

IN THE HIGH COURT OF ORISSA AT CUTTACK**ITA Nos. Nos.4, 8, 11, 13, 17 and 23 of 2011****ITA No.4 of 2011*****Commissioner of Income Tax, Appellant***
Bhubaneswar***-versus-******Western Electricity Supply Company of Respondent***
Odisha Limited (WESCO)**ITA No.8 of 2011*****Commissioner of Income Tax, Appellant***
Bhubaneswar***-versus-******Western Electricity Supply Company of Respondent***
Odisha Limited (WESCO)**ITA No.11 of 2011*****Commissioner of Income Tax, Appellant***
Bhubaneswar***-versus-******Southern Electricity Supply Utility of Respondent***
Odisha (SOUTHCO)**ITA No.13 of 2011*****Commissioner of Income Tax, Appellant***
Bhubaneswar***-versus-******Southern Electricity Supply Utility of Respondent***
Odisha (SOUTHCO)**ITA No.17 of 2011*****Commissioner of Income Tax, Appellant***
Bhubaneswar***-versus-******Central Electricity Supply Utility of Respondent***
Odisha (CESU)

ITA No.23 of 2011

***Commissioner of Income Tax,
Bhubaneswar***

Appellant

-versus-

***Southern Electricity Supply Utility of
Odisha (SOUTHCO)***

Respondent

Advocates, appeared in these cases:

For Appellants(s) : Mr. S.S. Mohapatra
Senior Standing Counsel

For Respondent(s) : Mr. Satyajit Mohanty, Advocate
Mr. R.R. Swain, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK**

**JUDGMENT
23.03.2022**

Dr. S. Muralidhar, CJ.

1. All these appeals by the Revenue (Income Tax Department) arise out a common judgment dated 19th November, 2010 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT).

2. ITA No.4 of 2011 arises out of the aforementioned order passed in ITA No.282/CTK/2010 for the Assessment Year (AY) 2009-2010 (WESCO-Respondent); ITA No.8 of 2011 is directed against the said order of the ITAT in ITA No.193/CTK/2010 for the AY 2008-2009 (WESCO-Respondent); ITA No.11 of 2011 is directed against the order of the ITAT in ITA No.284/CTK/2010 for the AY 2009-2010 (SOUTHCO-Respondent); ITA No.13 of

ITA Nos.4,8,11,13, 17 and 23 of 2011

2011 is directed against the order of the ITAT in ITA No.191/CTK/2010 for the AY 2007-2008 (SOUTHCO-Respondent); ITA No.17 of 2011 is directed against the said order of the ITAT in ITA No.208/CTK/2010 for the AY 2008-2009 (CESU-Respondent) and ITA No.23 of 2011 is directed against the order of the ITAT in ITA No.192/CTK/2010 for the AY 2008-2009 (SOUTHCO-Respondent)

3. On 3rd January, 2013 while admitting ITA No.13 of 2011 the following questions of law were framed by this Court for consideration:

"(i) Whether on the facts and circumstances of the case, the learned ITAT is justified in holding that the assessee-SOUTHCO is not liable to deduct tax at source against payment of transmission charges made to OPTCL as the equipment held by the OPTCL have not been given on rent, lease etc. to the assessee?

(ii) Whether on the facts and circumstances of the case, the learned ITAT is justified in holding that payment made by the assessee Company is only towards purchase price of electricity from the GRIDOC and not from OPTCL for which no TDS liability is attracted in terms of section 194-1 of the I.T. Act?

(iii) Whether the learned ITAT is justified in holding that the TDS liability is not attracted in case of the assessee-company for which there is no need to levy interest u/s. 201(1A) of the I.T. Act?"

4. The same questions arise for consideration in each of the other appeals as well.

5. The Respondent in each of these appeals is engaged in the distribution of power. Each of the companies purchases electricity from the Grid Corporation of Odisha Limited (GRIDCO). The electricity so purchased is distributed by utilizing the transmission network of the Orissa Power Transmission Corporation Limited (OPTCL). Both GRIDCO and OPTCL are regulated by the Orissa Electricity Regulatory Commission (OERC).

6. Question (i) and (ii) concern the applicability of Section 194-I of the Income Tax Act, 1961 (IT Act) to the payments made by the Respondents to OPTCL towards its billing/transmission charges. Both the Assessing Officer (AO) and the Commissioner of Income Tax (Appeals) [CIT (A)] decided the issue against the Assessee by holding that Section 194-I of the IT Act does apply and that the payments made were amenable to deduction of tax at source (TDS). It was further held that on account of failure of the Respondent to deduct TDS under 194-I of the Act, the penalty and interest under Sections 201(1) and 201(1A) of the IT Act stood attracted.

7. Allowing the appeals of the Respondents, the ITAT has in the impugned order come to the composite conclusion viz., that Section 194-I of the IT Act is not attracted. In doing so, the ITAT has followed the decision of the Supreme Court in ***India Meters Limited v. State of Tamil Nadu (2010-VIL-I-SC)***. The ITAT held that the Respondent-Assessee have not used any of the

equipments of OTPCL and, therefore, no rent can be deemed to have been paid by the Respondent to OPTCL. The relevant portion of the impugned order of the ITAT reads thus:

"At the outset, it is noticed that except the order of OERC, there is no connection between the assessee herein and OPTCL. The agreement, right from the beginning, is between Gridco and the assessee. Gridco is to supply the electricity. Gridco is to deliver the electricity to the specified points as per the agreement. OPTCL was originally a part of Gridco and OPTCL was hived up from Gridco in 2005. Gridco is liable to pay OPTCL for the transmission of the electricity till the point of delivery as specified in the bulk supply agreement with assessee. Only to protect the interest of OPTCL in regard to the receipt of payments, OERC has directed OPTCL to raise invoices on the assessee. This is evident from the fact that the Regulatory Commission has specifically stated that OPTCL would have the first charge on the receivables of Gridco from the assessee. Thus, what the assessee is paying, is in fact the purchase price for the electricity supplied by Gridco. The purchase price has been broken down on account of the orders of OERC into cost of electricity and transportation cost which is based on the transmission loss of electricity. The assessee has not used anything belonging to OPTCL nor the assessee is a party in the petition filed by OPTCL to OERC for the fixation of the tariff. If the assessee were paying rent or were using any equipments of OPTCL, then assessee should have been a party before the OERC in respect of the fixation of the price in the case of OPTCL. This is because the assessee would be an affected party. The assessee is only a party in the fixation of the price between the Gridco and assessee and it is in that order that a parallel identical direction is also available in para 37 and 294 and 295 of the order in the case of Gridco. Thus, it is

evident that the raising of invoices by OPTCL on the assessee is for the purpose of raising for first change on the receipts of Gridco and for no other purposes. As mentioned above, the assessee has not used any of the equipments of OPTCL and in absence of use in any manner whatsoever, of the equipments of OPTCL by the assessee, no rent can be deemed to have been paid for the purpose of invoking of section 194(I) of the Act."

8. Having heard learned counsel for the Appellants (Revenue), the Court is not persuaded that any error has been committed by the ITAT in coming to the above conclusion. In absence of there being any payment of rent or even deemed rent by the Respondents to OPTCL there was no obligation under Section 194-I of the IT Act to deduct TDS from the wheeling charges paid to OPTCL.

9. Consequently, the questions framed are answered in favour of the Assessee and against the Appellant (Revenue). The appeals are dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/PA