IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI H BENCH, MUMBAI

Before Shri Pramod Kumar (Accountant Member)
and Shri Vijay Pal Rao (Judicial Member)

ITA Nos. 20 TO 23/BLPR/2010
Assessment year: 2006-07 to 2009-2010

Chattisgarh State Electricity Board ***……Appellant***
(now known as CG State Power Holding Co. Ltd.)
Ground floor, Vidyut Seva Bhawan
Raipur 492 001 [PAN AABCC7876Q]

Vs.

Income Tax Officer (TDS), ***……Respondent***
Central Revenue Building
Civil lines, Raipur 492 001

Appearances:

Soli E. Dastur, *for the appellant*
Goli Srinivas Rao, *for the respondent*

Dates of hearing : October 20 and 24, 2011
Date of pronouncement : November 30, 2011

O R D E R

Per Pramod Kumar:

1. In this bunch of four appeals, which are directed against common order dated 7th October 2009 passed by the CIT(A), the assessee appellant has challenged correctness of CIT(A)'s upholding the following demands raised on the assessee under section 201(1) and 201(1A) r.w.s. 194 I of the Income Tax Act, 1961, for alleged non-

compliance with tax withholding requirements in respect of payments for electricity transmission charges:

Sl	Assessment Year	Demand u/s 201(1)-TDS	Demand u/s 201(1A)- Interest*	Total
1	2006-07	2,08,63,979	81,63,158	2,90,27,137
2	2007-08	4,85,23,892	1,37,75,324	6,22,99,216
3	2008-09	4,69,51,547	77,31,511	5,46,83,058
4	2009-10	6,56,98,260	31,77,291	6,88,75,551
				21,48,84,962

** As computed for the period up to the date of demands having been raised by the Assessing Officer.*

2. Let us take a look at the relevant material facts and the developments leading to this litigation before us. The appellant before us is Chattaisgarh State Electricity Board, through its successor C G State Power Holding Co Ltd (referred to as 'CSEB', in short). Chattisgarh State Electricity Board, a public sector undertaking owned by the Government of Chattisgarh, was formed under Section 5 of the Electricity Supply Act, 1948, and, with effect from 1st January 2009, it was divided into five separate companies, including CG State Power Holding Co Ltd – which was its successor in the present appeal. CSEB is engaged, inter alia, in the business of distribution of electricity to consumers within Chattisgarh.

3. The activity of distributing electricity to end consumers is preceded by two important intermediate steps – namely production of electricity, and its transmission from point of production to the point of distribution, and it is here that two significant players, namely National Thermal Power Corporation Ltd (NTPC, in short) and Power Grid Corporation of India Ltd (PGCIL, in short) come into play.

4. NTPC, a Government of India owned PSU, generates electric power and is one of the major sources of electrical power in the country. However, when CSEB, or for that purpose any other state electricity board, buys the electrical power, NTPC's obligation ends with availability of the electrical power at delivery points, which are technically termed as 'busbars', of the power generating station. It is for the CSEB to organize that electrical power so purchased from the NTPC is transmitted from such delivery points to the points where CSEB needs electrical power. This transmission of electrical power, termed as 'wheeling' in technical parlance, can only be done by the persons duly authorized by the Government of India in this behalf.

5. PGCIL, another Government of India PSU, is engaged in the business of transmitting the power, and is duly authorized for the purposes of transmitting power from delivery points to the bulk beneficiaries like assessee before us. It operates and maintains inter-state transmission system and operation of Regional Power Grids, and it has also been notified as the Central Transmission Utility (CTU) of the country. In addition to the facilities set up by PGCIL, it has been controlling the existing load despatch centres in the country with a view to achieve better grid management and operation. CSEB buys from the power from NTPC and the power so purchased by the CSEB is transmitted to by PGCIL.

