

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH, VIRTUAL HEARING AT KOLKATA**

**Before  
SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 102 to 106/PAT/2023  
Assessment Years: 2013-14 to 2017-18**

***Bihar State Power Generation Company Ltd. .... Appellant***  
***00, Vidyut Bhawan, Bailey Road,***  
***Patna-800001.***  
***(PAN: AAFCB2392G)***

***Vs.***

***ACIT, TDS, Patna ..... Respondent***

**Appearances:**

***Appellant represented by: Shri D. V. Pathy, Advocate***

***Respondent represented by: Shri Ashok Kumar, CIT, DR***

Date of concluding the hearing : 15.01.2025

Date of pronouncing the order : 15.01.2025

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The captioned appeals have been preferred by the assessee against the separate orders of even date 23.01.2023 of the Ld. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as ld. 'CIT (A)'] u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Years (AY) 2013-14 to 2017-18.

2. Since identical issue is involved in all these appeals, hence, these appeals have been heard together, and are being disposed of by this common order for the sake of convenience.

3. The sole issue involved in these appeals is as to whether the assessee is to be treated as assessee in default u/s. 201(1)/(1A) of the Act for not deducting tax at source (TDS) as per the provisions of section 194C of the Act.

4. The brief facts of the case are that the assessee is a State owned corporation and is engaged in the generation of electricity and also responsible for distribution of generated electricity to the electricity distribution companies. That an agreement was signed between Bihar Heavy Electrical Ltd. (BHEL) and Bihar State Electricity Board (BSEB) on 24.11.2011 for construction/reconstruction of Bihar Thermal Power Station (BTPS). The Assessing Officer (AO) observed that assessee deductor had given contract to BHEL, for supply of material as well as contract for undertaking transportation, uploading, civil & structural works, erection, testing and commissioning of the equipment and materials on EPC basis and the contract made between BHEL and BTPS (Unit of BSEB) was composite in nature and observed that though the assessee had awarded composite contract, it had deducted TDS only on the erection part of the contract, but failed to deduct tax at source on the supply portion of works. The A.O. treated the assessee (deductor) as an assessee in default u/s 201(1)/1A of Income-tax Act 1961 for non-deduction of tax at source under section 194C of Income-tax, Act 1961 and vide order dated 29.01.2018 and raised demand u/s 201(1)/(1A) of the Act for total amount of Rs.7,15,70,761/- for Financial Year 2012-13.

5. Being aggrieved by the said order of the AO, the assessee preferred appeal before the Ld. CIT(A). However, the Ld. CIT(A) confirmed the action of the AO in holding the assessee as assessee in default u/s. 201(1)/(1A) of the Act. Being aggrieved by the said order of the Ld. CIT(A), the assessee is in appeal before us.

6. The Ld. Counsel for the assessee has brought our attention to relevant part of the order of the Ld. CIT(A) to submit that the assessee is a company incorporated under the Companies Act, 1956 and is engaged in the business of generation of electricity. The assessee is owned by the State Govt. of Bihar. That the assessee nominated Bharat Heavy Electricals Ltd. for setting up of Power Plant on turnkey basis. That the assessee after nomination entered into two separate and distinct contracts i.e. first, for supply of plant, machinery and equipment and the other for erection of the project. The agreements,

inter-alia, elucidate the value of the contract both in terms of value for supply of goods and the cost of the execution of the contract. The Ld. AR has further submitted that the two contracts, one for supply of goods and the other for erection, were separate and distinct contracts. The assessee in respect of the execution of the works contract has deducted tax at source in accordance with section 194C of the Tax. The same has also been deposited in the Government Account. The assessee, however, has not deducted tax at source on the cost of supplies made by the contractor under a separate agreement. The Ld. Counsel, therefore, has submitted that since there were two separate contracts for supply of material and for erection/establishment of the thermal power station, hence, assessee accordingly, had deducted the TDS on the payment made for services. However, since there was a separate contract for cost of material and the payment was made as per the actual cost of the material, therefore, the provisions of section 194C of the Act were not applicable on the said payment. He, therefore, has submitted that both the lower authorities have erred in holding the assessee as assessee in default u/s. 201(1)/(1A) of the Act.

