

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.3.2016

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

Tax Case Appeal No.882 of 2015

M/s. TRIL Inforpark Limited
Ramanujan IT City
Taramani
Rajiv Gandhi Salai, OMR
Chennai 600 113. ... Appellant

Vs.

The Income Tax Officer (TDS)
Ward-1(1)
Chennai 600 034. ... Respondent

Appeal under Section 260A of the Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal, 'A'
Bench, Chennai dated 19.6.2015 in ITA No.699/Mds/2014
against the order of Commissioner of Income tax (Appeals)
VII Chennai 34 dated 28.02.2014 in ITA No.1066/13-14
against the order of the Income Tax Officer, TDS Ward 1(1),
Chennai 34 dated 03.10.2013 made in TAN No.CHET10517D/TDS
Ward 1(1)/2013-14.

For Appellant : Mr.Arvind P.Datar, SC
Assisted by:
Mr.R.Venkatnarayanan
Mr.Sandeep Bagmar
For M/s. Subbaraya Aiyar
For Respondent : Mr.J.Narayanaswamy
Standing Counsel

J U D G M E N T

(Delivered by V.Ramasubramanian,J.)

The above tax case appeal filed by the assessee was
originally admitted on 16.9.2015, on two substantial
questions of law. Subsequently, when the matter came up for

hearing on 30.10.2015, a request was made to re-frame the questions already framed and also to consider one more question. Therefore, we framed the following three questions of law as arising for consideration in this appeal on 30.10.2015:

"(i) Whether the period of limitation stipulated under Section 201(3) of the Act would commence from the end of the financial year of filing of the TDS statement for the relevant first quarter in which the impugned payment was made or from the end of the financial year of filing of the revised TDS statement for the second quarter and whether the answer to this question would depend upon the nature and contents of the revised TDS statement filed for the second quarter?

(ii) Whether an upfront payment made by a person for winning a long term lease for a period of 99 years could be treated as rent liable for TDS under Section 194I or not? and

(iii) Whether on the facts and circumstances of the case and in law, the payment of Rs.1,412 Crores representing market value of land collected by TIDCO at the behest of the Government and immediately paid to the Government on the basis of various orders of the Government instructing TIDCO to collect and pay even before the execution of the lease deed, was, in essence, a payment to the Government, being the real owner thereof and consequently, the appellant was not liable to withhold tax from the captioned payment in terms of Section 196 of the Act?"

2. Heard Mr.Arvind P.Datar, learned senior counsel appearing for the appellant/assessee and Mr.J.Narayanaswamy, learned Standing Counsel appearing for the respondent/revenue.

3. Since the facts out of which the above appeal arises are little peculiar, it is necessary for us to bring on record those facts for a complete understanding of the issues of law raised for our consideration.

(a) Way back in the year 2001, the Government of Tamil Nadu identified a vast extent of land measuring about 40.19 acres, lying in Thiruvannamiyur as well as Kanagam villages of Mylapore-Triplicane and Mambalam-Guindy Taluks of the District of Chennai, for the development of Second Information Technology Park at Taramani, Chennai. This was done by a Government Order in G.O.Ms.No.455, Revenue dated 02.11.2001.

(b) By another Government Order passed in G.O.Ms.No.165, Revenue dated 11.4.2003, the Government designated the Tamil

Nadu Industrial Development Corporation as the custodian of the said land for the development of the Second IT Park in joint venture. Originally it was conceived that a part of the land would be allotted to a joint venture company and the remaining would be utilised by TIDCO by other joint venture projects.

(c) Subsequently, a proposal was mooted for the allotment of 25.19 acres out of the aforesaid 40.19 acres of land, to TIDCO on outright sale basis for the construction of a business Hotel complex and IT based Complex. After several round of negotiations, the Government issued G.O.Ms.No.103, Industries dated 24.4.2007, permitting TIDCO to implement the project through joint venture companies by selecting the joint venture partner through open competitive bidding process and also permitting TIDCO to hand over the lands to the joint venture company on 99 year lease. The operative portion of the order of the Government in G.O.Ms.No.103, dated 24.4.2007 may be usefully extracted as follows:

"Accordingly, the Government pass the following orders:

- (i) The orders issued in G.O.Ms.No.74, Revenue Department, dated: 10.02.2005 transferring 24 acres of land to Police Department are hereby cancelled;
- (ii) TIDCO is permitted to implement the above Project through Joint Venture Companies by selecting the Joint Venture Partner through open competitive bidding process (two - part bid) as proposed in para 5 above.
- (iii) The mode and procedure of payment of rent and for execution of lease deed by the appropriate authority in favour of the Joint Venture Company as proposed by TIDCO mentioned in Para 5 above is approved;
- (iv) TIDCO is permitted to hand over the lands to the Joint Venture Company on 99 years lease basis, subject to the conditions that the JVC can only sub-lease/rent the built up area."

