

## Sec. 194J isn't applicable in case of transmission of electricity

**Summary – The High Court of Karnataka in a recent case of Gulbarga Electricity Supply Co. Ltd., (the Assessee) held that where assessee-electricity supply company made payments for transmission of electricity without deducting tax at source, section 194J would not be attracted as there was neither any transfer of technology nor any offer of technical service**

### Facts

- The assessee-company was engaged in the business of buying and selling of electricity. The power from the generation point to the customers was transmitted through the transmission network of KPTCL.
- The Revenue found that there were instances where assessee had made payment of transmission charges to KPTCL and ('SLDC'), an arm of KPTCL, without deducting tax at source thereon. The revenue held that payment for using the transmission lines for transmission of power generated by KPTCL was a payment for 'technical services' rendered similarly, in respect of SLDC as well. The assessment was completed wherein the income of the assessee was determined at Rs. 69.76 crores and made disallowances under section 40(a)(ia).
- On appeal, the Commissioner (Appeals) set aside the disallowances.
- On further appeal, the Tribunal confirmed the order of the Commissioner (Appeals).
- On appeal, before the High Court:

### Held

- It is relevant to state at this stage that the coordinate bench of this Court while considering the said provisions in identical circumstances in the case of *CIT v. Hubli Electric Supply Co. Ltd.* [\[2016\] 386 ITR 271/237 Taxman 7/65 taxmaan.com 208 \(Kar.\)](#) and connected matters, has held as under Irrefutable facts in these cases are KPTCL and assessee have entered into a power transmission agreement. Under the said agreement, KPTCL has agreed with the assessee to provide its transmission network for the purpose of carrying electricity to its users. For the said purpose, KPTCL has covenanted with assessee to fulfill the obligations contained in Article 2 of the agreement and to perform other obligations. Assessee has agreed to pay transmission charges on a monthly basis in terms of Article 8 of the agreement. Both parties have agreed to comply with the provisions of the State Grid Code and Regulations and Rules issued by KERC from time to time.
- SLDC is required to maintain records of quantity of energy flowing through the State Grid and issue State Energy Account under KERC (Terms and Conditions of Tariff) Regulations 2006. KPTCL is required to maintain the operation and maintenance of the transmission system. Transmission charges are calculated as per transmission tariff determined by KERC and KPTCL is required to raise

bills on every first working day of every month and the assessee has undertaken to pay transmission charges in terms of the said bills.

- There is no mention of any offer with regard to any "technical services" by the KPTCL. Plain and simple intention of the parties to the agreement as discernable from the power transmission agreement is that the assessee was desirous of using the transmission network belonging to the KPTCL in accordance with the provisions of the Electricity Act subject to payment of charges applicable and determined by KERC. KPTCL was willing to provide its transmission network for the purpose of carrying electricity to its users subject to payment of transmission and other charges as determined by KERC. There is neither an offer nor an acceptance of any "technical service" inter se between the parties. Admittedly, KPTCL is a State owned Company and the only power transmitting agency. It has installed and developed its own infrastructure. Assessee is also a State owned electricity distribution company. The only service which the assessee has availed from the KPTCL is "transmission of power" on payment of charges fixed by KERC. No material is placed by the Revenue before this Court to substantiate its contention that assessee had availed of any technical services, assessee has done nothing more than transmitting certain quantum of power from one place to the other for a price fixed by KERC. Assessee was oblivious to the technical expertise which the KPTCL may possess. There was neither transfer of any technology nor any service attributable to a technical service offered by the KPTCL and accepted by the assessee. Therefore, application of Section 194J of the Act to the facts of this case by the Revenue is misconceived.'
- The view taken in the case of *CIT v. Hubli Electric Supply Co. Ltd.* [[2016\] 386 ITR 271/237 Taxman 7/65 taxmaan.com 208 \(Kar.\)](#) and *Gulbarga Electricity Supply Co. Ltd. (supra)* and *CIT v. Delhi Transco Ltd.* [[2016\] 380 ITR 398/\[2015\] 234 Taxman 779/62 taxmann.com 166 \(Delhi\)](#) which was affirmed by Supreme Court in the case of *CIT v. Delhi Transco Ltd.* [[2016\] 68 taxmann.com 231](#) and accordingly, substantial question of law is answered in favour of the assessee and against the revenue by saying that the provisions of section 194J was not attracted in present case and the assessee was not liable to deduct the tax at source from the payments of transmission charge made by it to the KPTCL and SLDC and therefore, the additions made by the assessing authority in the returned income of the assessee on this account were rightly set aside by the Tribunal.
- Accordingly, the appeal of the revenue is dismissed.