7. We have heard rival contentions and gone through the records. A perusal of the impugned order of the Ld. CIT(A) would reveal that there is no dispute to the factual position that BSEB had awarded contract to BHEL for design, engineering, manufacturing, supply of land and plant and equipment for expansion project at Barauni Thermal Power Station at Begusarai, Bihar. The prices for the material as well as the services were mutually settled. Both the parts of the contract i.e. supply of material as well as the cost of services were separate and segregated. However, the Ld. CIT(A) noted that though there were two separate contracts i.e. one relating to supply of material and the other relating to the erection/setting up of power plant, however, there was a clause that any breach to any one of the two contracts shall automatically be deemed as breach of both the contracts. He, therefore, upheld the finding of the AO that it was a composite contract. He observed that it was clear that all the material supplied was meant for setting up of Barauni Thermal Power Station. He observed that had the work of setting up

of project was not undertaken, the supply of material would have not taken place. He observed that the use of material was accessory or incidental to the execution of the work.

8. After going through the order of the Ld. CIT(A) and after hearing the Ld. Representatives of the parties, we are of the view that the approach of the lower authorities in this case is not correct. The contract in question cannot in any terms be said to be a work contract only. Admittedly, there were two separate contracts in this case. The first contract was relating to the supply of plant, machinery, equipment etc. and the rates for the same were also separately settled. The second contract was for setting up of the thermal power plant which was a work contract. Both the contracts were separate contracts. In our view, in no terms, it can be said to be a composite contract of services only. Merely because both the contracts were dependant upon each other i.e. BHEL will be able to set up the plant only if it would have the requisite plant, equipment and machinery and without that it cannot set up and as the services cannot be performed without the supply of material, cannot, in itself, would make it a composite service contract. This, in almost every case, where same plant is to be set up there would be need of plant and machinery. It is upon the assessee either to get the plant and machinery from one party and get the execution/setting up work from the other party or the assessee may give both the contracts to one party. It is almost obvious that the erection/setting up part of the contract would always be dependant upon the availability of material. If both the contracts are given to one party and the said party supplies only the material and would not perform its service part of setting up the project then such material/plant and machinery would be of no use for such an assessee. It is to ensure that the other contracting party performs its obligations in full and to the satisfaction and as per the contract between the parties, the first contracting party if insists upon a clause that in the event of breach of one contract it will be considered breach of both the contracts that itself, does not make both the contracts, as a composite service contract. The provisions of section 194C of the Act are attracted for paying any consideration to any recipient for carrying out works

contract and not in respect of the payment made for the cost of goods and material, which is a separate payment and is not included in any manner for payment for the work contract, and, hence, the provisions of section 194C of the Act would attract only in respect of payment for works contract and not for the cost of goods/material. The assessee admittedly has deducted the TDS on the payments made for the works contract. In view of this, the action of the lower authorities in holding the assessee as assessee in default u/s. 201(1)/(1A) of the Act cannot be held to be justified and the same is accordingly, set aside. It is held that the assessee is not an assessee in default u/s. 201(1)/(1A) of the Act. In view of the above observation, all the appeals of the assessee stand allowed.

9. In the result, all the appeals of the assessee stand allowed.

**Order pronounced in the open Court on 15th January, 2025.**

Sd/-

**[Sanjay Awasthi]**  
Accountant Member

Sd/-

**[Sanjay Garg]**  
Judicial Member

Dated: 15.01.2025

*J.Dey (Sr. P.S.)*

*Copy of the order forwarded to:*

1. **Appellant : Bihar State Power Generation Company Ltd.**
2. **Respondent : ACIT, TDS Circle, Patna**
3. **CIT(A), NFAC, Delhi**
4. **CIT**
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

*//True copy //*

By order

Assistant Registrar  
ITAT, Patna Benches  
Patna