(d) As could be seen from the operative portion of G.O.Ms.No.103, TIDCO was required by the Government to implement the project through joint venture companies by selecting the partner through open competitive bidding process. The procedure and mode of payment of rent and the execution of the lease deed, etc. in favour of the joint venture company was left to be decided by TIDCO, as per the decision taken in their Board in its 419th meeting held on 16.10.2006, the contents of which were extracted in paragraph 5 of G.O.Ms.No.103. Since the questions raised in this case, may have to be decided on the facts out of

which the legal issues originated, it is necessary to extract paragraph 5 of G.O.Ms.No.103, as follows:

"5. The Board of TIDCO, at its 419th meeting held on 16.10.2006, considered the above matter and resolved to send proposals to Government for approval of TIDCO's proposal to implement the IT Parks (IT/ITES-SEZ in an area of 25.19 acres at Taramani behind TICEL Bio Park and IT/ITES-SEZ comprising IT Park and an International Convention Centre cum Hotel in an area of 25 acres at Taramani in front of TIDEL Park) through joint venture companies by selecting the joint venture through open competitive bidding process (Two part bid). The successive bidder who quotes the highest rate (H1) (above or equivalent to the upset price) will have to arrange for payment of bid amount for the entire land through JVC to TIDCO within a period of three months from the date of letter of award and amounts paid by the JVC is non refundable. The successful bidder shall also arrange for payment of an amount escalated at the rate of 12% (P.A or in proportion to the actual period) of the total bid amount through the JVC to TIDCO for the period from date of bid inviting expression or interest to date of payment of bid amount for the entire land. This amount is payable along with the bid amount. The lease deed in favour of the JVC will be executed only after full financial closure of within 60 days of payment of lease rent, whichever is later. In addition to the upfront payment which is non refundable and to be payable to TIDCO within the period mentioned above, the respective JVCs shall have to pay a sum of Rs.1000/- (Rupees one thousand only) per acre per annum towards the remaining lease rent till the end of 99 year lease period. The Joint Venture Company shall have the right only to lease the built up space only up to the period of the lease of land granted to the Joint Venture Company and no sale or transfer is permitted. TIDCO's equity contribution in the joint venture will be to the extent of 26% of the paid up capital of the joint venture or an investment of Rs.50 Crores in each of the joint venture companies whichever is lesser. It is proposed to make TIDCO's equity contribution out of the deposit of the non refundable upfront lease rent."

(e) As could be seen from what is extracted above, TIDCO

was obliged to select the successful bidder who quoted the higher rate. The amount so quoted, will have to be paid through the Joint Venture Company to TIDCO within a period of three months from the date of the letter of award. The amounts paid by the joint venture company are supposed to be non-refundable.

(f) In other words, the joint venture company to whom a lease for a period of 99 years is to be granted, could be born only after the joint venture partner is selected by TIDCO through competitive bidding process.

(g) As per the directions of the Government contained in G.O.Ms.No.103, TIDCO floated a tender. The request for proposal floated on 08.6.2007 together with addendum issued on 22.11.2007, showed that qualified bidders were entitled to take the documents on or before 12.11.2007. The last date for receipt of written enquiries was fixed as 16.11.2007. The pre-bid meeting was scheduled to be held on 22.11.2007, the last date for submission of bids was fixed as 13.12.2007, the opening of the first cover was to be by 11.15 hours and the opening of the second cover was to be by 17.00 hours on 13.12.2007.

(h) The RFP document issued by TIDCO indicated the Reserve Price per sq.ft. of land as Rs.12,000/-. This amount of Rs.12,000/- was arrived at, on the basis of the guideline value available with the registration department.