6. It is in this backdrop, and during the course of verification of tax deduction at source returns, that the Assessing Officer noted that CSEB has entered into an agreement with NTPC and PGCIL for use of transmission system owned by the PGCIL and expressed the view that the assessee was required to deduct tax at source from such payments, in terms of the provisions of Section 194 I of the Act. The Assessing

Officer was of the view that, as evident from the agreement that the assessee entered into with PGCIL, the PGCIL had developed the national power grid to ensure transmission of power within, and across, the different regions of the country. The Assessing Officer noted that the assessee had made the payment for transmission charges for use of transmission system. He noted that the "the plain reading of various clauses of the agreement clarify that the transmission charges are collected on account of use of transmission system" and that "the western grid is made exclusively for CSEB to transmit the power". The Assessing Officer further observed that "the utilization of transmission system implies existence of some equipment or physical body and does not indicate the involvement of the manpower in the form of professional, technician or any labour to run the electric current". He also noted that "the access line consisting of circuits is within the reach of the CSEB and it is through that private line/ access line and related equipment placed at PGCIL station that the transmission of electricity takes place …..". The Assessing Officer also noted that there is dedicated machinery and equipment identified and allowed to be used in the hands of the CSEB. It was noted that PGCIL is mainly responsible for transmitting power from production centre to the consumers, and, in the process, in coverts DC into AC power. It requires transformers and other electrical apparatus for this process and transmission. The stand of the Assessing Officer was that the payments made by the assessee to PGCIL, for the purpose of transmitting power from NTPC's delivery point to assessee's facilities, can be said to be payments in the nature of rent for transmission facilities, and, accordingly, be hit by the provisions of Section 194 I of the Act. A reference was made to Hon'ble Allahabad High Court's judgment in the case of CIT Vs Indian Turpentine and Resin Co Ltd (75 IITR 533) in support of the contention that transmission equipment constitute plant and

machinery, and, therefore, payment for transmission charges should be construed as payment for use of plant and machinery.

7. The Assessing Officer, rejecting the elaborate arguments of the assessee in support of the contention that the payment for transmission charges is not in the nature of rent for transmission equipment, observed that the absence of expression 'rent' in the agreement does not alter the factual situation in this case, and that the expression 'rent' has a much wider connotation under Explanation (i) to Section 194 I. It was noted that the as long as payment is made, by whatever name called, for use of equipment, plant, machinery, the same will be covered by the definition of rent for the purpose of this section. As regards the assessee's contention that the assessee does not have any liability under section 201(1), in view of the fact that the PGCIL has paid the taxes directly and in the light of Explanation (i) to Section 191, the Assessing Officer rejected this contention as well and observed that 'the payment of advance tax by deductee cannot be treated as discharge of tax liability under section 194I of the Act, as it is liability of the assessee tax deductor'. He was of the view that both these liabilities, i.e. of the tax withholding liability of the person making the payment and of tax liability of recipient of income, are independent liabilities and cannot be equated with each other. He held that "one of the basic intentions to introduce the TDS provisions of the Act is to provide Government regular cash flow for development works to prevent the revenue loss caused in cases where the department fails to tap the revenue from deductee later on", that this "claim of exemption for non deduction hits adversely the basic intention of the legislature, which is against the law", and, therefore, this "argument put forth by the learned counsel has no force". The assessee was, accordingly, treated as in default in respect of the

amounts which the assessee ought to have deducted at source under section 194 I of the Act. Consequent demands, under section 201(1) and 201(1A), aggregating to Rs 21,48,84,970 (after rounding off) were raised on the assessee.

8. Aggrieved, assessee carried the matter in appeal but without any success. While learned CIT(A) meticulously recorded written submissions of the assessee, he preferred not to deal with these very erudite and detailed submissions in detail, and rejected the same rather summarily by observing as follows:

> I have gone through the order of the AO and submission of the appellant. I have also perused the Bulk Power Transmission Agreement (BPTA) between PGCIL and MPSEB and also the Power Purchase Agreement (PPA) between NTPC and CSEB. The appellant has not furnished annexure 'C' to BPTA which provides for transmission tariff. It is an undisputed fact that the PGCIL has established power transmission system/ lines which have been used by the appellant for transmission of power, in consideration of monthly charges paid. The issue arises whether the transmission charges paid by the appellant is rent within definition provided under section 194 I and liable to TDS. As per ITO(TDS), it is an arrangement for use of transmission assets owned and developed by PGCIL and thus monthly charges paid by the appellant is rent within the definition provided in Explanation to Section 194I.The ITO TDS has further held that the definition of rent has been substituted by Taxation Laws (Amendment) Act 2006, and is also applicable since inception of Section 194 I being clarificatory in nature. The ITO (TDS) has also rejected plea of the appellant that for transmission charges paid, Section 194 C is applicable instead of Section 194 I (Refer para 9; page 10 of the order). Accordingly, ITO(TDS) has held that the appellant has failed to deduct tax at source, as per provisions of Section 194 I, and, therefore, deemed to be an assessee in default under section 201 and also liable to interest under section 201(1A). The appellant contended before the ITO (TDS) that transmission charges paid by the appellant is in the nature of service charges and do not fall within the ambit of rent. It was further submitted that the definition of rent has been substituted with effect from 13.07.2006 and, therefore, is not applicable prior to that since it is not clarificatory in nature. By amendment, scope of rent has

