आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जे', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH MUMBAI

सर्वश्री आर.सी.शर्मा, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य

BEFORE : SHRI R.C.SHARMA, AM
&
SHRI SANJAY GARG, JM

आयकर अपील सं./**ITA Nos.7384 to 7386/Mum/2010**

(**निर्धारण वर्ष /** Assessment Years :2005-06, 2006-07 & 2007-08)

ITO(TDS)(OSD)-3(2), Mumbai	Vs.	M/s The Tata Power Co.Ltd., Corporate Tax Department, Corporate Centre, Block-B, 34, Sant Tukaram Road, Carnac Bunder, Mumbai-400 009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACT 0054 A**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA Nos.2914 & 2915/Mum/2010**

(**निर्धारण वर्ष /** Assessment Year :2007-08 & 2008-09)

M/s The Tata Power Co.Ltd., Corporate Tax Department, Corporate Centre, Block-B, 34, Sant Tukaram Road, Carnac Bunder, Mumbai-400 009	Vs.	ITO(TDS)(OSD)-3(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACT 0054 A**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

प्रत्याक्षेपक सं./CO **No.64 & 65/Mum/2012**

(Arising out of ITA No. 2914 & 2915/Mum/2010)

(**निर्धारण वर्ष /** Assessment Year : 2007-08 & 2008-09)

ACIT (TDS)(OSD)-3(1), Mumbai	Vs.	M/s The Tata Power Co.Ltd., Corporate Tax Department, Corporate Centre, Block-B, 34, Sant Tukaram Road, Carnac Bunder, Mumbai-400 009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACT 0054 A**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

राजस्व **की ओर से** /Revenue by : Shri Akhilendra P. Yadav

निर्धारिती **की ओर से** /Assessee by : Shri Dinesh Vyas

सुनवाई की तारीख / **Date of Hearing : 13th Nov, 2014**
घोषणा की तारीख/**Date of Pronouncement : 19th Nov.2014**

आदेश / O R D E R

PER BENCH **:**

The Revenue has filed appeals for the assessment years 2005-06 to 2007-08 and the assessee has filed appeals for the assessment year 2007-08 & 2008-09, whereas the Revenue has filed cross objections for the assessment years 2007-08 & 2008-09.

2. Since common grounds are involved in all these appeals, therefore, all the appeals have been heard analogously and are being disposed of by this consolidated order.

3. In all the years under consideration common issue involved relates to assesse's liability for deduction of tax u/s.194I from transmission charges paid to MSETCS(Pool) Account. The precise ground taken by the assessee for A.Y.2007-08, which is similar to other grounds, reads as under :-

> *The appellant objects to the order dated 28th January, 2010 passed by the Commissioner of Income-tax (Appeals) 14, Mumbai (hereinafter referred to as the CIT(A)) for the aforesaid assessment year on the following grounds :-*
>
> *1. The CIT(Appeals) failed to appreciate that Section 1941 is applicable to renting of plant or equipment w.e.f. 13-7-2006 and hence, is not applicable to the period extending from 1-4-2006 to 12-7-2006.*
>
> *2. Without prejudice to (1) above, the CIT(A) erred in holding that tax is deductible at source under Section 1941 from transmission charges paid to MSETCL (Pool) Account, having failed to appreciate that -*

a. the transmission network is not in the physical possession or control of the Company as a Transmission Service User. Accordingly, the payment is not in the nature of rent or royalty for use of the transmission network, under the provisions of Section 1941;

b. the pooling-of the transmission network is an arrangement prescribed by the Regulator i.e. MERC to share the revenue from the transmission business and not to hire the transmission lines from MSETCL.

3. The CIT(A) failed to appreciate that tax deduction at source mechanism cannot be put into practice since the identity of the person in whose hands transmission charges are ultimately includible as income, is not known at the time of contributing to the MSETCL-STU-Pool Account."

4. Rival contentions have been heard and record perused. Facts in brief are that assessee company is engaged in power sector and also engaged in distribution of power/electricity. During the course of survey u/s.133A, it was found that assessee company has paid wheeling charges/transmission charges, but has failed to deduct tax at source. Accordingly, the AO held that assessee is default u/s.201 of the Act.

