



IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 15TH DAY OF DECEMBER, 2015

PRESENT

THE HON'BLE MR.JUSTICE S.ABDUL NAZEER

AND

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

I.T.A. NO.437/2012

C/W

I.T.A. NOS.439, 440, 442, 444, 445, 446, 449, 450, 451, 452, 453,
455, 456, 458, 460 & 465 OF 2012

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
TDS, HMT BHAVAN, BELLARY ROAD, BANGALORE
2. THE INCOME TAX OFFICER,
TDS WARD, C.R.BUILDING,
NAVANAGAR, HUBLI 580025. ...COMMON APPELLANTS

(BY SRI. Y.V.RAVIRAJ &
SRI. K.V.ARAVIND, ADVS.)

AND:

HUBLI ELECTRIC SUPPLY COMPANY LTD.,
CORPORATE OFFICE, P.B.ROAD, NAVANAGAR,
HUBLI 580025.

...COMMON RESPONDENT

(BY SRI. S. PARTHASARATHI,
SRI. MALAHARA RAO, H.R.KAMBIYAVAR &
SRI. P.DINESH, ADVS.)

THESE ITAs ARE FILED UNDER SECTION 260-A OF IT ACT,
1961 ARISING OUT OF COMMON ORDER DATED 31.07.2012
PASSED IN ITA NO.896 TO 903/BANG/2011 FOR THE
ASSESSMENT YEARS 2007-08 TO 2010-11, ITA NOS.904 TO
906/BANG/2011 AND ITA NOS.908 TO 913/BANG/2012 FOR THE

ASSESSMENT YEARS 2007-08 TO 2009-10, PRAYING THAT THIS HON'BLE COURT BE PLEASED TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY P.S.DINESh KUMAR J., PRONOUNCED THE FOLLOWING:

JUDGMENT

Revenue has presented following appeals raising certain questions of law.

Sl. Nos.	ITA No.	ITA No. Before Tribunal	Assessment years
1.	437/2012	910/Bang/2012	2009-10
2.	439/2012	909/Bang/2012	2008-09
3.	440/2012	908/Bang/2012	2007-08
4.	442/2012	906/Bang/2011	2009-10
5.	444/2012	905/Bang/2011	2008-09
6.	445/2012	904/Bang/2011	2007-08
7.	446/2012	903/Bang/2011	2010-11
8.	449/2012	902/Bang/2011	2009-10
9.	450/2012	901/Bang/2011	2008-09
10.	451/2012	900/Bang/2011	2007-08
11.	452/2012	899/Bang/2011	2010-11
12.	453/2012	898/Bang/2011	2009-10
13.	455/2012	897/Bang/2011	2008-09
14.	456/2012	896/Bang/2011	2007-08
15.	458/2012	913/Bang/2012	2009-10
16.	460/2012	912/Bang/2012	2008-09
17.	465/2012	911/Bang/2012	2007-08

2. All the above appeals were admitted to consider the following common substantial question of law:

“Whether the Tribunal is justified in holding that Section 194J of the Act is not applicable to the facts and circumstances of this case?”

3. Heard Shri Y.V.Raviraj, learned counsel for the appellants/Income Tax Department and Shri Parthasarathi, learned counsel for the respondent/assessee.

4. Learned counsel for the Revenue made following submissions with regard to factual matrices of appeals.

- (i) Assessee, Hubli Electricity Supply Company Limited (HESCOM) is a State owned Company registered under the Companies Act and engaged in the business of buying and selling electricity. Assessee purchases electricity from State owned generators like Karnataka Power Corporation Limited (KPCL), National Thermal Corporation (NTC) and the like ones as also from private generators like Jindal Energy Limited. Power is transmitted from the generation point to the consumers through the transmission network of the Karnataka Power Transport Corporation Limited (KPTCL) in terms of an agreement dated 08.05.2012 which has a term of 25 years there from.

- (ii) During the survey conducted by the Revenue in the premises of assessee under Section 133A of the Income Tax Act, 1961 ('Act' for short), it was noticed that the assessee had made payments towards transmission charges to KPTCL; Power Grid Corporation of India Limited (PGCIL) and 'SLDC charges' to State Load Dispatching Centre (SLDC) without deducting tax deductible at source under Section 194J of the Act. After issuing summons and following all procedure, the assessing authority vide separate orders dated 31.03.2011 for the assessment year 2006-07 to 2009-10 held that the assessee was in default under Section 201(1) of the Act and levied interest of Rs.65,18,10,369/- under Section 201(1A) both in respect of payments made towards transmission charges and 'SLDC charges'. Orders passed by the Assessing Authority were challenged before the Commissioner of the Income Tax (Appeals).
- (iii) During the hearing, the assessee had brought to the notice of the Commissioner of Income Tax (Appeals) that the payee namely the KPTCL had paid the taxes due on its income. Accordingly, the assessee urged that no demand be raised against the assessee, as the taxes were already paid by the payee KPTCL. Following the decision of the Hon'ble

Supreme Court in the case of *Hindustan Coca Cola Beverages (P) Ltd., vs. CIT*¹ the Commissioner held that no demand could be visualized under Section 201(1) of the Act in cases where assessee had successfully demonstrated that the taxes were already paid by the payee. Accordingly, the appeals were allowed in part and the ITO (PDS) was directed to afford an opportunity to the assessee to furnish proof of payment of taxes by the payees and thereafter work out interest under Section 201(1A) of the Act from the date of remittance of TDS till the date of filing of the return by the payee in each case.

- (iv) The orders passed by the Commissioner (Appeals) were challenged by both the assessee as well as Revenue before the Income Tax Appellate Tribunal (ITAT), Bengaluru. The said appeals were dismissed by common order dated 31.07.2012 impugned herein. Assessee was aggrieved by the order of the Commissioner to the extent that it has been rendered liable to pay interest. Revenue was aggrieved by the order passed by the Commissioner against a finding that no demand could be visualized under Section 201 when the assessee would satisfy the Revenue that the taxes were paid by the payee.

¹ 293 ITR 226 (SC)

With the dismissal of the appeals by ITAT, Revenue has preferred these appeals raising questions of law mentioned supra.

5. Learned counsel for the Revenue urged the following grounds in support of these appeals.

- (i) Admittedly, KPTCL is a transmission company and power generated at the generating stations is transmitted through its transmission network;
- (ii) KPTCL collects transmission charges and SLDC charges for transmission of power.
- (iii) In terms of Section 39 of the Electricity Act, 2003 it undertakes transmission of electricity through intra-state transmission system and ensures development of efficient, coordinated and economical system for smooth flow of electricity from generating station to the load centres.
- (iv) State Load Dispatching Centre is also an another arm of KPTCL and collects fixed rate from generating companies called as 'SLDC charges'. SLDC is a statutory body and functions as per Section 32 of the Electricity Act. It is responsible for optimum scheduling and dispatch of electricity. It is required to monitor grid operations, keep accounts of quantity of electricity transmitted through the

State Grid, exercise supervision and control over intra-state transmission system and carry out real time operations for grid control and dispatch of electricity within the State through secured operation as per grid standards and State Grid Code;

- (v) The aforementioned functions of KPTCL and SLDC clearly establish that KPTCL extends “technical services” to the assessee while transmitting power under the aforementioned power transmission agreement. Therefore, Commissioner (Appeals) fell in an error while coming to a conclusion that no demand could be visualized under Section 201(1) of the Act, if the assessee satisfied the Revenue that the payee had paid the taxes and further directing the ITO (TDS) to workout the interest from the due date of remittance of TDS till the date of filing of returns. Similarly, the ITAT also fell in an error in dismissing the appeals filed by the Revenue. Accordingly, he prayed for answering the substantial question of law in favour of the Revenue by allowing these appeals.

6. On the other hand, Shri Parthasarthi, learned counsel for the assessee supporting the judgment of the Tribunal, contended that there is no error in the impugned orders passed by

the ITAT, giving rise to any question of law much less a substantial question of law arising out of the said orders. Reiterating the grounds of appeals urged on behalf of the assessee before the Commissioner (Appeals), he submitted that the service which the KPTCL offers is transmission of power from the generating point to the consumer's point. So far as the assessee is concerned, it has not sought for any technical service from KPTCL. The functions carried out by the KPTCL under Section 39 of the Electricity Act, 2003 and the functions carried out by the SLDC under Section 32 of the Act, assessee has no other option but to utilize the services of KPTCL as it functions under a statute and has a monopoly in the power transmission service. Thus, assessee is compelled to seek the services of KPTCL and at any rate, assessee does not avail any "technical service" from the KPTCL. In the premise, Section 194J is not applicable to the facts of the case. As a supplemental argument, he contended that in any event the income earned has been offered to tax by the payee namely, the KPTCL and therefore, the Commissioner (Appeals) has rightly held that the case on hand is fully covered by the ratio of the judgment of the Hon'ble Supreme Court in the case of

Hindustan Coca Cola Beverages (P) Ltd., (supra). He further contended that ITAT, rightly following the case of *Bangalore Electricity Supply Company vs. ITO (TDS)*² has dismissed the appeals by the impugned order. Thus, he submitted that the instant appeals do not merit any consideration and accordingly prayed for their dismissal.

7. We have given our careful considerations to the submission made by the learned counsel for the Revenue and the assessee.

Revenue is aggrieved by the decision of the ITAT holding that compliance of Sec 194J mandating deduction of tax at source are not attracted to the facts of these cases and the assessee was not liable to deduct tax at source on payment of transmission charges to KPTCL.