(i) A company by name Tata Realty Infrastructure Limited, became the highest bidder by quoting a rate of Rs.12,050/- per sq.ft. Despite the fact that by G.O.Ms.No.479, Revenue dated 24.8.2007, the Government of Tamil Nadu claimed to have alienated the entire extent of land, namely 25.27 acres in favour of TIDCO, the highest commercial offer made by Tata Realty Infrastructure Limited had to be in fact accepted only by the Government and not by TIDCO as seen from letter Ms.No.25, Industries dated 27.02.2008. By this letter dated 27.02.2008, the approval of the Government was conveyed to TIDCO to accept the highest commercial offer of what was indicated as "Upfront land lease rent of Rs.12,050/-". However, it was also indicated in the said letter that TIDCO was entitled to retain Rs.50/- per sq.ft., but pay to the Government the rest of the amount working out to Rs.1326.42 Crores collected from the consortium.

(j) After receipt of the decision of the Government directing TIDCO to accept the offer made by the consortium, TIDCO issued the Letter Of Award dated 29.02.2008, in favour of Tata Realty and Infrastructure Limited, directing them to enter into a Joint Venture Agreement with TIDCO. It was indicated in the said letter also that the Upfront Land Lease Rent shall be non-refundable.

(k) Pursuant to the above, a Joint Venture Agreement was entered into on 24.3.2008 by and between TIDCO and Tata Realty Infrastructure Limited and the Indian Hotels Company Limited. Simultaneously, the Joint Venture Company Tril Infopark Limited

was incorporated on 20.3.2008.

(l) Thereafter, TIDCO executed a deed of lease dated 13.8.2008 in favour of the Joint Venture Company, namely Tril Infopark Limited, granting a lease of the land of the extent of about 25.27 acres, in favour of the said company for a period of 99 years.

(m) The Joint Venture Company made payment of total amount of Rs.1412,79,68,010/- to TIDCO on 27.5.2008. Out of the said amount, TIDCO retained a sum of about Rs.85.00 Crores and remitted to the Government of Tamil Nadu a sum of Rs.1320 Crores on 29.5.2008. Since what was supposed to be retained by TIDCO was only around Rs.5.50 Crores at the rate of Rs.50/- per sq.ft., the Government made a demand and later agreed to treat the excess amount retained by TIDCO as a loan by Government to TIDCO.

(n) On 9th February 2012, an inspection by the Officers of the department was carried out at the premises of the Joint Venture Company, purportedly for ascertaining whether the company had complied with Chapter 17-B of the Act. Thereafter, the Assessing Officer passed an order under Section 201(1) and 201(1A) holding that the Joint Venture Company is an assessee in default, in the light of the fact that they had failed to deduct tax at source in terms of Section 194-I, on the amount of Rs.1407,29,29,960/-. A penalty was also levied.

(o) Aggrieved by the said order, Joint Venture Company, which is the assessee in this case, filed a first appeal before the Commissioner of Income Tax (Appeals). By an order dated 28.02.2014, the Commissioner of Income Tax (Appeals) dismissed the appeal, concurring with the views of the Assessing Officer. The assessee's further appeal to the Income Tax Appellate Tribunal was allowed and the matter remitted back to the Assessing Officer. The order of remand was passed by the Tribunal on the short ground that the copy of the lease agreement entered into between the assessee and TIDCO was not available before them and therefore, they were unable to arrive at a finding of fact as to whether it was an advance payment of rent or the cost of acquisition of land. The Tribunal took the view that the matter needed to be re-examined in the light of the provisions of Section 2(47) read with Explanation (i) to Section 194-I. Aggrieved by the said order of remand passed by the Tribunal and contending that the lease deed always formed part of the records of the Assessing Officer as well as Commissioner of Income Tax (Appeals), the assessee has come up with the above appeals.

4. Before proceeding further, we must bring on record one important fact. If factually what the Tribunal stated in paragraph 12 of its order was correct, in the sense that the

copy of the lease deed was not available before the Tribunal, the substantial questions of law raised before us may not arise for consideration. But, as seen from the order of the Assessing Officer as well as the order of the Commissioner of Income Tax (Appeals), the lease deed was very much available. Even the learned Standing Counsel for the Department is unable to deny this fact. The lease deed formed part of the Annexure to the order of assessment. Therefore, the Tribunal was in error in thinking that the lease deed was not available at all.

5. Once we find that the Tribunal did not address itself to the issue raised before them, on the presumption that a crucial document was not available, then there is one alternative, namely to remit the matter back to the Tribunal. But, that appears to be a distant possibility, in view of the fact that the Tribunal has also relied upon a decision of its own rendered in Foxconn. The said decision of the Tribunal in Foxconn is the subject matter of appeal before us in TCA No.801 of 2013. Therefore, today, there is no point in remitting the matter back to the Tribunal for consideration of these issues. Therefore, we have taken up the three questions that we framed on 30.10.2015 for our consideration.