5. By the impugned order, the CIT(A) confirmed the action of the AO, against which assessee is in further appeal before us.

6. At the outset, it was submitted by the learned AR that the very solitary issue raised in the appeals are covered by the order of the coordinate bench in the case of **M/s Reliance Infrastructure Limited, ITA Nos.2814 to 2819/Mum/2013, dated 20-8-2014**, wherein it was held that assessee was not liable to deduct TDS either u/s.194-I or u/s.194-J on the 'Wheeling and Transmission Charges paid by the assessee.

7. We have carefully gone through the orders of the authorities below as well as the order of the Tribunal in the case of **M/s Reliance**

Infrastructure Limited (supra). The precise observation of the Tribunal was as under :-

> *"6. We have considered the rival submissions of the ld. representatives of the parties. A perusal of the above reproduced observations made by the ld.CIT(A) while accepting the appeal of the assessee reveals that the ld. CIT(A) has followed the various decisions of the co-ordinate benches of the Tribunal to hold that the assessee was not liable to deduct TDS either under section 194-I or section 194J on the 'Wheeling and Transmission Charges' paid by the assessee in case of which provisions of Electricity Act, 2003 were applicable.*
>
> *The ld. D.R. could not produce any contrary decision which may justify departure from the almost well settled position of law on the above issue. Hence, respectfully following the decision of the co-ordinate benches of the Tribunal i.e. "Maharashtra State Electricity Distribution Co. Ltd. vs. DCIT (TDS) Range-2" ITA No.2872/Mum/2010 for A.Y.2009-10 and the other decisions as referred by the ld. CIT(A) in his order, the issue is accordingly decided in favour of the assessee and the appeals of the Revenue are hereby dismissed."*

As the facts and circumstances during the years under consideration are *pari materia*, respectfully following the order of the Tribunal, as reproduced above, we do not find any merit in the action of the lower authorities for holding that assessee was in default for non-deduction of tax on Wheeling/transmission charges paid by the assessee.

8. It was also argued by the learned AR that the issue is also covered by the order of Hon'ble Supreme Court in the case of **Hindustan Coca Cola Beverages Pvt. Ltd., 293 ITR 226 (SC)**, wherein it was held that where payee has already paid tax due on the payment received by it, the tax could not be recovered once again from the deductor-assessee. Accordingly, it was held that assessee was not in default u/s.201 of the IT Act.

9. Our attention was also invited by the learned AR to page 16 of the CIT(A)'s order, wherein complete detail of transmission charges paid to MSETCL (Pool) Account by the assessee company was classified. It was further emphasize that the amount received by the assessee was far in excess of the amount paid in each year and that amount received was included in PBT, hence, taxable income of assessee has already been computed on the amount so received.

10. Principally, there is no dispute to the proposition that once the amount on which the tax should be required to be deducted at source have already been included by the recipient in his total income and due taxes has been paid thereon, the deductor cannot be made once again made liable for non-deduction of tax at source on such payments, which amounts to double taxation of the very same income. However, there is no such finding either by the AO or by the CIT(A) in this regard in the instant appeals before us, therefore, we are not in a position to apply the proposition so laid down by the Hon'ble Supreme Court to the instant appeals before us.

10. In view of the above discussion, respectfully following the order of the Tribunal as discussed above, we do not find any merit in the action of the AO for holding that assessee was in default for non-deduction of tax on wheeling/transmission charges paid by it in various years under consideration.

11. In the result, appeals of the assessee (ITA Nos.2914&2915/Mum/1200) are allowed and appeals of the revenue (ITA Nos.7384 to 7386/Mum/2010) are dismissed, whereas the cross objection filed by the revenue (CO Nos.64&65/Mum/2012) have become infructuous, therefore the same are dismissed.

Order pronounced in the open court on this 19/11/2014.

आदेश की घोषणा खुले न्यायालय में दिनांकः 19/11/2014 को की गई ।

Sd/-	**Sd/-**
(संजय गर्ग)	**(आर.सी.शर्मा)**
(SANJAY GARG)	**(R.C.SHARMA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 19/11/2014

प्र.कु.मि/pkm, नि.स/ PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai