

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: "H" New Delhi

BEFORE SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos: 4913-4918/Del/2013  
AYs: - 2007-08 to 2012-13

ACIT  
13-A, Subhash Road  
Dehradun

(Appellant)

vs. Uttranchal Power Corporation Ltd.  
Urja Bhawan  
Kanwali Road  
Dehradun  
(PAN MRTUO0222F)  
(Respondent)

Appellant by : Ms. Jyoti Kumari, CIT(DR)  
Respondent by : Shri Neeraj Sharma, CA  
Shri Manpreet Bagga, CA

Date of Hearing : 29.10.2015  
Date of pronouncement : 30.11.2015

**ORDER**

**PER SUDHANSHU SRIVASTAVA JUDICIAL MEMBER**

These six appeals have been preferred by the Department against the orders passed by the Ld. CIT (A) -I Dehradun for financial years 2006-07 to 2011-12. The only ground of appeal in all the appeals is as under:-

- i) *"The CIT(A) has erred in law and on facts in holding that TDS was not deductible on the payments of transmission & SLDC charges etc. made by the Uttranchal Power Corporation Limited (UPCL) to Power Transmission Corporation Uttrakhand Limited (PTCUL) ignoring the fact that payment for services provided by PTCUL to UPCL were in the nature of fee for technical services and were liable for TDS u/s 194J of the I.T. Act, 1961"*

2. Since all the six appeals have one common ground, we are disposing of all the six appeals by this common order.

3. The brief facts of the case, as borne out from the records, are that the assessee is a public sector undertaking and power distribution utility in the State of Uttarakhand. The Power Transmission Corporation of Uttrakhand Ltd. (PTCUL) is the transmission company which transmits i.e. wheels electricity from the generating company to the distribution company. The assessee is also stated to be acting as the State Load Dispatch Center (SLDC). The assessee pays transmission/wheeling charges to PTCUL. A Survey u/s 133A of the I.T. Act 1961 was conducted for the assessee and it was discovered that the assessee was not deducting tax at source on the payment made to PTCUL. It was assessee's contention that the payment of transmission charges will not fall within the purview of section 194J as fee for technical services. It was assessee's contention before the AO that the process was highly equipment oriented and that the PTCUL looked after the work relating to transmission beyond 33 KV. It was assessee's submission that the payment of transmission charges will not come within the purview of section 194J as fee for technical services since operation and maintenance of transmission lines and use of these lines for transmitting power does not result in any technical services being rendered to the assessee. It was the assessee's submission that rendering of services by allowing the use of technology system was different than charging fees from rendering technical services. The assessee also submitted that an amendment was made in section 9 (1) (vii) of the Income Tax Act, 1961 vide Finance Act 2012 so as to cover payments made for transmission and wheeling charges under the

head royalty and consequently under the ambit of provisions of section 194J of the Income Tax Act, 1961. Since the said amendment has been made by the Finance Act 2012, it was assessee's submission that payments for power transmission were not covered by the provision of section 194J till 2012 and even then post the amendment, wheeling and transmission charges would fall under 'royalty' and not under 'technical services' and as such there was no default on the part of the assessee to deduct tax at source. However, the AO was of the opinion that the assessee was liable to deduct tax at source at the time of payment of the technical fees to PTCUL and also liable to pay interest u/s 201 (1A) on the amount of tax that should have been deducted for the different financial years. The shortfall of TDS and interest thereon as per the AO was as under:-

S.No.	Financial Year	Payment	Short deduction	Interest on short deduction
1.	2006-07	42,98,00,000/-	4,29,80,000/-	77,36,400/-
2.	2007-08	42,98,00,000/-	4,29,80,000/-	2,66,47,600/-
3.	2008-09	134,99,99,996/-	13,49,99,999/-	6,61,49,999/-
4.	2009-10	75,81,00,000/-	7,58,10,000/-	2,80,49,700/-
5.	2010-11	106,50,00,000/-	10,65,00,000/-	2,66,25,000/-
6.	2011-12	1,30,50,00,000/-	13,05,00,000/-	16,96,50,000/-

4. In appeals before the Ld. CIT (A)-1, Dehradun the assessee reiterated its submission that it was not under a legal obligation to deduct tax at source on the payment of wheeling charges and since TDS was not deductible, interest also could not be charged. The Ld. CIT (A), while allowing the assessee's appeals, referred to a

plethora of decisions on the subject and held that tax was not deductible at source on payment of transmission and SLDC charges by assessee to PTCUL and the appeals of the assessee were allowed.

