आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव,न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER&
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.452-454/Viz/2010**
(निर्धारण वर्ष**/A.Ys : 2008-09 to 2010-11 respectively)**

Dy.Commissioner of Income Tax Circle-3(1) (TDS) Vijayawada	Vs.	M/s Southern Power Distribution Company of A.P.Limited Behind Srinivasa Kalyana Mandapam Kesavavayana Gunta Tirupati **[PAN : HYDSO8188F]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

आयकर अपील सं**./I.T.A.No.1217/H/2010,517/Viz/2019 &518/Viz/2019**
(निर्धारण वर्ष**/A.Ys : 2008-09 to 2010-11 respectively)**

M/s Southern Power Distribution Company of A.P.Limited Behind Srinivasa Kalyana Mandapam Kesavavayana Gunta Tirupati **[PAN : HYDSO8188F]**	Vs.	Dy.Commissioner of Income Tax Circle-3(1) (TDS) Vijayawada
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से /Revenue by	:	Shri D.K.Sonowal, CIT DR
निर्धारिती की ओर से / Assessee by	:	Shri C.P.Rama Swami, AR
सुनवाई की तारीख / Date of Hearing	:	04.09.2019
घोषणा की तारीख/Date of Pronouncement	:	04.10.2019

आदेश /O R D E R

Per Bench :

These appeals are filed by the revenue and the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Tirupati in I.T.A. No.517/DCIT C-3(1) TDS/VJY/CIT(A)/TPT/09-10 dated 25.06.2010. For the sake of convenience, these appeals are clubbed, heard together and a common order is being passed as under.

2. A survey u/s 133A was conducted in the business premises of the assessee on 29.09.2008. During the course of survey, the Assessing Officer (AO) found that the assessee has made the payment of lease rentals to M/s Klenn & Marshall on which TDS was required to be made u/s 194I of the Income Tax Act, 1961 (in short 'Act'), but the assessee has not deducted the TDS. The Assessing officer(AO) also found that the assessee made the payment of transmission and SLDC charges every month to M/s AP Transco Ltd, but no TDS was deducted. In view of the above defaults, the AO issued the show cause notice to the assessee calling for it's objections as to why the assessee should not be treated as assessee in default u/s 201(1)/201(1A) of the Act. In response thereto, the assessee filed its explanation as to why the TDS was not made on transmission

charges and lease rentals. The assessee explained that the lease agreement was entered into with M/s Klenn & Marshall by the then A.P.Transco in the year 1998 for a period of 6 years for procurement, installation, commissioning and maintenance of certain equipment on monthly lease rental basis and the lease period was expired during the year 2004. It was also submitted that, at the time of lease agreement, there was no provision in the Act to deduct the tax at source on the said payments. Subsequent to expiry of lease period, the matter was locked up in legal disputes and the assessee was paying the unpaid bills pertaining to lease period as per the directions of Debt Recovery Tribunal (in short 'DRT'), Hyderabad. Hence, argued that there is no liability of TDS and accordingly requested to drop the proceedings u/s 201(1).

3. Not being convinced with the explanation of the assessee, the AO observed that it is true that though there was no provision for deduction of tax at source u/s 194I till 31.03.2007, the Act has been amended w.e.f. 01.06.2007 to provide for TDS on leasing of equipment. The AO further observed that the TDS is required to be made either at the time of credit to the account of the payee or at the time of payment whichever is earlier. Accordingly the AO viewed that the payments made after 01.06.2007

attracts the provisions of TDS and failure to deduct the tax at source attracts the provisions of section 201(1) of the Act. Since the assessee has made payments subsequent to 01.06.2007 and no credit entry was made prior to 01.06.2007 in the books of the deductor, the AO held that the assessee is liable to deduct the TDS on the payments made to M/s Klenn & Marshall u/s 194I of the Income tax act on the rent payments made to M/s Klenn & Marshall during the F.Y.2007-08 and 2008-09 to the extent of Rs.38,34,243/- as per the details given below :

Expenditure	Financial Year	Amount	Section	Rate of TDS	TDS
Klenn & Marshall Rent	2007-08	32258472	194I	11.33	3654885
Klenn & Marshall Rent	2008-09	1583035	194I	11.33	179358
				Total	3834243

4. The second issue raised by the AO is that the assessee has paid the transmission charges and SLDC charges to M/s AP Transco Ltd., for using the transmission lines and other equipment for transmitting power from generating stations to the customers, but the assessee did not deduct the tax at source as required u/s 194J of the Act. Hence, the AO issued show cause notice dated 30.01.2009 for assessee's failure to deduct tax at source u/s 194J of the Act. The assessee filed reply objecting for treating the

payment as royalty u/s 194J of the Act stating that the transmission and SLDC charges were made for the transmission services rendered by M/s AP Transco which are in the nature of transportation of goods from one place to other place. Since the provisions of Section 194C specifically cover the transportation of goods, the assessee was under the impression of 194C is applicable to transmission of electricity and hence submitted that tax is deductible @2.266% as per section 194C of the Act but not under 194J. Thus, the assessee contended that the transmission charges are nothing but the payment made towards transportation of electricity and deduction has to be made u/s 194C of the Act, but not 194J of the Act. The AO considered the explanation offered by the assessee and viewed that transmission and transportation are two different and distinct terms. Transmission comes into picture where a medium is provided to enable something to pass through it. In the process of transmission, the medium of transmission does not move with the thing, but it only enables the thing to pass through it. Whereas in contradistinction, in the case of transportation, the medium which carries the thing also moves along with the thing. Hence, viewed that the process of transmission cannot be equated to transportation. Accordingly, the AO held that the provisions of section 194C are not

applicable in the case of the assessee and the AO was of the view that both the assessee and the AP Transco are bound by Electricity Act, 2003 and therefore they carry out their activities in accordance with the provisions of the Electricity Act. As such the nature of transmission charges has to be judged from the view point of Electricity Act but not from the general logic. As per the Electricity Act, 2003, transmission charges are paid for the use of transmission net work owned by M/s AP Transco, but not for carrying out any works contract, hence, such payment for use of equipment being in the nature of payment by way of royalty as mentioned in section 194J and accordingly liable to deduction u/s 194J, but not u/s 194C.

5. The AO further observed that the AP Transco owns a vast network of transmission lines and other equipment required for transmission of electricity. Transmission of electricity can only be carried out under license from Electricity Regulatory Commission and such license was granted to M/s AP Transco for carrying out such job within the state of Andhra Pradesh. Hence, any person including the assessee, who wants electricity to be transmitted from one place to the other place within the state of Andhra Pradesh have to necessarily use the transmission network of M/s AP Transco upon making the payment of Transmission & SLDC

charges to it. SLDC charges are to be paid in addition to transmission charges which are levied for use of State Load Dispatch Centre maintained by AP Transco. The AO considered section 40(c) of the Electricity Act, 2003 and observed that AP Transco is required to provide non-discriminatory open access to its transmission system for use of licensed customers on payment of transmission charges. Thus, observed that transmission charges are authorized under the Act only for use of transmission system owned by the transmission licensee. The AO observed from the net that AP Transco is authorized to collect only user charges for allowing the use of transmission system and the user charges of transmission payable are fixed by the AP Electricity Regulatory Commission and transmission charges are paid for use of the transmission network.

6. The AO also examined the definition of royalty contained in Explanation 2 to section 9(1)(vi) of the Income tax Act and held that the transmission charges and SLDC charges paid by the assessee for the use of transmission network owned by AP Transco fall within the definition of royalty. Thus, held that the provisions of section 194J are squarely applicable for deduction of tax at source.

7. The AO also examined the applicability of section 194I of the Act also for the payments made to M/s AP Transco and held that the provisions of section 194I are applicable for the amounts paid by way of rent under lease agreement or arrangement which involves taking possession of the machinery / plant / equipment and in this case, there is no such provision given to the assessee, therefore, held that section 194I is not applicable and section 194J is applicable in this case.

8. The AO found that the assessee has not deducted the tax at source on the payments made during the F.Y.2007-08. During the F.Y.2008-09 also the assessee did not deduct the tax at source at the time of payment of transmission and SLDC charges from month to month but deducted the tax on 31.03.2009 after issue of show cause notice at the rate of 2.266% applicable to contracts. However, since, the recipient of transmission and SLDC charges had admitted the income and filed its return of income and paid taxes there on for the respective assessment years, the assessee was not treated as assessee in default u/s 201(1). However, the AO held that the assessee is liable for charging the interest u/s 201(1A) on the payments made to A.P.Transco.