6. For the purpose of convenience, we would take the second question for consideration first. The second question revolves around the dispute as to whether the amount of more than about Rs.1400 Crores paid by the Joint Venture Company to TIDCO constituted rent or not.

7. Section 194-I imposes an obligation upon any person not being an individual or a Hindu undivided family, who is responsible for paying to a resident, any income by way of rent, to deduct income tax at the rates specified in clauses (a) or (b) as the case may be. Therefore, to oblige a person making payment to deduct income tax at source, what is paid should be shown to be "an income by way of rent".

8. The explanation to Section 194-I indicates the meaning of the expression "rent" and it reads as follows:

" "rent" means any payment, by whatever name called, under any lease, sub- lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee; "

9. It must be noted that the definition is an exhaustive definition and not an inclusive definition as seen from the

usage of the words "means". To constitute a rent within the meaning of Section 194-I, there must be a payment by whatever name called under any lease, sub-lease, tenancy or any other agreement or arrangement. In addition, such payment should be for the use of any land, building, etc.

10. What has happened in the case on hand, as seen from the narration of facts that we have given earlier, that the Government originally decided to make TIDCO as a mere custodian of a land of larger extent of about 40.19 acres. Subsequently, the Government decided, as seen from G.O.Ms.No.103 dated 24.4.2007, the operative portion of which we have already extracted earlier, is to permit TIDCO to implement the project through Joint Venture Companies by selecting the Joint Venture Partner through open competitive bidding process. In other words, the sequence of events that have taken place from G.O.Ms.No.455, Revenue dated 02.11.2001 up to G.O.Ms.No.479, Revenue, dated 24.8.2007 shows that the whole process comprised of two distinct steps. The first step was the identification of Joint Venture Partner and the birth of the Joint Venture Company. The second is the execution of the lease deed in favour of the Joint Venture Company.

11. Once the exercise undertaken by the Government and TIDCO is understood to have comprised of these two distinct and separate steps, the question that arises for consideration, can easily be answered. What happened in the open competitive bidding process that took place in November 2007 was the identification of a Joint Venture Partner. The selection of the Joint Venture Partner depended upon the quote that he was able to make. The amount of more than Rs.1400 Crores, which was actually quoted in the form of per sq.ft., rate at Rs.12,050/- per sq.ft. was not actually for taking the land on lease, but was a consideration paid to make TIDCO accept a company as its Joint Venture Partner. If this amount had not been offered by Tata Realty Infrastructure Limited, they could never have become the Joint Venture Partner with TIDCO and the assessee before us would never have been born. Once we understand this position and once we cross this first step, it is only thereafter that we can land up in the second step, namely that of execution of the lease deed.

12. It is true that at the time when the lease deed was executed on 13.8.2008, the joint venture was already born and this is why under the terms of the Joint Venture Agreement, the Joint Venture Company itself was obliged to make payment of the entire amount of more than Rs.1400 Crores. But, despite the fact that the lease deed was executed on 13.8.2008, the lease was deemed to have commenced from 29.02.2008. That was the date on

which the joint venture agreement was entered into, but the company got incorporated only on 20.3.2008. The revised lease deed was later entered into on 03.02.2009.

13. The lease deed dated 13.8.2008 actually imposed an obligation upon the Joint Venture Company to set up the IT Park within 18 months not from the date of lease deed namely 13.8.2008, but from 29.02.2008, the date on which the Letter Of Award was issued to the consortium by TIDCO.

14. Therefore, fundamentally, the amount of Rs.1400 Crores was offered by Tata Realty Infrastructure Limited, which was not the lessee, as the lessee was yet to be born, for the purpose of becoming a Joint Venture Partner with TIDCO and to create a new entity, which will eventually become the lessee. If we treat, as contended by the Revenue, this amount as part of the rent, it would result in a proposition that on behalf of a company yet to be born, one of the spouses which was supposed to give birth had already agreed upon the commitment.

15. Therefore, in essence, what was offered by the joint venture partner, namely Tata Realty Infrastructure Limited, in the bidding that took place in February 2008 and what was paid on 27.5.2008 by the Joint Venture Company was actually a consideration for bagging the contract to have a joint venture and for getting the right of 99 years lease conferred upon the Joint Venture Company. If the payment is understood in this clearcut fashion, then no doubt may be cast upon the nature of the payment.

