

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 12<sup>TH</sup> DAY OF FEBRUARY, 2018

PRESENT

THE HON'BLE MRS. JUSTICE S. SUJATHA

AND

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

ITA No.260/2013

C/W

ITA Nos.289/2014, 263/2013, 265/2013, 208/2014 AND 262/2013

**IN ITA NO.260/2013**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX,  
TDS, AAYAKAR BHAVAN,  
SEDAM ROAD, GULBARGA.
2. THE DEPUTY COMMISSIONER OF INCOME-TAX,  
TDS CIRCLE, AAYAKAR BHAVAN,  
STAFF ROAD, FORT, BELLARY-583 102.

... APPELLANTS

(BY SRI.Y.V.RAVIRAJ, ADV.)

**A N D :**

M/S KALYANI STEELS, LTD.,  
HOSPET ROAD, GINIGRA,  
KOPPAL DIST.

...RESPONDENT

(BY SRI.CHYTHANYA K.K, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 18.12.2012 PASSED IN ITA NO.861/BANG/2011, PARYING THAT, I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN, II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE IN ITA NO.861/BANG/2011 DATED 18.12.2012 CONFIRMING THE ORDER OF THE APPELLATE

COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, TDS CIRCLE, BELLARY.

**IN ITA NO.289/2014**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX,  
TDS, AAYAKAR BHAVAN,  
SEDAM ROAD, GULBARGA.
2. THE ASST. COMMISSIONER OF INCOME-TAX,  
TDS CIRCLE, AAYAKAR BHAVAN,  
STAFF ROAD, FORT, BELLARY.

... APPELLANTS

(BY SRI.Y.V.RAVIRAJ, ADV.)

**A N D :**

M/S KALYANI STEELS, LTD.,  
HOSPET ROAD, GINIGRA,  
KOPPAL.

....RESPONDENT

(BY SRI.CHYTHANYA K.K, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 21.02.2014 PASSED IN ITA NO.1041/BANG/2013 FOR THE ASSESSMENT YEAR 2010-2011 PARYING THAT, I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN, II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE IN ITA NO.1041/BANG/2013 DATED 21.02.2014 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, TDS CIRCLE, BELLARY.

**ITA NO.263/2013**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX,  
TDS, AAYAKAR BHAVAN,  
SEDAM ROAD, GULBARGA.

2. THE DEPUTY COMMISSIONER OF INCOME-TAX,  
TDS CIRCLE, AAYAKAR BHAVAN,  
STAFF ROAD, FORT, BELLARY-583 102.

... APPELLANTS

(BY SRI.Y.V.RAVIRAJ, ADV.)

**A N D :**

M/S KALYANI STEELS, LTD.,  
HOSPET ROAD, GINIGRA,  
KOPPAL DIST.

...RESPONDENT

(BY SRI.CHYTHANYA K.K, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 18.12.2012 PASSED IN ITA NO.862/BANG/2011 FOR THE ASSESSMENT YEAR 2009-2010, PARYING THAT, I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN, II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE IN ITA NO.862/BANG/2011 DATED 18.12.2012 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, TDS CIRCLE, BELLARY.

**ITA NO.265/2013**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX,  
TDS, AAYAKAR BHAVAN,  
SEDAM ROAD, GULBARGA.
2. THE DEPUTY COMMISSIONER OF INCOME-TAX,  
TDS CIRCLE, AAYAKAR BHAVAN,  
STAFF ROAD, FCRT, BELLARY-583 102.

... APPELLANTS

(BY SRI.Y.V.RAVIRAJ, ADV.)

**A N D :**

M/S MUKUND, LTD.,  
HCSPET ROAD, GINIGRA,  
KOPPAL DIST.

...RESPONDENT

(BY SRI.CHYTHANYA K.K, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 18.12.2012 PASSED IN ITA NO.859/BANG/2011, PARYING THAT, I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN, II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE IN ITA NO.859/BANG/2011 DATED 18.12.2012 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, TDS CIRCLE, BELLARY.