been enlarged. Finally, it was submitted that the deductee, i.e. PGCIL, has already paid tax on transmission charges received by it, and, therefore, no demand under section 201(1) should be enforced. Perusal of Explanation to Section 194 I, i.e. definition of rent, reveals that any arrangement for use of land or building or plant or machinery or equipment or furniture or fitting shall be treated as rent for the purpose of Section 194 I. Perusal of Clause 5 of BPTA and 3.4 of PPA reveals that transmission charges is payable for utilization of transmission system owned by PGCIL and, therefore, is in the nature of rent. In fact, the charges paid are for facility provided for transmission of power and not for any services rendered, and, therefore, the transmission charges are payments in consideration for arrangement for facility provided for transmission of power. Accordingly, the appellant was obligated to deduct TDS on such payment, as per the provisions of Section 194 I of the Income Tax Act, which he has failed. As regards the applicability of amendment, w.e.f. 13.07.2006 or from inception, to Section 194 I, I agree with the contention of the AO that the amendment is clarificatory in nature and, therefore, the same is applicable in all the years under consideration. Thus the appellant has failed to deduct TDS as required under Income Tax Act, and, therefore, is deemed to be in default in respect of tax to be deducted and consequently also liable to pay interest under section 201(1A).

9. The assessee is not satisfied by the stand so taken by the CIT(A) as well, and is in further appeal before us.

10. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

11. We find that the Power Purchase Agreement entered into by the assessee with NTPC, (copy placed before us at pages 15-27 of the paper-book), specifically provides that "power shall be made available by the NTPC at the busbars of the Station and it shall be obligation and responsibility of the CSEB to make the required arrangement for evacuation of power from such delivery points of NTPC". It is pursuant to these obligations that the assessee, along with other bulk power

beneficiaries – namely M P State Electricity Board, Gujarat Electricity Board, Maharashtra State Electricity Board, Electricity Department – Government of Goa, Administration of Daman & Diu, and Electricity Department – Administration of Dadra and Nagar Haveli, has entered into a 'Bulk Power Transmission Agreement' with PGCIL. The preamble of this agreement, inter alia, notes that the PGCIL "is desirous to transmit energy from the Central Sector Power Station(s) to the Bulk Power Beneficiaries and that the said Bulk Power Beneficiaries are desirous of receiving the same through POWERGRID transmission system on mutually agreed terms and conditions". This agreement provides that "POWERGRID shall operate and maintain the transmission system belonging to it in the Western Region as per agreed guidelines and the directives of the Western Regional Electricity Board and the Regional Load Dispatch Centers, and cooperate with the Bulk Power Beneficiaries of the Region, so as to maintain the system parameters within acceptable/ reasonable limits except where it is necessary to take measures to prevent imminent damage to any equipment". In respect of these services, the bulk power beneficiaries are to pay to PGCIL a monthly charges computed in the manner set out in clause 9 of the said agreement. This clause, in turn, refers to formula set out in A.4 of Annexure 1 which refers to the same ratio of agreed annual charges divided by 12 as is between power transmitted to each beneficiary to total sales from that particular point of delivery. In other words, while the annual charges are fixed, these are divided between the beneficiaries in the same ratio as is ratio of power evacuated by a beneficiary to the total sale of power from that delivery point. It is, however, not in dispute that the transmission lines are in the physical control of PGCIL, these are maintained and operated by the PGCIL and, so far as the assessee is concerned, its interest in the transmission lines is restricted to the fact that electrical power purchased by the assessee, simultaneously alongwith electrical power