16. Arguments were advanced across the Bar as to how one should distinguish a rent from a premium. Relying upon the definition of the expression premium contained in Halsbury's Laws of England, Mr.J.Narayanasamy, learned Standing Counsel for the Department submitted that premium represents a capitalised rent and hence, it may be different from the actual rent, but would nevertheless continue to be rent.

17. As we have pointed out earlier, it is not even necessary for us to get into a question whether what was paid was premium or rent. In a case where two existing entities enter into an agreement for the lease of a property, the question as to what was paid as premium and what was agreed to be paid as rent would arise. In this case, the original agreement was actually between the lessee and a company which agreed to have a joint venture with the lessor. It is only out of the said agreement that the lessor was born. The amount fixed, namely more than Rs.1400 Crores, was to confer the benefit of entering into a joint venture with the lessor. Therefore, in this case,

we need not even get into the exercise of finding out whether what was paid would come within the meaning of premium or rent.

18. As a matter of fact, P.Ramanatha Aiyar Law Lexicon defines "premium" as "either a reward, or a periodical payment for the insurance of life or property, or a lumpsum or fine paid for the grant of a house, a sum paid in excess of the nominal value of the share of stocks etc..

19. In this case, as we have indicated earlier, the determination of the amount of Rs.1400 Crores preceded even the birth of the Joint Venture Company and the creation of the lease deed. Therefore, it was actually a consideration paid for two things, namely (a) to be conferred with the benefit of being a Joint Venture Partner, and (b) to be conferred with the benefit of a 99 years lease in favour of the Joint Venture Company that was born out of the partnership.

20. Relying upon Section 105 of the Transfer of Property Act, it is contended by Mr.Arvind P.Datar, learned senior counsel for the assessee that the said provision makes a distinction between premium and rent. While Section 105 defines a lease of immovable property to be a transfer of right to enjoy such property, either for a certain duration of time or in perpetuity, in consideration of a price paid or promised, the second part of Section 105 indicates that the price paid or promised for the lease could be called premium and the money, share, service or other thing to be tendered is to be called rent.

21. On the basis of the definition so made under Section 105 of the Transfer of Property Act, the learned senior counsel for the appellant/ assessee also submitted that this distinction was incorporated into Chapter XX-C of the Income Tax Act under Section 269-UA and that therefore, the income tax law also recognised the distinction between the two.

22. Relying upon the decision of the Patna High Court in Raja Shiva Prasad Singh v. King Emperor [AIR 1924 Patna 679], the learned senior counsel contended that a salami which is like a premium was always understood as not part of the rent. A similar view was taken by the Supreme Court in Board of Agricultural Income Tax v. Sindhurani [AIR 1957 SC 729], where the Supreme Court indicated that salami is not rent and it could not be called revenue within the meaning of the word used in the definition of agricultural income under Section 2(1)(a) of the Assam Agricultural Income Tax Act, 1939.

23. In Commissioner of Income Tax v. Panbari Tea Co. Ltd.

[57 ITR 422 (SC)], the Supreme Court was concerned with the question as to whether the payment of premium fixed under a deed of lease, in instalments, would make it different from a revenue receipt instead of capital receipt at the hands of the recipient. Irrespective of the fact whether the premium fixed under the lease deed is paid in lumpsum or in instalments, the Supreme Court held that the distinction between rent and premium will not vanish.

24. In the Chief Controlling Revenue Authority v. S.M.Abdul Jammal [AIR 1970 Madras 288], a Full Bench of this Court was concerned with the question as to whether the cost of repairs, additions and improvement to be effected on the premises by the lessees would fall within premium or for money advanced in addition to rent received. The Full Bench took the view that the distinction between a premium and rent lies in the fact that premium is one paid in consideration of the conveyance implied in the lease and is quantified in lump.

25. In V.Srinivasan v. Sub Registrar [AIR 1985 Kar. 56], a Full Bench of the Karnataka High Court was concerned with two questions, one of which was whether the rent paid in advance is to be construed as money advanced in addition to rent reserved. Even in the said decision, the Full Bench of the Karnataka High Court drew inspiration from the distinction between premium and rent available in Section 105 of the Transfer of Property Act.