5. Now in these present appeals before us, the department is contesting the order of the Ld. CIT (A) and has submitted that the order of the AO should be restored. Ld. AR on the other hand pleaded for upholding of the order of the Ld. CIT (A).

6. We have heard the rival submissions and have gone through the records. There are a number of decisions which favour the stand of the assessee. Reference may be made to the decision of the Jaipur Bench in Jaipur Vitran Nigam Ltd. vs. DCIT 123, TTJ 888 (Jaipur) wherein the Jaipur Bench had discussed the issue of deductibility of tax at source on payment of wheeling charges by the distribution company to the transmission company and had held that it did not represent payment for technical services and that tax was not required to be deducted at source. Similarly, in the case of Bangalore Electricity Supply Company Ltd vs. ITO (TDS) 71 DTR (Bangalore) (Trib) 186, the decision of the Jaipur Bench was followed. The Bangalore Bench also considered the applicability of section 194I of the Income Tax Act and held that the tax was not deductible even under that section. The Hon'ble Delhi High Court in the case of CIT vs. Bharti Cellular Ltd. 319 ITR 139 (Delhi) has held that the term "technical services" used in section 194J as well in section 9(i)(vii) of the Income Tax Act implied human interface and would not cover a situation where payment had been received simply for providing facilities of

technical nature. Similarly, in the case of Skycell Communications Ltd. vs. DCIT 251 ITR (Madras), the Hon'ble Madras High Court has equated transmission of voice with transmission of electricity and has held that the same did not amount to providing a technical service. The Ld. AR for the assessee has placed reliance on a recent judgment of the Hon'ble High Court of Bombay in the case of CIT (TDS) vs. M/s. Maharashtra State Electricity Distribution Company Ltd. in ITA No. 336/2013 wherein through its decisions pronounced on 8<sup>th</sup> May, 2015, the Hon'ble High Court of Bombay has held in para 47 of the order as under:-

*"In our view the transmission charges and / or wheeling charges are not amounts paid under any arrangement for use of land, building, plant machinery, equipment furniture, fitting etc. and, therefore, not rent. Equally the amounts are not fees for technical services. In the facts and circumstances of this case we answer the question in favour of the assessee and against the revenue. The appeal is disposed of accordingly. There will be no order as to costs"*

7. In view of the facts and circumstances of the case and after going through the records and respectfully following the judgment of the Hon'ble Bombay high Court in the case of CIT (TDS) vs. Maharashtra State Electricity Distribution Company Limited (ITA No. 336/2013) we have no hesitation in holding that tax is not deductible at source on payment of transmission and SLDC charges to PTCUL. Thus, the AO was not correct in holding the assessee to be in default for non deduction of tax at source on payments made towards wheeling charges/SLDC. The demand for interest is equally not justified. Hence no interference is called for in the orders passed by the Ld. CIT (A) for all the six years.

8. In the result all the six appeals of the department are dismissed.

Pronounced in the open court On 30<sup>th</sup> November, 2015.

Sd/-  
**(J.SUDHAKAR REDDY)**  
**ACCOUTANT MEMEBR**

sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: the 30. 11. 2015

'veena'

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By order  
Dy. Registrar

Sl. No.	Description	Date
1.	Date of dictation by the Author	26.11.2015
2.	Draft placed before the Dictating Member	27.11. 2015
3.	Draft placed before the Second Member	
4.	Draft approved by the Second Member	
5.	Date of approved order comes to the Sr. PS	
6.	Date of pronouncement of order	
7.	Date of file sent to the Bench Clerk	
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	