Sec. 194J reads as follows:

194J. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—

(a) fees for professional services, or

(b) fees for technical services^{26, 27} [or]

² ITA No.530 to 535 / Bang / 2011

²⁸[(ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or]

²⁷[(c) royalty, or

(d) any sum referred to in clause (va) of section 28,]

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ²⁹[ten] per cent of such sum as income-tax on income comprised therein :

Provided that no deduction shall be made under this section—

(A) from any sums as aforesaid credited or paid^{29a} before the 1st day of July, 1995; or

(B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(i) ³⁰[thirty thousand rupees], in the case of fees for professional services referred to in clause (a), or

(ii) ³⁰[thirty thousand rupees], in the case of fees for technical services referred to in ³¹[clause (b), or]

³²[(iii) ³⁰[thirty thousand rupees], in the case of royalty referred to in clause (c), or

(iv) ³⁰[thirty thousand rupees], in the case of sum referred to in clause (d) :]

³³[**Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :]

³⁴[**Provided also** that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.]

(2) ³⁰[***]

(3) ³⁰[***]

Explanation.—For the purposes of this section,—

(a) “professional services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified³⁶ by the Board for the purposes of section 44AA or of this section;

(b) “fees for technical services” shall have the same meaning as in

Explanation 2 to clause (vii) of sub-section (1) of section 9;

³⁷[(ba) “royalty” shall have the same meaning as in *Explanation 2 to clause (vi) of sub-section (1) of section 9;*]

(c) where any sum referred to in sub-section (1) is credited to any account, whether called “suspense account” or by any other name, in the books of account of the person liable to pay such

sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

In the instant cases, the above provision would come into play only when there is payment of fee for availing technical services. Compliance or otherwise of the above provision by the assessee entirely hinges upon the factual matrix with regard to availing of technical services if any from the KPTCL. Thus, in order to answer the question of law raised by the Revenue, it is imperative to examine as to whether assessee had availed any technical services from KPTCL.

8. Irrefutable facts in these cases are KPTCL and assessee have entered into a power transmission agreement dated 08.05.2012. Under the said agreement, KPTCL has agreed with the assessee to provide its transmission network for the purpose of carrying electricity to its users. For the said purpose, KPTCL has covenanted with assessee to fulfill the obligations contained in Article 2 of the agreement and to perform other obligations. Assessee has agreed to pay transmission charges on a monthly basis in terms of Article 8 of the agreement. Both parties have

agreed to comply with the provisions of the State Grid Code and Regulations and Rules issued by KERC from time to time.

9. SLDC is required to maintain records of quantity of energy flowing through the State Grid and issue State Energy Account under KERC (Terms and Conditions of Tariff) Regulations 2006.

10. KPTCL is required to maintain the operation and maintenance of the transmission system.

11. Transmission charges are calculated as per transmission tariff determined by KERC and KPTCL is required to raise bills on every first working day of every month and the assessee has undertaken to pay transmission charges in terms of the said bills.

12. We have carefully perused the contents of the power transmission agreement. There is no mention of any offer with regard to any "technical services" by the KPTCL. Plain and simple intention of the parties to the agreement as discernable from the power transmission agreement is that the assessee was

desirous of using the transmission network belonging to the KPTCL in accordance with the provisions of the Electricity Act subject to payment of charges applicable and determined by KERC. KPTCL was willing to provide its transmission network for the purpose of carrying electricity to its users subject to payment of transmission and other charges as determined by KERC. There is neither an offer nor an acceptance of any “technical service” *inter se* between the parties. Admittedly, KPTCL is a State owned Company and the only power transmitting agency. It has installed and developed its own infrastructure. Assessee is also a State owned electricity distribution company. The only service which the assessee has availed from the KPTCL is “transmission of power” on payment of charges fixed by KERC. No material is placed by the Revenue before this Court to substantiate its contention that assessee had availed of any technical services. In our considered view, assessee has done nothing more than transmitting certain quantum of power from one place to the other for a price fixed by KERC. Assessee was oblivious to the technical expertise which the KPTCL may possess. There was neither transfer of any

technology nor any service attributable to a technical service offered by the KPTCL and accepted by the assessee. Therefore, application of Section 194J of the Act to the facts of this case by the Revenue is misconceived.

13. The above finding is sufficient to answer the common substantial question of law. However, having perused the order passed by the Commissioner (Appeals) by adverting to the judgment of the Hon'ble Supreme Court in the case of *Hindustan Coca Cola Beverages (P) Ltd.*, (supra), we deem it necessary to touch upon the subject of payment of tax by the payee. It is not in dispute that the payee KPTCL has offered the income to tax and paid the same. In the circumstances, there is no loss of Revenue. Although the question of loss of Revenue is not subject matter of these appeals, we have adverted to the same as payment of tax by the payee has the effect of rendering these appeals purely academic.

14. In the premise, we hold that these appeals are devoid of merit and answer the question of law against the Revenue.

In the result, these appeals fail and accordingly stand dismissed. No costs.

Sd/-
JUDGE

Sd/-
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