9. For the F.Y.2009-10, the AO held that the assessee is liable for deduction of tax at source @11.33% u/s 194J of the Act on the payment of Rs.72.90 crores and accordingly treated the assessee as assessee in default u/s 201(1) for a sum of Rs.8,19,15,900/-. Accordingly the AO raised the demand of Rs.8,60,38,464/- for the impugned assessment years.

10. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the action of the AO with regard to treating the assessee as assessee in default for the lease rentals made to M/s Klenn & Marshall. The assessee before the Ld.CIT(A) argued that the amounts were deposited in the DRT as per the order dated 13.11.2003 and no other payments were made to M/s Klenn & Marshall, hence argued that the payment made as deposit to DRT cannot be treated as lease rentals and the provisions of section 194I are not attracted. The Ld.CIT(A) observed that the DRT, Hyderabad issued a garnishee order against the predecessor of the company (AP Transco) to deposit lease rentals payable to M/s Klenn & Marshall into the Tribunal's account to the credit of O.A. Thus, effectively, the assessee is making payments towards lease rentals only, even though such payments are under dispute and the matter was yet to be finalized. As the payments are made by the assessee on account of lease

rentals, in the absence of specific direction from DRT for non deduction of tax at source, the Ld.CIT(A) was of the opinion that the provisions of section 194I are applicable, the moment the payees account is paid or credited. By virtue of payment of lease rentals into the DRT, it is deemed that payments were treated to be made to the lessor / payee, hence, they are liable for TDS u/s 194I of the Act. Thus, the Ld.CIT(A) upheld the order of the AO and dismissed the appeal of the assessee.

11. With regard to transmission charges and SLDC charges, the Ld.CIT(A) found that the assessee had accepted that it has used the infrastructure of AP Transco for transmission of electricity and the payment made was in the nature of rent, but not royalty. Before the Ld.CIT(A), the assessee also placed heavy reliance on the certificate issued by the AO of AP Transco for lower deduction of tax at source. Since the payee had accepted that the payments would fall in the category of rent, but not u/s 194J, the Ld.CIT(A) held that the payments made to AP Transco for transmission of power fall in the category of rentals, but not under work contract or the royalty. The Ld.CIT(A) also considered the certificate issued by the AO of AP Transco for deduction of tax at source @1.75% u/s 197(1) of the Act and accordingly

held that the deduction of tax at 1.75% would be adequate to meet the liability. Accordingly, appeal of the assessee is allowed.

12. Against the order of the Ld.CIT(A), the assessee filed appeal challenging the order of the Ld.CIT(A) for confirming the action of the AO with regard to payment made to M/s Klenn and Marshall and the department has filed the appeals against the order of the Ld.CIT(A) for holding that the TDS is applicable u/s 194I of the Act as rentals, instead of Royalty and upholding the deduction of TDS @1.75%.

13. Initially, the assessee has filed one appeal for all the assessment years with common Form No.36. On being raised the objection for filing one single appeal, subsequently, the assessee has filed the separate appeals for each assessment year. Thus, there was a delay of 3265 days for the A.Y.2009-10 and 2010-11. The assessee also filed the condonation petition requesting to condone the delay stating that since, the original appeal was filed within the limitation, removal of defects may be condoned in re-presentation of appeal papers. We have considered the condonation petition filed by the assessee and observed that the assessee has filed the original appeal within the due date which was defective and subsequently

rectified the defect by filing the separate appeal for each assessment year. Therefore, after hearing both the parties, we are of the view that there is sufficient and reasonable cause for the delay, hence the delay is condoned.

