IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 22ND DAY OF MARCH 2016

PRESENT

THE HON'BLE MR.JUSTICE ASHOK B. HINCHIGERI

AND

THE HON'BLE MRS. JUSTICE S. SUJATHA

I. T. A.No 438/2012
C/W
I. T. A. Nos.441/2012, 443/2012, 447/2012, 448/2012, 454/2012, 457/2012, 459/2012, 461/2012, 462/2012, 463/2012 & 464/2012

I. T. A.No.438/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan,
Bellary Road, Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga – 585 105

...Appellants

(By Sri Ameet Kumar Deshpande., Advocate)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,

Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri Lava M.
& Sri Manjunath M. Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 839/Bang/2011, for the Assessment Year 2006-2007, praying to formulate the substantial question of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 839/Bang/2011 and confirm the order of the Appellate Commissioner and confirming the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.441/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan,
Bellary Road, Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 840/Bang/2011, for the Assessment Year 2007-2008, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 840/Bang/2011 and confirm the order of the Appellate Commissioner confirming the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.443/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan,
Bellary Road, Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga - 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A. Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 841/Bang/2011, for the Assessment Year 2008-2009, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 841/Bang/2011 and confirm the order of the Appellate Commissioner confirming the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.447/2012

BETWEEN:

1. The Commissioner of Income-Tax
   TDS, HMT Bhavan,
   Bellary Road, Bangalore

2. The Income-Tax Officer
   TDS Ward, Aayakar Bhavan,
   Sedam Road,
   Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A. Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 842/Bang/2011, for the Assessment Year 2009-

2010, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 842/Bang/2011 and confirm the order of the Appellate Commissioner confirming the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.448/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan, Bellary Road,
Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 843/Bang/2011, for the Assessment Year 2010-2011, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No.

843/Bang/2011 and confirm the order of the Appellate Commissioner confirming the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.454/2012

BETWEEN:

1. The Commissioner of Income-Tax
   TDS, HMT Bhavan,
   Bellary Road, Bangalore

2. The Income-Tax Officer
   TDS Ward, Aayakar Bhavan,
   Sedam Road,
   Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Arneetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A. Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 844/Bang/2011, for the Assessment Year 2011-2012, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 844/Bang/2011 and confirm the order of the Appellate Commissioner confirming the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.457/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan,
Bellary Road, Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 874/Bang/2011, for the Assessment Year 2006-2007, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 874/Bang/2011 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.459/2012

BETWEEN:

1. The Commissioner of Income-Tax
   TDS, HMT Bhavan,
   Bellary Road, Bangalore

2. The Income-Tax Officer
   TDS Ward, Aayakar Bhavan,
   Sedam Road,
   Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 875/Bang/2011, for the Assessment Year 2007-2008, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 875/Bang/2011 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.461/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan,
Bellary Road, Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 876/Bang/2011, for the Assessment Year 2008-2009, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 876/Bang/2011 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.462/2012

BETWEEN:

1. The Commissioner of Income-Tax
   TDS, HMT Bhavan, Bellary Road,
   Bangalore

2. The Income-Tax Officer
   TDS Ward, Aayakar Bhavan,
   Sedam Road,
   Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 877/Bang/2011, for the Assessment Year 2009-2010, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 877/Bang/2011 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.463/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan,
Bellary Road, Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 878/Bang/2011, for the Assessment Year 2010-2011, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 878/Bang/2011 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

I. T. A.No.464/2012

BETWEEN:

1. The Commissioner of Income-Tax
TDS, HMT Bhavan,
Bellary Road, Bangalore

2. The Income-Tax Officer
TDS Ward, Aayakar Bhavan,
Sedam Road,
Gulbarga – 585 105

...Appellants

(By Sri K.V.Aravind and
Sri Ameetkumar Deshpande, Advocates)

AND:

Gulbarga Electricity Supply Company Ltd.,
Corporate Office, Main Road,
Gulbarga - 585 102

... Respondent

(By Sri A Shankar, Sri Chandrashekhar, Sri M.Lava,
& Sri Mallayya Shetty, Advocates)

This Income Tax Appeal filed under Sec. 260-A of I.T. Act, 1961 arising out of order dated 31/08/2012 passed in ITA No. 879/Bang/2011, for the Assessment Year 2011-2012, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order dated 31/08/2012 passed by the ITAT, Bangalore in ITA No. 879/Bang/2011 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, TDS Ward, Gulbarga.

These Appeals coming on for final hearing this day, ***S. SUJATHA J.,*** delivered the following:

JUDGMENT

All these appeals arise from the common judgment passed by the Income Tax Appellate Tribunal "A" Bench, Bangalore in ITA Nos.839 to 844/Bang/2011 relating to the assessment years 2006-07 to 2011-12. Hence, all these matters are clubbed, heard together and disposed of by this common judgment.