purchased by other bulk power beneficiaries, is transmitted through these transmission lines. The way it works is like this. The power available at the delivery points, collectively for all the bulk power beneficiaries, is loaded for transmission on these transmission lines or powergrid and each of the beneficiaries is allowed to utilize the power to the extent allocated to him. It is not the case that purchases by each of the bulk beneficiary can be physically identified and that particular beneficiary is only allowed to use that physically identified portion of power. Strictly speaking, therefore, it is not the transmission of power from one point to another but availability of power on the entire power grid or transmission lines enabling the beneficiary to utilize the power to the extent of his allocation. On these facts, the question that requires our adjudication is whether or not the payment for transmission charges can be termed as 'rent' for the purposes of Section 194 I of the Act.

12. Let us now take a look at the statutory provision with regard to tax withholding from rent payments, which is set out in Section 194 I of the Act, and analyze the same. Section 194I provides as follows:

> 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, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of— (a) two per cent. for the use of any machinery or plant or equipment; and (b) ten per cent. for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:
>
> Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed [one hundred eighty thousand rupees] :

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.

Explanation : For the purposes of this section, [(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any, —,

(a) land; or
(b) building (including factory building); or
(c) land appurtenant to a building (including factory building); or
(d) machinery; or
(e) plant; or
(f) equipment; or
(g) furniture; or
(h) fittings,

whether or not any or all of the above are owned by the payee;]

(ii) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

13. The case of the Assessing Officer, which has been sustained in the first appeal, is that since expression "rent", for the purpose of Section 194 I, includes “any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement” for the use of machinery, plant or equipment, and since the assessee has made the payments towards transmission charges for use of the machinery, plant and equipment collectively constituting mode of transmission of power, the provisions of Section 194 I come into play on the facts of this case.

14. The core issue that we must deal with is whether the present arrangement under the Bulk Power Transmission Agreement can be termed can be covered by the scope of expression any other agreement or arrangement 'for the use of' appearing in Explanation (i) to Section 194 I.

15. Explanation (i) to Section 194 I, as we have noted above, defines rent as any payment, by whatever name called, under any lease, sub-lease, or tenancy or any other agreement or arrangement ***"for the use of"*** land, building, plant, machinery or equipment etc. As evident from a plain reading of the agreements under which impugned payments have been made, the payments have been made for the services of transmission of electricity and not the use of transmission wires per se. It is a significant fact that these transmission lines are not only being used for transmission of electricity to the assessee but also for transmission to electricity to various other entities. The transmission lines continue to be not only under control and possession of the PGCIL in legal terms, but, what is more important, these transmission lines are effectively in the control of PGCIL, without any involvement of the assessee in actual operations of the same. On these facts, in our humble understanding, the assessee has made the payments for transmission of electricity in which transmission lines have been used rather than for the use of transmission lines *per se*. The payments could be said to have been made for "the use of transmission lines" in a case in which the object of consideration for which payments are made was the use of transmission lines *simplictor* , and such a use by the assessee does not extend beyond the transmission of electricity through such lines in the sense that the same transmission lines continue to be in the control of PGCIL for transmission of electricity for other entities and for all practical purposes. Even as electricity purchased by the assessee is transmitted to the assessee from the

NTPC busbar to its landing points, the same transmission lines continue to be engaged in similar transmission of electricity for other entities and the assessee has no say in the manner in which such transmission lines can be controlled and used by the PGCIL. Undoubtedly, for the purpose of an arrangement being termed as in the nature of rent for the purpose of Section 194 I, the 'control' and 'possession', in legal terms, of an asset may not not needed to be with the person benefiting from the asset in question, it is a condition precedent for invoking Section 194 I that the asset, for the use of which the payment in question is made, should have some element of its control by the assessee. Here is a case in which the assessee has no control over the operations of the transmission lines, and all that he gets from the arrangements is that he can draw the electrical power purchased from PGCIL's transmission lines in an agreed manner.