Assessee's Appeals :

14. The assessee's appeal is with regard to treating the assessee as assessee in default for the payments made to M/s Klenn and Marshall for the A.Y. 2008-09 and 2009-10. The AO treated the assessee as assessee in default in respect of payments made to M/s Klenn & Marshall for the F.Y.2007-08 and 2008-09 and raised the demand of Rs.38,34,243/- as under :

Expenditure	Financial Year	Amount	Section	Rate of TDS	TDS
Klenn & Marshall Rent	2007-08	32258472	194I	11.33	3654885
Klenn & Marshall Rent	2008-09	1583035	194I	11.33	179358
				Total	3834243

15. During the appeal hearing, the Ld.AR argued that the assessee has paid the amounts as per the order of the DRT, thus, TDS has no application for the amounts made as per the orders of the DRT. The second proposition made by the Ld.A.R was that there was no agreement between the assessee and M/s Klenn & Marshall, therefore, there is no liability for the assessee to

deduct the tax at source. The Ld.A.R further argued that the contract was between AP Transco and M/s Klen & Marshall but no separate agreement was reduced in writing between the assessee and the recipient, thus, there is no liability cast upon the assessee for deduction of tax at source. The Ld.AR also argued that even in the case of AP Transco, the liability was related to the period 2002-03 and 2003-04 and the lease period was expired in 2004, hence there is no application of TDS. The Ld.A.R. further submitted that the liability was related to the earlier assessment years which was taken over by the assessee and for discharging the liability, there is no case for deduction of tax at source. For a query from the Bench, to establish the liability pertains to 2003-04 and 2004-05 which was being raised by AP Transco, the Ld.AR submitted that he would submit the relevant account copy and balance sheet showing the transfer of liability to the assessee. Thus, argued that there is no case for deduction of tax at source, accordingly requested to set aside the orders of the lower authorities and allow the appeal of the assessee. The Ld.AR further submitted that since the assessee is not paying the income and it was only discharging the liability, there is no case for deduction of tax at source.

16. On the other hand, the Ld.DR vehemently opposed the argument of the assessee and heavily placed reliance on the orders of the lower authorities. The Ld.DR argued that the assessee has made the payment of lease rentals to M/s Klenn & Marshall during the impugned assessment years as detailed in the order passed by the AO. Though section 194I has been inserted in the Act w.e.f. 01.06.2007, since the assessee has paid the lease rentals subsequent to 01.06.2007, the assessee is liable for deduction of tax at source. Further the Ld.DR argued that though the assessee claimed that the payment was made as per the orders of the Hon'ble DRT, the Hon'ble DRT has not directed the assessee not to deduct the TDS u/s 194I of the Act and there was no clarification in the order of the Hon'ble DRT with regard to deduction of tax at source. Since the assessee is making the payment of lease rentals to M/s Klenn & Marshall no sooner, the payments are made or credited, the assessee is liable for deduction of tax at source, accordingly argued that in the instant case, the AO rightly raised the demand u/s 201(1) of the Act and requested to uphold the order of the Ld.CIT(A).

17. We have heard both the parties and perused the material placed on record. With regard to first proposition of the assessee that the payments were made as per the order of the DRT and the TDS provisions are not

attracted for payments made to DRT is concerned, we have gone through the order of the Hon'ble DRT. The Hon'ble DRT after considering the facts and merits of the case, allowed the petition filed by Industrial Development Bank of India (in short 'IDBI') and directed the AP Transmission Corporation of India to deposit monies payable to the IDBI for the period from September 2002 to October 2003 and for subsequent period covered under the said contract. The DRT has not directed the AP Transco not to deduct the tax at source as required u/s 194I of the Act. The assessee also did not get clarification from the Hon'ble DRT. Therefore, the assessee is bound to deduct the tax at source on the payments made to Klenn & Marshall u/s 194I of the Act. Accordingly, we reject the contention of the Ld.AR on this argument.

18. The second argument of the Ld.AR was that the contract was between the AP Transco and APSPDCL, but there was no contract or agreement between the assessee and Klenn & Marshall and the liability was related to the period 2002-03 and 2003-04 for which the AP Transco has already raised the liability and the assessee is only discharging the liability, but not making any payment to Klenn & Marshall. It is true that the tax deduction is required to be made on the payment which results into income