2. These appeals are filed by the revenue under Section 260-A of the Income Tax Act, 1961 (the 'Act' for short) raising the following substantial questions of law:

1. Whether the Tribunal was correct in holding that the analysis and distribution (SLDC) of electricity by KPTCL from generation point to the consumers of the assessee involving utilization of sophisticated machineries, involvement of technical expertise, application of science, services of Engineers, engagement of

qualified technicians and trained, skilled personal/manpower does not amount to technical services to attract provisions of Section 194-J of the Act?

2. Whether the Tribunal committed an error in not recording a finding regarding application of other provisions of TDS after holding that the provisions of Section 194-J of the Act are not attracted?

3. Whether the Tribunal was correct in deleting the interest levied u/s.201(1A) of the Act, for non deduction of tax at source as required u/s.194-J of the Act?

3. Briefly stated the facts are:

- that the assessee is the limited Company engaged in the business of buying and selling of electricity. The assessee purchases electricity from the generators of electricity. The power from the generation point to the consumers is transmitted through the transmission network of Karnataka Power Transmission

Corporation Limited (for short 'KPTCL'). The assessee had made payments to the KPTCL towards State Load Dispatching Centre (for short 'SLDC'), the unit of KPTCL. It appears during the course of survey conducted under Section 133-A of the Act, it was found by the authorities that the assessee has not deducted TDS on the amount paid to the KPTCL towards SLDC charges. The Assessing Officer invoking the provisions of Section 201(1) of the Act and Section 201(1A) of the Act, treated the assessee as an assessee in default for not deducting the tax at source on the payments made to the KPTCL. The assessing Officer held that the transaction of transmission of electricity from the generation point to the consumers through a transmission network is in the nature of technical services attracting Section 194-J of the Act. Being aggrieved, the assessee preferred the appeals before the Appellate Commissioner. The Appellate Commissioner confirmed the finding recorded by the Assessing Officer holding that the services rendered by the KPTCL to the assessee towards analysis and distribution of electricity amounts to technical services, attracts the provisions of Section 194-J of the Act. Accordingly the appeals were rejected on this issue.

4. Being aggrieved, the assessee carried the matters before the Income Tax Appellate Tribunal. The Tribunal after examining the transactions entered into between the KPTCL and the assessee held that the view taken by the authorities that the transmission of electricity through a transmission network of KPTCL attracts the provisions of Section 194-J of the Act is totally misconceived. Accordingly the appeals filed by the assessee were allowed. Hence, these appeals by the revenue, challenging the common judgment passed by the Tribunal.

5. Heard the learned counsel for the parties and perused the material on record.

6. The learned counsel appearing for the assessee at the outset pointed out that the identical substantial questions of law raised in the case of ***The Commissioner of Income Tax and another vs. Hubli Electric Supply Company Ltd.,*** (ITA No.437/2012 and connected matters dated 15.12.2015), this Court has answered the same against the revenue. Placing reliance on this judgment, the assessee seeks to answer the substantial questions of law raised in these appeals against the revenue.

7. However, the learned counsel for the appellants-revenue though admits that the identical substantial questions of law raised in similar circumstances in the case of ***Hubli Electric Supply Company Ltd.,*** (supra) is covered against the revenue, he makes an attempt to raise a new ground that the transaction of transmission of electrical energy from the generation point to the consumers through a

transmission network of KPTCL, if not to be treated as technical services, attracting the provisions of Section 194-J of the Act, it would be brought under the provisions of Section 194-I of the Act as rent and contends that the appeals are required to be allowed.

8. We are afraid that this stand of the revenue is not appreciable. In the scheme of the Act, the proceedings before the assessing officer constitute the base, if the base is taken out/disturbed/replaced or substituted by any new material, the entire edifice of the proceedings will collapse. The points, which were not the basis of the proceedings or the subject matter of adjudication, cannot be raised for the first time in the appeal proceedings under Section 260-A of the Act. The scheme of the Act contemplates mechanism to set right the error, if any committed by the Assessing Officer. We cannot give our acceptability to the arguments advanced by the revenue contrary to the well

established machinery provided under the Act. It is an attempt to deviate from the scheme of the Act, having noticed that the substantial questions of law raised in these appeals are answered against the revenue in identical cases referred to above i.e., nature of services or transaction entered into between the assessee and KPTCL are not in the nature of technical services to attract the provisions of Section 194-J of the Act. It is not a chance litigation to switch over to a different provision alien to proceedings initiated. It is also discerned that this point was at no point of time raised, considered and examined by the authorities. Sections 194-J and 194-I are two independent provisions which operate in different fields. It is not possible to import the existence or the consideration of any point not raised and adjudicated before the authorities or the Tribunal, much against the principles of natural justice and that too at this juncture in the appeal proceedings under the fiscal statute. The arguments advanced on behalf of the revenue deserve to be rejected and accordingly they are rejected.

9. The judgment of ***Hubli Electric Supply Company Ltd.,*** is squarely applicable to the facts of the present case. We do not see any reasons to differ from the view taken by the co-ordinate Bench of this Court in ***Hubli Electric Supply Company Ltd.*** case (supra). We are in agreement with the view taken by this Court and answer the substantial questions of law raised against the revenue and in favour of the assessee.

Accordingly the appeals are dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Srt