16. While on the issue of distinction between use of an asset and benefit from an asset, we may usefully refer to the following distinction brought out by the Karnataka High Court between leasing out of equipment and the use of equipment by its customer. This was done in the case of Lakshmi Audio Visual Inc. vs. Asstt. Commr. of Commercial Taxes (124 STC 426), which has been followed by Hon'ble Delhi High Court in the case of Asia Satellite Telecommunications Ltd (332 ITR 340), in the following terms :

> *"9. Thus if the transaction is one of leasing/hiring/letting simpliciter under which the possession of the goods, i.e., effective and general control of the goods is to be given to the customer and the customer has the freedom and choice of selecting the manner, time and nature of use and enjoyment, though within the framework of the agreement, then it would be a transfer of the right to use the goods and fall under the extended definition of "sale". On the other hand, if the customer entrusts to the assessee the work of achieving a certain desired result and that involves the use of goods belonging to the assessee and rendering of several other services and the goods used by the assessee to achieve the desired result continue to be in the effective and general control of the assessee, then, the transaction will not be a transfer of the right to use goods falling within the extended definition of "sale". Let me now clarify the position further, with an illustration which is a variation of the*

illustration used by the Andhra Pradesh High Court in the case of Rashtriya Ispat Nigam Ltd. vs. CTO.

(i) A customer engages a carrier (transport operator) to transport one consignment (a full lorry load) from place A to B, for an agreed consideration which is called freight charges or lorry hire. The carrier sends its lorry to the customer's depot, picks up the consignment and proceeds to the destination for delivery of the consignment. The lorry is used exclusively for the customer's consignment from the time of loading, to the time of unloading at destination. Can it be said that right to use of the lorry has been transferred by the carrier to the customer ? The answer is obviously in the negative, as there is no transfer of the "use of the lorry" for the following reasons : (i) The lorry is never in the control, let alone effective control of the customer; (ii) the carrier decides how, when and where the lorry moves to the destination, and continues to be in effective control of the lorry; (iii) the carrier can at any point (of time or place) transfer the consignment in the lorry to another lorry; or the carrier may unload the consignment en route in any of his godowns, to be picked up later by some other lorry assigned by the carrier for further transportation and delivery at destination.

(ii) On the other hand, let us consider the case of a customer (say a factory) entering into a contract with the transport operator, under which the transport operator has to provide a lorry to the customer, between the hours 8 a.m. to 8 p.m. at the customer's factory for its use, at a fixed hire per day or hire per km. subject to an assured minimum, for a period of one month or one week or even one day; and under the contract, the transport operator is responsible for making repairs apart from providing a driver to drive the lorry and filling the vehicle with diesel for running the lorry. The transaction involves an identified vehicle belonging to the transport operator being delivered to the customer and the customer is given the exclusive and effective control of the vehicle to be used in any manner as it deems fit; and during the period when the lorry is with the customer, the transport operator has no control over it. The transport operator renders no other service to the customer. ……."

17. It is thus clear that in a situation in which the payment in made for the use of an asset simpliciter, whether with control and possession in its legal sense or not, the payment could be said to be for the use of an asset. However, in a situation in which the payment is made only for the purpose a specific act, i.e. power transmission in this case, and even if an asset is used in the said process, the payment cannot be said to be for the use of an asset. When control of the asset

(transmission lines in the present case) always remains with the PGCIL, any payment made to the PGCIL for transmission of power on the transmission lines and infrastructure owned controlled and in physical possession of PGCIL can be said to have been made for 'the use of' these transmission lines or other related infrastructure. Viewed in this perspective, Section 194 I has no application so far as the impugned payments for transmission of electricity is concerned. For this short reason alone the impugned demands must be held to unsustainable in law.

18. We have taken note of learned Departmental Representative's reliance on Hon'ble Delhi High Court's judgment in the case of DCIT Vs Japan Airlines (325 ITR 298), which in turn follows its earlier decision in the case of United Airlines Vs CIT (287 ITR 281), in support of the proposition that even in a situation in which landing and parking charges are paid by airlines to the Airport Authority, and when such charges are not in respect of the specific area of land, the provisions of Section 194 I come into play. By the same logic, according to the learned Departmental Representative, transmission charges are paid by the assessee, even though the same may not pertain to specific transmission lines which may be simultaneously used by more than one persons, the provisions for tax deduction at source from rent under section 194 I be held to be applicable. We are unable to see any merits in this submission. When an aircraft is parked in a portion of land in the airport, such a portion of land could still be viewed as being effectively used by the airlines owning the aircraft, and the same is the position with regard to the landing strip. Learned Departmental Representative has also referred to the decision of Hon'ble Andhra Pradesh High Court in the case of Krishna Oberoi Vs Union of India (257 ITR 105) but we see no merits in this defence either. This case