of the beneficiary. The same attracts deduction at source. Every payment may not attract the TDS at source. In the instant case, the Ld.AR argued that the company M/s AP Transco is following the mercantile system of accounting and the liability was related to the F.Y.2003-04 and 2004-05 pertained to AP Transco, but not related to APSPDCL. Therefore, contended that the provisions of TDS are not applicable. However, for a query from the Bench, the Ld.AR did not place the financial statements, evidencing that the AP Transco has claimed the expenditure during the F.Y. 2002-03, 2003-04, 2004-05 and credited the amounts to the account of M/s Klenn & Marshall and kept the payment pending and resultant the liability was transferred to the assessee company. The Ld.AR failed to furnish the balance sheet of AP Transco and the account copy of the Klenn & Marshall in the books of AP Transco before transfer and after transfer of the liability. As observed from the order of the AO, it is found that no credit entry was made prior to 01.06.2007, therefore, in the interest of justice, we are of the considered view that this issue requires verification at the level of the AO to examine whether the AP Transco has debited the expenditure and transferred liability to the assessee. In case, the expenditure was debited during the A.Y. 2003-04 and 2004-05 and transferred the liability to the

assessee, the provisions of TDS would not be applicable since the point of credit would be at the time of raising the expenditure and crediting the account of the beneficiary. As we understand from the argument of the Ld.AR, the assessee is only making payment of the liability already transferred to it, but not paying any lease rentals to the recipient, therefore, we set aside the orders of the lower authorities and remit the matter back to the file of the AO for denovo consideration to examine the actual liability and decide the issue afresh on merits. The appeal of the assessee on this ground is allowed for statistical purpose.

19. This issue is involved for the F.Y.2007-08 and 2008-09 as per page No.3 of the AO's order. The AO had raised the demand u/s 201(1) for the A.Y. 2007-08 and 2008-09 but no demand was raised for the A.Y.2010-11. However, the assessee has filed the appeal for the A.Y.2007-08, 2008-09 and 2010-11 also. Since there was no demand raised u/s 201(1) for the A.Y.2010-11, the appeal filed by the assessee becomes infructuous, hence dismissed. Accordingly, appeals of the assessee for the A.Y.2008-09 and 2009-10 are allowed for statistical purpose and the appeal for the A.Y.2010-11 is dismissed as infructuous.

I.T.A. 452/Viz/2010, 453/Viz/2010 and 454/Viz/2010

20. As discussed earlier the departmental appeals are related to the short issue payments made to A.P.Transco falls whether under u/s 194J/194I or 194C for deduction of tax at source. The department contends that the payments made to the A.P.Transco is royalty and TDS required to be deducted u/s m194J. The assessee's view is payments are in the nature of transport contracts and hence the rate applicable for TDS is 2.66%. The payee contends that the receipt is in the nature of Rent hence the TDS applicable u/s194I.

20.1. Supporting the order of the lower authorities, the Ld.DR argued that the payments made to AP Transco are in the nature of royalty, hence argued that the Ld.CIT(A) erred in holding that the provisions of section 194I are applicable in the instant case. Therefore, requested to uphold the order of the AO and set aside the order of the Ld.CIT(A). The Ld.CIT(DR) also relied on the decision of CIT Vs. Kotak Securities Ltd. (2011) 203 Taxman 0086. On the other hand, the Ld.AR argued that the payments made to AP Transco are not in the nature of fee for technical services or royalty, hence, there is no case for applying the provisions of 194J of the Act. Similarly, the Ld.AR argued that SLDC charges are reimbursement of

expenses and the question of deduction of tax at source does not apply. The Ld.AR argued that the payment made to AP Transco is for user charges and hence there is no application of TDS and submitted that the case of the assessee is squarely covered by the decision of the coordinate bench of ITAT, Bangalore in the case of Bangalore Electricity Supply Co. Ltd.[2012] 20 ITR (Trib) 365 [ITAT (Bang)] and argued that they are neither in the nature of fee for technical services nor in the nature of royalty, hence, argued that there is no case for application of 194J and requested to uphold the order of the Ld.CIT(A).

21. We have heard both the parties and perused the material placed on record. The coordinate bench of ITAT Bangalore considered the issue in detail and held on similar facts that the payments made to KPTCL are not in the nature covered for deduction of tax at source u/s 194J of the Act. The coordinate Bench has considered the following case laws while holding that the payments made to KPTCL by BESCOM are not in the nature of fee for technical services nor in the nature of royalty. Jaipur Vidyut Vitran Nigam Ltd. Vs. Dy.CIT (2009) 123 TTJ 888 (JP) and Chattisgarh State Electricity Board Vs. ITO (TDS) [2012] 14 ITR (Trib) 91 (Mumbai).

