LAL, ADVOCATE)***

**WP. No.13446 of 2021**

**Between:-**

**GOVT. CHANDRA VIJAY COLLEGE  
THROUGH ITS PRINCIPAL DR. S.K.  
BARMAN, HIGHER EDUCATION  
DEPARTMENT, DISTRICT DINDORI  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI ASHISH ANAND BARNARD, ADDITIONAL  
ADVOCATE GENERAL)***

**AND**

**OFFICE OF THE INCOME TAX  
OFFICER THR INCOME TAX OFFICER  
(TDS-2,) C.R. BUILDING ROOM NO. 102,  
ANNXE BUILDING, NAPIER TOWN  
JABALPUR MP (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI SANJAY LAL, ADVOCATE)***

**WP. No.13480 of 2021**

**Between:-**

**GOVT. CHANDRA VIJAY COLLEGE  
THROUGH ITS PRINCIPAL DR. S.K.  
BARMAN, HIGHER EDUCATION  
DEPARTMENT, DISTRICT DINDORI  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI ASHISH ANAND BARNARD, ADDITIONAL  
ADVOCATE GENERAL)***

**AND**

**OFFICE OF THE INCOME TAX  
OFFICER THR INCOME TAX OFFICER  
(TDS-2,) C.R. BUILDING ROOM NO. 102,  
ANNXE BUILDING, NAPIER TOWN  
JABALPUR MP (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI SANJAY LAL, ADVOCATE)***

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Reserved on : 21.06.2022

Passed on : 29.08.2022

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**Per: Sheel Nagu, J.**

**ORDER**

This common order shall govern the disposal of WP. Nos. 13421/2021, 13429/2021, 13438/2021, 13441/2021, 13445/2021, 13446/2021 and 13480/2021.

2. Present petitions filed under Article 226 by a government college seeks quashment of order dated 17.02.2020 (Annexure P/1) by the respondent by which penalty u/S.201 of Income-Tax, 1961 (for brevity “Act of 1961”) is imposed on the ground of petitioner-college having failed to deduct tax at source in regard to payment made by way of honorarium to Guest Faculty Lecturers for the assessment year 2017-18.

3. Learned counsel for the rival parties are heard on the question of admission so also on final disposal.

4. Indisputably, the statutory remedy of appeal u/S.246 of Act of 1961 is available to the petitioner to be availed. However, Shri Barnard, learned State counsel for the petitioner submits that in view of undisputed facts involved of the Guest Faculty Lecturers neither falling under technical service nor professional service as per Section 194J of Act of 1961, the statutory remedy of appeal though available is not efficacious, and therefore, grievance raised herein can very well be adjudicated under Article 226 of the Constitution. In support, learned State counsel relies upon recent decision of Apex Court in the case of *Magadh Sugar & Energy Ltd. vs. State of Bihar & others reported in 2021 S/CC Online 601*.

5. *Per contra*, learned counsel for the respondent/Revenue by filing reply relies upon decision of High Court of Punjab and Haryana in the case of *C.I.T. (TDS) Chandigarh vs. D.A.V. College* rendered in an IT appeal u/S.260A of Act of 1961 whereby following substantial questions of law were framed :-

*(i) Whether on the facts and circumstances of the case and in law, the Ld. ITAT was justified in holding that the relation with Guest Faculty (professional teaching staff) is equivalent in nature to an employer/employee relationship when there was no agreement/appointment or employer-employee relationship between the parties and that the Guest Faculties were merely professionals and therefore Section 194J of the Act was applicable ?*

*(ii) Whether on the facts and in the circumstances of the case, the learned ITAT has erred in recognizing the payments made to Guest Faculty, who rendered professional services to the college, as per the provisions of Section 192 of the Income Tax Act, 1961 instead of Section 194J of the Income Tax Act, 1961 ?*

*(iii) Whether on the facts and in the circumstances of the case, the Ld. ITAT is right in law in holding that there existed an employer-employee relationship between the Guest Faculty teachers and the College and the assessee-college is not liable to make deduction of tax at source u/s.194J of the Income Tax, 1961 ?*

*(iv) Whether on the facts and in the circumstances of the case the findings recorded by the Ld. ITAT are perverse and contrary to the material available on record and not sustainable in the eyes of law ?*

6. After adjudication of appeal, High Court of Punjab & Haryana remanded the matter to the Tribunal to decide the question as to whether agreement between college-assessee and Guest Faculty Lecturers was a “contract for service” or a “contract of service”. While so remanding the matter, High Court of Punjab & Haryana held that adjudication of aforesaid questions requires going into disputed questions of fact which

ought to be left for the fact finding Authority i.e. the Appellate Authority and the Tribunal constituted under the Income Tax Act.

6.1 Armed with the aforesaid decision of High Court of Punjab & Haryana, learned counsel for the respondent/Revenue contends that disputed questions of fact are involved, which would require adducing of evidence before coming to a finding whether relationship between the petitioner-college and the Guest Faculty Lecturers would satisfy the pre-requisites of professional service oör technical service contemplated by Section 194J of Act of 1961. It is submitted by learned counsel for the respondent/Revenue that this exercise ought not to be gone into in writ jurisdiction especially when the alternative efficacious statutory remedy of appeal is available to be availed.

7. After having heard learned counsel for the rival parties and having perused the material on record and the provisions of Section 194J of Act of 1961, this Court is of the considered view that to ascertain the real object and import of the relationship between petitioner-college and Guest Faculty Lecturers and as to whether Guest Faculty Lecturers on the anvil of Section 194J of Act of 1961 for the purpose of T.D.S., disputed questions of fact will have to be gone into. It is trite law that writ jurisdiction ought not to be exercised when disputed questions of fact are involved and the relevant statute provides for an alternative efficacious remedy. Petitioner has not availed the alternative efficacious statutory remedy of appeal u/S.246 of Act of 1961 before Commissioner (Appeals).

8. More so, this Court do not see any apparent jurisdictional error in the order of Assessing Authority (Annexure P/1), and therefore, none of the exceptions laid down in the decision of Apex Court in the case of ***Whirlpool Corporation vs. Registrar of Trademarks, Mumbai*** reported in ***(1998) 8 SCC 1*** can come to the rescue of petitioner-college.

9. Since an interim order was passed by this Court on 02.08.2021, which continues to subsist till date, this Court grants 45 days' time to petitioner-college to approach the Appellate Authority u/S.246 of Act of 1961 and till then the interim order passed by this Court on 02.08.2021 shall continue to subsists.

9.1. However, it is made clear that continuance of interim order is made merely to enable the petitioner to approach the appropriate appellate Forum and not to prejudice the mind of Appellate Authority, who is free to adjudicate the appeal on admission as well as on interim relief without being influenced by this order.

9.2. It is further made clear that if no appeal is filed within aforesaid period of 45 days, then Revenue shall be free to execute the impugned assessment order.

10. With the aforesaid observations, these petitions stand disposed of.

**(SHEEL NAGU)**  
**JUDGE**

**(ARUN KUMAR SHARMA)**  
**JUDGE**

*mohsin*