only deals with the question whether payment for hotel rooms will be covered by the definition of rent, but then it was not, and could not have been, in dispute that the payment for hotel room constitutes payment for 'the use of' an asset – the precise point of controversy in the present decision. Clearly, a hotel customer pays for the use of, or the right to the use of, the hotel room. It is for the same distinguishing feature that decisions in the cases of JC Bansal Vs TRO (123 ITD 245) and CIT Vs Rebook India Co (163 Taxman 61) are not relevant in the present context.

19. It is also important to bear in mind the fact that by the virtue of insertion of Explanation to Section 191 with effect from 1st June 2003, a person can be treated as an assessee in default under section 201(1) only when there is lapse in deduction of tax at source on his part and, in addition to this lapse, the recipient of income has also failed to pay such tax directly. The reasons are not difficult to fathom. Proceedings under section 201(1) are not penal proceedings. These are vicarious proceedings to make good the shortfall in tax collection, and when the tax liability is duly discharged by the recipient of income embedded in the payment, such a vicarious liability cannot be invoked. The lapse of non deduction or short deduction of tax at source is to be visited with several consequences. The first and foremost consequence is that the tax deductor has to make good the shortfall in tax deduction and the tax deductor also has to compensate the Revenue by way of interest for the period of late realization of this tax to the Revenue authorities. These provisions, contained in s. 201(1) and 201(1A), are set out in Chapter XVII-B titled as 'Collection and Recovery of Tax'. The next set of consequences are contained in s. 271C and s. 276B, covered by Chapter XXI—'Penalties Imposable' and Chapter XXII—'Offences and Prosecutions' respectively. Sec. 276B, as it stands now, is not applicable on the facts of this case which comes to the play only when the

assessee has deducted the tax at source but he does not pay, or does not pay in time, the taxes so deducted at source. Sec. 271C deals with levy of penalty for total or partial failure to deduct tax at source i.e., for non-deduction and short-deduction of tax at source. This provision is clearly a penalty provision which is applicable for the cases of tax deductor's not discharging, wholly or partially, statutory obligations of deducting taxes at source, but then considerations which are relevant for examining a case having been made out for imposition of penalty are, as is the settled legal position, altogether different and the different yardsticks for such a case apply. However, unlike Section 271 C, Section 201 (1) is not of the penalty nature, and, therefore, the core consideration for invoking Section 201(1) is not the lapse on the part of the tax deductor, but loss of revenue to the exchequer. As long as taxes payable by the recipient of income are paid, the provisions of Section 201(1) cannot be pressed into service. The authorities below were thus quite unjustified in brushing aside the assessee's contentions to the effect that since PGCIL has already discharged all his income tax obligations, demands under section 201 (1) cannot be raised at all. However, now that we have held, on merits, that payments made for transmission of electricity by the transmission lines owned by PGCIL donot constitute payment for rent under section 194 I, it is not really necessary to go into this aspect of the matter. The question as to whether the definition of expression 'rent', introduced in section 194 I with effect from July 2006, is prospective or clarificatory is also, given our findings that, even on the touchstone of the definition of rent under the aforesaid provision, the payment for transmission of power will not constitute 'rent', not really relevant in the present context, and we see no need to deal with the same either.

20. In view of the above discussions, and bearing in mind entirety of the case, we are of the considered view that the provisions of Section

194 I cannot apply in respect of payments made for transmission of power by the PGCIL, on the facts of the case before us. Accordingly, the impugned demands raised under sections 201(1) r.w.s. 194 I and 201(1A) r.w.s. 201(1A) are cancelled. The assessee gets the relief accordingly.

21. In the result, the appeals are allowed. Pronounced in the open court today on 30th day of November, 2011.

Sd/xx ***Sd/xx***
(Vijay Pal Rao) **(Pramod Kumar)**
Judicial Member Accountant Member

*Mumbai; **30th** day of **November, 2011**.*

Copy forwarded to :

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Income Tax Appellate Tribunal
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