**ITA NO.208/2014**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX,  
AAYAKAR BHAVAN,  
SEDAM ROAD, GULBARGA-585 105.
2. THE ASST. COMMISSIONER OF INCOME-TAX,  
TDS CIRCLE, AAYAKAR BHAVAN,  
STAFF ROAD, FORT, BELLARY.

... APPELLANTS

(BY SRI.Y.V.RAVIRAJ, ADV.)

**A N D :**

M/S MUKUND, LTD.,  
HOSPET ROAD, GINIGRA.

...RESPONDENT

(BY SRI.CHYTHANYA K.K, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 17.12.2013 PASSED IN ITA NO.1040/BANG/2013 FOR THE ASSESSMENT YEAR 2010-2011 PARYING THAT, I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN, II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE IN ITA NO.1040/BANG/2013 DATED 17.12.2013 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, TDS CIRCLE, BELLARY.

**ITA NO.262/2013**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX,  
TDS, AAYAKAR BHAVAN,  
SEDAM ROAD, GULBARGA.
2. THE DEPUTY COMMISSIONER OF INCOME-TAX,  
TDS CIRCLE, AAYAKAR BHAVAN,  
STAFF ROAD, FORT, BELLARY-583 102.

... APPELLANTS

(BY SRI.Y.V.RAVIRAJ, ADV.)

**A N D :**

M/S MUKUND LTD.,  
HOSPET ROAD, GINIGRA,  
KOPPAL DIST.

...RESPONDENT

(BY SRI.CHYTHANYA K.K, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 18.12.2012 PASSED IN ITA NO.860/BANG/2011 FOR THE ASSESSMENT YEAR 2009-2010, PARYING THAT, I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN, II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE IN ITA NO.860/BANG/2011 DATED 18.12.2012 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, TDS CIRCLE, BELLARY.

THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, S.SUJATHA J., DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are filed by the revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for short) challenging the order of the Income Tax Appellate Tribunal, Bangalore Bench 'A' ('the Tribunal' for short) in ITA Nos.861/Bang/2011 dated 18.12.2012, 1041/Bang/2013 dated 21.02.2014, 862/Bang/2011 dated 18.12.2012, 859/Bang/2011 dated 18.12.2012, 1040/Bang/2013 dated 17.12.2013 and 860/Bang/2011 dated 18.12.2012 respectively.

2. Since the substantial questions of law raised in these appeals are identical, the same are heard together and disposed of by this common judgment.

3. The assessee is engaged in the business of manufacture of steel. During the assessment year 2008-09, 2009-10 and 2010-11 the assessee has made payment to M/s Hospet Steel Limited ('HSL' for short) towards managerial and technical services rendered by way of operating and maintaining an integrated steel

plant. Survey under Section 133A of the Act was conducted. Subsequent to survey, proceedings under Section 201(1) and Section 201(1A) of the Act were initiated. Orders under Sections 201(1) and 201(1A) of the Act were passed holding that, HSL and M/s Kalyani Steel Limited ('KSL' for short) and M/s Mukund Limited ('ML' for short) are independent entities. HSL is a service company and managed an integrated steel plant for KSL and ML. The required labour and staff for the services has been employed by HSL. HSL has used its assets and machineries for rendering the agreed services. The amounts received towards service charges has been accounted in the P & L account of HSL and the same is offered to tax. Hence, the Assessing Officer held that, assessee is in default under Section 201 for not deducting TDS under Section 194J of the Act and consequently, interest under Section 201(1A) of the Act was computed. Being aggrieved by the same, appeal was preferred by the assessee/respondent before the Appellate Commissioner. The Appellate Commissioner

arrived at a conclusion that the payment made by the assessee to HSL is reimbursement of expenses and there was no liability to deduct TDS under Section 194J of the Act and hence, Section 201(1) and 201(1A) of the Act are not justifiable. Being aggrieved by the same, revenue has preferred these appeals raising following substantial questions of law:

- i) *Whether the Appellate Authorities were correct in holding that, the payments made by the assessee to M/s Hospet Steel Limited are reimbursement of expenses on cost to cost basis and does not constitute income component, hence, provisions of Section 194J of the Act are not attracted?*
- ii) *Whether the Appellate Authorities failed to take into consideration that, entire payment made to M/s Hospet Steel Limited was towards rendering of managerial and technical services by way of operating and maintaining an integrated steel plant and the provisions of Section 194J of the Act are attracted, consequently, Section 201 of the Act is attracted?*



4. Learned counsel Sri.Y.V.Raviraj appearing for the revenue would contend that, both appellate authorities failed to take into consideration that HSL is carrying on business independently and not as an agent of KSL and ML. The entire staff and manpower required for operating and maintaining the integrated steel plant for rendering services were employed by HSL. Both the appellate authorities have failed to take into consideration that, while examining the applicability of the TDS provisions, the payment should be examined with reference to the services for which payment is made. The nomenclature given by the assessee or HSL does not change the applicability of the provisions. Any amount credited towards fee for professional or technical services attracts the provisions of Section 194J of the Act. Taxability or otherwise of the said amount in the hands of the recipient is not the requirement of Section to be looked into while applying the said provisions.

5. Learned counsel Sri.Chythanya K.K. appearing for the assessee submitted that HSL acts as an agent of KSL and ML to manage the affairs of the steel plant. Strategic Alliance Agreement (SAA) entered into between KSL and ML with HSL indicates that both companies installed their plants in close by and in pursuance of the said SAA, the assessee along with ML promoted HSL for effective functioning of all the plants as one composite manufacturing unit and accordingly, the assessee had installed iron making and steel rolling facilities and ML had installed steel making facilities with the following terms namely:

- (i) *the share capital of HSL was held by the assessee and ML in equal proportion and the investment in the said steel making facilities have been made by SAA constituents in the ratio of 41.38% (the assessee): 58.62% (by ML).*
- (ii) *the assessee and ML have agreed to reimburse HSL the expenditure incurred on behalf of the assessee and ML in course of administering the plant operations on cost*

*to cost basis, i.e., all the expenses for hot metal making and steel rolling activities were allocated to the assessee and the expenses incurred for steel making activities to ML;*

- (iii) all other common expenses and corporate expenses except the provision for gratuity and leave encashment to staff etc., were recovered from SAA constituents in the ratio of 41.38% and 58.62% as agreed upon;*

*It has been subscribed under the caption –  
C. Payments to JVC in the SAA as under:*

*“The parties agree and undertake to pay the JVC in advance a sum of Rs.20.00 million in the products sharing ratio or such other sum as may be agreed from time to time to facilitate the operation of the plants. All costs and expenses incurred by JVC shall be reimbursed by the parties in the products sharing ratio.”*

*The parties also agree to pay to JVC service charges as may be agreed upon between the parties and the JVC.”*

*In the supplementary agreement (dated 10.08.1999) to SAA dated 16.05.1998, sub-para 2.2(c) of Chapter 2 on Page 24 of the Principal Agreement was substituted by the following paragraph:*

*“It is agreed by and between the parties to this Agreement that JVC is an outcome of the Strategic Alliance between the parties and will only be acting as conduit pipe for and on behalf of the Strategic Alliance constituents and no remuneration will be paid to JVC.”*

6. In terms of the aforesaid, share capital of HSL was held by the assessee and ML in equal proportion and the investment in the said steel making facilities has been made by SAA constituents in the ratio of 41.38 and 58.62 by the assessee and ML respectively. As per the terms of SAA, the assessee and ML have reimbursed the expenses incurred by HSL in performance of its obligations. The said payment did not comprise of any income component in the hands of HSL. It is only the reimbursement of such expenses incurred by HSL, the

same cannot be categorized as fees towards professional and technical services. Thus, it was argued that, there being no income in the hands of HSL, Section 194J of the Act is not applicable. This factual aspect as well as legal aspects were rightly considered by the appellate authorities while arriving at a decision. Hence, the substantial questions of law raised by the revenue deserves to be answered in favour of the assessee rejecting the appeals.