Canara Bank V. ITO [2008] 305 ITR (AT) 189 (Ahd) (para 14)
CIT v. Bharti Cellular Ltd. [2009] 319 ITR 139 (Delhi) (paras 13, 14, 23, 25)
CIT v. Kotak Securities Ltd. [2012] 340 ITR 333 (Bom) (paras 21, 22)
Commissioner of Customs v. Parasrampuria Synthetics Ltd. [2002] 253 ITR 274 (SC) (para 25)
Continental Construction Ltd. v. CIT [1%2] 195 ITR 81 (SC) (para 14)
Hindustan Coca Cola Beverage P. Ltd. v. CIT [2007] 293 ITR 226 (SC) (para 18)
ITO v. Dr. Willmar Schwabe India P. Ltd. [2005] 3 SOT 71 (Delhi) (para)
Medi Assist India TPA P. Ltd. v. Deputy CIT (TS) [2010] 324 ITR 356 (Karn) (paras 21, 22)
Singapore Airlines Ltd. v. ITO [2006] 7 SOT 84 (Chennai) (para 14)
Skycell Communications Ltd v. Deputy CIT [2001] 251 ITR 53 (Mad) (paras 13, 14, 23, 24,25)

Therefore respectfully following the view taken by the coordinate Bench of ITAT, we hold that the payments made by the assessee company to AP Transco are not in the nature of payment for technical services or royalty. Accordingly, we uphold the order of the Ld.CIT(A) on this issue.

21.1. However we, are of the view that the case law relied up on by the assessee with regard to non deduction of tax at source on payments made to A.P. Transco is not sqarely covered by the decision of Bangalore Bench, since the facts are distinguishable with the assessee's case. In the case of BESCOM the assessee heavily relied on the Notifications of state Government and also objected for deduction of tax at source both on transmission charges and the SLDC charges. Where as in the case of the

assessee both the payer and payee have agreed that the payment attracts TDS either under 194C or 194I of the act. Hence the case law relied up on by the assessee cannot be applied in the assessee's case mutadis mutandis and the issue with regard to application of correct provision TDS requires further consideration on facts and circumstances.

22. The Ld.CIT(A) held that the payments made to AP Transco are in the nature of lease rentals and attracts the deduction of tax at source u/s 194I of the Act. The Ld.AR argued that SLDC charges are reimbursement of expenses and as per the order of the coordinate Bench of ITAT, transmission charges are not covered for the deduction of tax at source u/s 194I of the Act. We differ with the argument taken by the Ld.AR on this issue. Since in the instant case, the payee has accepted before the concerned AO that the payments made to AP Transco are in the nature of rental payments and requested for lower deduction of TDS. Similarly the assessee has taken the argument before the AO that the payment is in the nature of contract and accordingly deducted the tax at source. Both the assessee as well as the payee agreed that the payment made to payee is income and tax required to be taxed on such income and the said conclusion was drawn by the payer and payee as per the recitals of

agreement reached between them. In the case of Bangalore Electricity Supply Co. Ltd., during the survey, in the statement recorded u/s 133A, the assessee canvassed before the AO of the BESCOM that the payments made to KPTCL was not in the nature of royalty or technical services. Further submitted that the entire payments were made as per the understanding and the directions of Govt. of Karnataka and therefore, canvassed before the AO that the payment made to KPTCL was neither technical services nor the lease rentals. Further, the coordinate Bench of ITAT Karnataka came to conclusion that SLDC charges are reimbursement of expenses on the submissions made by the assessee, whereas in the instant case, the assessee has paid the transmission charges and the SLDC to the AP Transco as per the agreement reached between both the parties on 04.10.2007. As per the contents of the agreement reached between both the parties, payee as well as the assessee have accepted before the CIT(A)/AO that the payments made would fall in the category of rent. Hence, the decision of coordinate bench in the case of Bangalore Electricity Supply Co., is distinguishable from the facts of the assessee's case and thus the findings of the coordinate bench are not applicable in the assessee's case with regard to application of 194I of the act. Since the payee had accepted that the

payments are covered u/s 194I of the Act and the receipt was in come in it's hands we, do not find any reason to differ with the contention of the payee. The Ld.CIT(A) also decided the issue on the premise that the payment would fall in the category of lease rental as per the recitals of the agreement. Thus, we hold that the payments made by the assessee to AP Transco is income in the hands of the payee and would fall for deduction of Tax at source u/s 194I of the Act.