26. Apart from the above citations, the learned senior counsel for the assessee also relied upon several decisions of the Tribunal itself, where the rental income at the hands of the lessor was treated as revenue income.

27. However, in response to the above contentions, Mr.J.Narayanasamy, learned Standing Counsel for the Department contended that the question as to how a particular item is to be treated at the hands of the person making payment, does not depend upon the manner in which the same is treated at the hands of the recipient. Therefore, he contended that the distinction between premium and rent sought to be made by the learned senior counsel for the assessee and the support sought to be drawn from the manner in which the income was treated at the hands of the recipient cannot decide the question of law raised here.

28. We have carefully considered the above submissions.

29. We have no doubt in our mind that how a particular item is to be treated at the hands of the person making the payment, cannot depend upon the manner in which the same was treated at the hands of the recipient. We have not even gone into the

question of fact as to how the lessor, namely TIDCO treated the amount received by them from the assessee.

30. As we have pointed out earlier, the question in this case arises at the very threshold, as to why was a payment of more than Rs.1400 Crores made by the assessee and what was the method adopted by the parties to fix such an amount as payable to the lessor.

31. As we have indicated earlier, though the amount of Rs.1412 Crores was paid actually by the lessee to the lessor, it was not paid merely for the purpose of retaining the lease for a period of 99 years. The amount paid was actually determined in an open competitive bidding that took place even before the Joint Venture Company was born. Tata Realty and Infrastructure Limited, which was the Joint Venture Partner, offered this amount for getting the benefit of entering into a Joint Venture Agreement with TIDCO, the benefit of which will spill over to joint venture company in the form of a 99 years lease. Therefore, the mistake of the Department lies in treating the transaction as having commenced from the date of the lease, namely 13.8.2008. The date on which the amount was quantified, the manner in which the amount was quantified and the method of selection of the Joint Venture Partner are the crucial determining factors in this case to understand that the said amount could never constitute rent.

32. To put it differently, a premium or rent irrespective of how they are treated, could be decided only after an agreement for lease is finalised. If an amount has to be determined even before an agreement for lease is finalised, the same would never form part of the rental income. It is this distinction that has been lost sight of by all the authorities. Therefore, the second question of law has to be answered in favour of the assessee.

33. The third question of law is as to whether the payment, which has eventually gone to the coffers of the Government, could be taken to be a payment made to somebody else, for the purpose of attracting the provisions of Section 194-I or not.

34. On facts, there is no dispute that even at the time when the alienation was made by the Government, the amount determined by the parties was agreed to paid to the Government. We have extracted paragraph 5 of G.O.Ms.No.103 earlier. The method of determination of the amount and the method of choosing the lessee alone were left to TIDCO. But, TIDCO was obliged to retain only a sum of Rs.50/- per sq.ft. and pass on the balance amount to the Government. Therefore, the amount liable to be

passed on to the Government cannot be a consideration paid to TIDCO, which is the lessor. It was a consideration paid to the Government. Once it is understood to be a consideration paid to the Government, the question of deducting tax at source does not arise. Therefore, the third question of law is also to be answered in favour of the appellant/assessee.

35. The learned Standing Counsel has circulated a note of submissions and an additional note of submissions. Most of the contentions of the learned Standing Counsel revolved around two substantial questions, namely use of the expression "upfront land lease rent" and the distinction sought to be made by the assessee between premium and rent. Both these issues are already answered by us by tracing the history of the birth of the very contract itself.

36. Though Mr.Arvind P.Datar, learned senior counsel for the appellant wanted to make submissions even on the question of limitation, which has been framed as the first question of law, we do not think that we need to go into the said question. Once we have found on merits that the amount paid by the appellant to TIDCO just for the purpose of passing on to the Government, could not be treated as rent, the question as to whether proceedings were initiated within the period of limitation or not, need not be gone into. Therefore, in the light of our answers to questions of law 2 and 3, we do not answer question No.1. The appeal is allowed answering questions of law 2 and 3 in favour of the appellant. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Income Tax Appellate Tribunal,
Á'Bench, Chennai.
 - 2.The Commissioner of Income Tax (Appeals) VII, Chennai 34.
 - 3.The Income Tax Officer (TDS)
Ward-1(1) Chennai 600 034.
- +1 cc to Mr.Subbaraya Iyer, Advocate, sr.14612
+1 cc to Mr.J.Narayanasamy, Advocate, sr.14611

TCA No.882 of 2015.

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