7. Heard the learned counsel appearing for the parties and perused the material on record.

8. In order to answer the substantial questions of law raised by the revenue, it is apt to refer to Section 194J of the Act, the relevant provision reads thus:

*194J- Fees for professional or technical services.*

*(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of -*

*(a) xxxxx*

*(b) fees for technical services,*

- (ba) xxxxx
- (c) xxxxx
- (d) xxxxx

*shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to (ten) per cent of such sum as income-tax on income comprised therein:*

9. A reading of this provision discloses that, an amount equal to ten percent of such sum as income-tax has to be deducted on income comprised therein, by a person not being an individual or a HUF, who is responsible for paying a resident any sum towards fees for technical services as per Clause (b) of Section 194J(1) of the Act, the relevant factor is “income comprised”. To attract this provision, there must be an income comprised therein. Section 2(24) of the Act defines the income. The reimbursement of expenses incurred by HSL cannot be categorized as income under Section 2(24) of the Act.

10. Section 190 of the Act provides for deduction at source and advance payment. The said provision reads thus:

*“190. (1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction (or collection) at source or by advance payment (or by payment under sub-section (1A) of Section 192), as the case may be, in accordance with the provisions of this Chapter.*

*(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.”*

11. This provision makes it clear that deduction at source shall be on such income not otherwise. The primary factor to attract Section 194J is the ingredient of “income comprised therein”. If no income is reflected in the balance sheet and P & L account of HSL towards the reimbursement charges paid on cost to cost basis by

KSL and ML, it ceases to have the character of income. As such, the assessee cannot be treated as the assessee in default in not deducting tax at source under Section 194J of the Act. The arguments of the revenue that the fees paid by the assessee is towards technical services is imaginary one not established with substantial material.

12. The Assessing Officer proceeded to pass the orders under Sections 201 and 201(1A) of the Act on the footing that the assessee was required to deduct tax from the payments made to the HSL irrespective of the fact that the said payments include element of income or not. This approach of the Assessing Officer is contrary to Section 194J of the Act, which in unequivocal terms describes deduction of income tax on income comprised therein.

13. It is trite that, if there is no income embedded in a payment, then TDS provisions would not apply as TDS is only an alternative method of collection of taxes. It is beneficial to refer to the judgment of this Court in the



case of **Hyderabad Industries Ltd., Vs Income Tax Officer and Another 188 ITR 749 (kar)**, wherein it is held that, “an amount which will not be included in the total income of a person cannot be considered as “income” for the purpose of deduction of tax at source at all. The purpose of deduction of tax at source is not to collect a sum which is not a tax levied under the Act, it is to facilitate the collection of tax lawfully leviable under the Act.” In view of the factual finding of the appellate authorities that the payment made by KSL and ML to HSL for various expenses incurred would be a reimbursement and not a fee for technical services, Section 194J of the Act is not attracted.

14. The CBDT in the circular number 715 dated 03.08.1995 has clarified that the reimbursement cannot be deducted out of the bill amount for the purpose of TDS. The Assessing Officer's view is against the intent of the said circular.

15. This Court in ***Karnataka Power Transmission Corporation Ltd., Vs. Deputy Commissioner of Income-tax (TDS) Circle 16(2), Bangalore*** reported in ***(2016) 383 ITR 59 (Kar)*** while considering the applicability of Section 194A of the Act has observed that, Section 194A of the Act mandates the tax deductor to deduct 'income tax' on any income by way of interest other than income by way of interest on securities. The phrase 'any income' and 'income tax thereon' if read harmoniously, it would indicate that the interest which finally partakes the character of income, alone is liable for deduction of the income tax on that income by way of interest. If the said interest is not finally considered to be an income of the deductee, as per reversal entries of the provision, Section 194A(1) of the Act would not be made applicable. In other words, if no income is attributable to the payee, there is no liability to deduct tax at source in the hands of the tax deductor.

16. Under the circumstances, the assessee falls outside the scope of Section 194J r/w Section 200 of

the Act during the relevant assessment years. Consequently, the provisions of Sections 201 and 201(1A) of the Act are not attracted. We do not find any material irregularity or infirmity in the orders passed by the appellate authorities. For the aforesaid reasons, we answer substantial questions of law against the revenue and in favour of the assessee.

Accordingly, the appeals stand dismissed.

[Sd/-]  
JUDGE

[Sd/-]  
JUDGE

MBS/-