23. The AO in para No.7.1. of the order held that for the F.Y. 2007-08 and 2008-09, the assessee was not treated as assessee in default u/s 201(1) of the Act, following the decision of Hon'ble Supreme Court in the case of M/s Hindustan Cola Beverages Ltd reported in 295 ITR 226, since, the payee had admitted the income in the respective assessment years. Thus, for the A.Y. 2007-08 and 2008-09, the assessee would be liable for interest u/s 201(1A) as per the TDS liability applicable u/s 194I of the Act. However, as observed from the order of the AO neither the demand u/s 201(1A) was raised in the order nor the demand notice was enclosed in the appeal papers. Though in appeal memo in form No.36 column No.5 mentioned the sections of 201(1)/201(1A) of the act, the department did not raise any ground with regard to interest u/s 201(1A) in the grounds of appeal. As a

result the AO did not consider the assessee as assessee in default for the A.Y. 2008-09 and 2009-10 for the purpose of section 201(1) and no demand was raised u/s 201(1A), hence, the appeals filed by the revenue for the A.Y. 2008-09 and 2009-10 becomes in fructuous and hence dismissed.

24. The next issue is with regard to demand raised by the AO for the F.Y. 2009-10, relevant to the A.Y. 2010-11 treating the assessee as assessee in default for application of provisions of section 194J of the Act. In the instant case, the AO of the payee had issued the lower deduction certificate u/s 197 on 05.11.2009 for payment of transmission charges and SLDC charges for the F.Y. 2009-10 authorizing the payer for deduction of tax at source @1.75% for the amounts receivable by the payee on account of transmission and SLDC charges for the F.Y. 2009-10. The certificate u/s 197 is issued for whole year, but not for part of the year. Once the AO of the payee/or the authority concerned issue's the certificate for lower deduction the same is binding on the department and the payer is also obliged to deduct the TDS as per the certificate issued by the AO. The certificate is issued considering the estimated income of the assessee for the relevant assessment year and the tax payable thereon taking into consideration of the earlier records as well as the estimated receipts of the

current year. This exercise is under taken to avoid unnecessary hardship and the financial burden to the tax payer and to avoid unnecessary refunds to the department which results in to the payment of interest. Therefore, on the basis of the certificate, if the assessee deducts the tax at source @1.75%, the same would be adequate and meet the liability and the AO (TDS) cannot find fault with it. It is accepted principle that the department need not collect the tax more than the tax liability of the tax payer. The department required to collect the correct and due taxes from the tax payer and the collection of more tax would cause financial hardship and effect the cash flow of the taxpayer. That is the reason, the provisions of section 197 were incorporated in the Act, so as to enable the payee to get the relief by obtaining certificate from the AO authorizing lower deduction of tax at source in genuine cases. Thus, we do not see any default in the case of the assessee for non deduction of tax at source over and above 1.75%. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

In the result,

(i) The appeals of the assessee for the A.Y.2008-09 and 2009-10 are allowed for statistical purposes. For the A.Y. 2010-11, the appeal of the assessee is dismissed.

(ii) The appeals of the revenue for the A.Y.2008-09, 2009-10 and 2010-11 are dismissed.

Order pronounced in the open court on 4th October, 2019.

Sd/-	Sd/-
(डि.एस. सुन्दर सिंह)	**(वी.दुर्गा राव)**
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
लेखा सदस्य/ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 04.10.2019
L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s Southern Power Distribution Company of A.P.Limited, Behind Srinivasa Kalyana Mandapam, Kesavavayana Gunta Tirupati
2. राजस्व/The Revenue - Dy.Commissioner of Income Tax, Circle-3(1) (TDS) Vijayawada
3. The Commissioner of Income Tax (TDS), Hyderabad
4. The Commissioner of Income Tax (Appeals), Tirupati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam