

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.299 of 2020

CNR No. BRHC010492732020

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South Bihar Power Distribution Company Ltd., a Company incorporated Under the Companies Act 1956 Having its registered Office at Vidyut Bhawan, Bailey Road P.O. GPO P.S. Kotwali, through its Sr. Finance Manager, Gajendra Sharma Son of Shri Mahendra Sharma resident of Road No.9 near Balaji Apartment Shri Nagar, P.O. Ashiana Nagar, P.S. Shastri Nagar Patna.

... .. Appellant/s

Versus

Asst. Commisioner of Income Tax TDS, TDS Circle having its Office at Central Revenue Building, Bir Chand Patel Marg, Patna.

... .. Respondent/s

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with

Miscellaneous Appeal No. 298 of 2020

CNR No. BRHC010492732020

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NORTH BIHAR POWER BISTRIBUTION COMPANY LTD. a Company incorporated under the Companies Act 1956, having its registered office at Vidyut Bhawan, Bailey Road, P.o. GPO, P.s.- Kotwali, through its Deputy General manager, Anurag Son of late Rajendra Prasad resident of Flat No. 406, Ramayan Apartment, Exhibition Road, P.o.- GPO, P.s.- Gandhi Maidan, District- Patna

... .. Appellant/s

Versus

Asst. Commissioner of Income Tax TDS, having its office at Central Revenue Building, Bir Chand Patel Marg, Patna

... .. Respondent/s

=====

with

Miscellaneous Appeal No. 301 of 2020

CNR No. BRHC010492732020

=====

North Bihar Power Distribution Company Ltd. A Company incorporated under the Companies Act 1956 having its registered office at Vidyut Bhawan, Bailey Road, P.O. - GPO, P.S.- Kotwali, through its Deputy General Manager, Anurag Son of Late Rajendra Prasad resident of Flat No. 406 Ramayan Apartment Exhibition Road P.O. GPO, P.S.- Gandhi Maidan, District- Patna.

... .. Appellant/s

Versus



Asst. Commissioner of Income Tax TDS Having its office at Central Revenue Building Bir Chand Patel Marg, Patna.

... ... Respondent/s

with

Miscellaneous Appeal No. 302 of 2020

CNR No. BRHC010492732020

North Bihar Power Distribution Company Ltd. A Company incorporated under the Companies Act 1956 having its registered office at Vidyut Bhawan, Bailey Road, P.O. - GPO, P.S.- Kotwali, through its Deputy General Manager, Anurag Son of Late Rajendra Prasad resident of Flat No. 406 Ramayan Apartment Exhibition Road P.O. GPO, P.S.- Gandhi Maidan, District- Patna.

... ... Appellant/s

Versus

Asst. Commissioner of Income Tax TDS Having its office at Central Revenue Building Bir Chand Patel Marg, Patna.

... ... Respondent/s

with

Miscellaneous Appeal No. 303 of 2020

CNR No. BRHC010492732020

South Bihar Power Distribution Company Ltd., a Company incorporated under the Companies Act 1956 having its registered office at Vidyut Bhawan, Bailey Road, P.O. GPO, P.S.- Kotwali, through its Sr. Finance Manager, Gajendra Sharma son of Shri Mahendra Sharma resident of Road no. 9, Near Balaji Apartment, Shri Nagar, P.O.- Ashiana Nagar, P.S.- Shastri nagar, Patna

... ... Appellant/s

Versus

Asst. Commissioner of Income Tax, TDS, TDS Circle having its office at Central Revenue Building, Bir Chand Patel Marg, Patna

... ... Respondent/s

with

Miscellaneous Appeal No. 305 of 2020

CNR No. BRHC010492732020

South Bihar Power Distribution Company Ltd., a Company incorporated Under the Companies Act 1956 Having its registered Office at Vidyut Bhawan, Bailey Road P.O. GPO, P.S. Kotwali, through its Sr. Finance Manager, Gajendra Sharma Son of Shri Majendra Sharma resident of Road No.9 Near Balaji Apartment Shri Nagar, P.O. Ashiana Nagar, P.S. Shastri Nagar Patna.



... .. Appellant/s

Versus

Asst. Commissioner of Income Tax TDS, TDS Circle having its Office at
Central Revenue Building, Bir Chand Patel Marg, Patna.

... .. Respondent/s

with

Miscellaneous Appeal No. 307 of 2020

CNR No. BRHC010492732020

South Bihar Power Distribution Company Ltd. A Company incorporated
under the Companies Act 1956 having its registered office at Vidyut Bhawan,
Bailey Road P.O.- GPO, P.S.- Kotwali, through its Sr. Finance Manager,
Gajendra Sharma, Son of Shri. Mahendra Sharma, resident of Road No. 9
Near Balaji Apartment Shri Nagar, P.O.- Ashiana Nagar, P.S.- Shastri Nagar,
Patna.

... .. Appellant/s

Versus

Asst. Commissioner of Income Tax TDS, TDS, Circle Having its office at
Central Revenue Building, Bir Chand Patel Marg, Patna.

... .. Respondent/s

with

Miscellaneous Appeal No. 311 of 2020

CNR No. BRHC010492732020

North Bihar Power Distribution Company Ltd., A Company incorporated
under the Companies Act 1956 having its registered office at Vidyut Bhawan,
Bailey Road, P.O. - GPO, P.S.- Kotwali, through its Deputy General Manager,
Anurag Son of Late Rajendra Prasad resident of Flat No. 406 Ramayan
Apartment Exhibition Road P.O. GPO, P.S.- Gandhi Maidan, District- Patna.

... .. Appellant/s

Versus

Asst. Commissioner of Income Tax TDS having its office at Central
Revenue Building, Bir Chand Patel Marg, Patna

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 299 of 2020)

For the Appellant/s	:	Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s	:	Ms. Archana Sinha @ Archana Shahi, Sr. Adv
		Ms. Shilpi Keshri, Advocate
		Ms. Rani Singh, Advocate
		Mr. Manish Kr. Paswan, Advocate



(In Miscellaneous Appeal No. 298 of 2020)

For the Appellant/s : Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv
Ms. Shilpi Keshri, Advocate
Ms. Rani Singh, Advocate
Mr. Manish Kr. Paswan, Advocate

(In Miscellaneous Appeal No. 301 of 2020)

For the Appellant/s : Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv
Ms. Shilpi Keshri, Advocate
Ms. Rani Singh, Advocate
Mr. Manish Kr. Paswan, Advocate

(In Miscellaneous Appeal No. 302 of 2020)

For the Appellant/s : Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv
Ms. Shilpi Keshri, Advocate
Ms. Rani Singh, Advocate
Mr. Manish Kr. Paswan, Advocate

(In Miscellaneous Appeal No. 303 of 2020)

For the Appellant/s : Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv
Ms. Shilpi Keshri, Advocate
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For the Appellant/s : Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv
Ms. Shilpi Keshri, Advocate
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For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv
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For the Appellant/s : Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv
Ms. Shilpi Keshri, Advocate
Ms. Rani Singh, Advocate
Mr. Manish Kr. Paswan, Advocate

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA

and

HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA)

17 14-10-2026

Heard the parties.

2. The Present appeals have been preferred by the
appellants-assesseees, State-owned electricity Distribution



Companies against common order dated 06.12.2019, passed by the Income Tax Appellate Tribunal, Patna Bench, Patna, concerning the liability to deduct tax at source under Section 194C of the Income Tax Act, 1961 (hereinafter for brevity to be referred to as 'the Act'), in respect of payments made under contracts relating to supply of materials and erection of electrical infrastructure.

3. The controversy arose out of the contracts awarded by the appellants pursuant to its tender process for execution of work on turnkey basis. The appellants case before the Authority was that, although the tenders contemplated the execution of the project as a whole, the appellants had issued two separate and distinct letters of award/contract, one relating to the supply of materials/equipment and the other relating to erection and associated works. As per the appellants, the value of the materials supplied was separately ascertainable and separate invoices were raised in respect thereof. The appellants deducted tax at source under Section 194C on the payments relating to the erection portion, but did not deduct tax at source on the payments towards supply of materials, treating the latter as payments arising from "contracts for sale" and not from "contract for carrying out any work".



4. The Assessing Authority, however, took the view that the supply and erection portion could not be viewed independently. According to the Assessing Authority, the supply of materials was so closely connected with the erection and commissioning works that the two constituted one composite contract. On that basis, the appellants were treated as *assesseees in default* under Section 201(1) and 201(1A) of 'the Act' for failure to deduct tax at source on the supply component.

5. The appellants carried the matter by filing separate appeals before the Commissioner of Income Tax (Appeals). By separate, but identical orders, all dated 06.10.2018, CIT (Appeals) affirmed the view that the contracts constituted a composite package, thereby upholding the view of the Assessing Officer.

6. The matters thereafter travelled to the Income Tax Appellate Tribunal. The Tribunal did not accept the appellants' contention. It proceeded on the basis that the supply and erection components were inseparably connected with each other and that the ultimate object of the arrangement was completion of a turnkey project. The Tribunal accordingly held that the supply portion could not be isolated from the erection and commissioning work and that the payments relating to



supply were also liable to deduction of tax at source under Section 194C of the Act.

7. The Tribunal also considered the question of liability under Sections 201(1) and 201(1A) of 'the Act' in cases where the deductees/contractors had allegedly incurred losses. On this aspect, the Tribunal referred to the principles laid down in **Hindustan Coca-Cola Beverages (P) Ltd. Vs. Commissioner of Income Tax, (2007) 293 ITR 226 (SC)** and the decision in **CIT (TDS) Vs. Sahara India Commercial Corporation Ltd., ITA No. 58/2015, order dated 18.01.2017**, and directed verification by the Assessing Officer in accordance with law.

8. Being Aggrieved by the common order dated 06.12.2019, passed by the Tribunal, the appellants filed these appeals under Section 260A of 'the Act' in the month of December, 2020.

9. Thereafter, the appellants were heard at the admission stage under Order XLI Rule 11 of the CPC and by order dated 24.02.2026 these appeals were admitted on the following substantial questions of law:-

"1. Whether the Tribunal has erred in law in holding the contract in question is a composite contract notwithstanding existence of two separate and distinct



contracts one, for the supply of material and the other for erection and the quantum and value of supply of material is clearly discernible therefrom?

2. Whether in view of the legislative amendment in section 194 C of the Finance (No. 2) Act, 2009 manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person other than such customer amount to work within the meaning of section 194 C of the Act?

3. Whether the Tribunal has erred in a law in reaching its conclusion with regard to the composite nature of the contract without appropriate consideration of the several judicial pronouncements of the Hon'ble High Court and coordinate benches of the Tribunal?

4. Whether the Tribunal is correct in law in not considering the issues in relation to the liability to deduct tax at source in case of the deductee incurring losses particularly in absence of their liability to pay tax which were not only borne out from their respective returns but also the acceptance thereof?..."

10. On 13.10.2026, when these appeals were taken up for final hearing, learned Senior Counsel appearing for the Revenue Department, submitted that a supplementary affidavit has been filed by the Revenue Department, bringing on record the orders dated 19.03.2020 (Annexure-P/4 series), by which the Assessing Officer, acting in due compliance of the Tribunal's



order has already carried out the verification exercise, after giving due opportunity of hearing to the appellants, and the appellants have already been held to be *assesseees in default* in respect of the payments made to the deductees/contractors, who had failed to deposit tax and not submitted Form 26A. Thus, holding the appellants liable to pay tax under Section 201(1) and liable to pay the interest under Section 201(1A) of 'the Act'. Therefore, as per the learned Senior Counsel appearing for the Revenue Department, the impugned common order of the Tribunal has already been carried out by the Assessing Officer and the appellants have been held liable to pay tax and interest under Sections 201(1) and 201(1A) of 'the Act' and these orders (Annexure-P/4 series), passed by the Assessing Officer dated 19.03.2020 have not been challenged by the appellants.

11. It is particularly important to note that the orders dated 19.03.2020 (Annexure-P/4 series to the supplementary affidavit filed by the respondent), carrying out the order passed by the Tribunal, showing that the appellants had participated in the proceedings before the Assessing Officer, were passed way back on 19.03.2020, much prior to the filing of the instant appeals before this Court. However, this vital fact was not pleaded in the memo of appeals filed in December, 2020,



thereby suppressing and withholding the same. Even on 24.02.2026 when these appeals were admitted and substantial questions of law was framed, this Court did not know about the subsequent orders dated 19.03.2020 passed by the Assessing Officer.

12. When a pointed query was put to the learned Senior Counsel appearing for the appellants as to why the aforesaid fact relating to passing of the orders by the Assessing Officer, in compliance of the Tribunal's order, was not brought on record when the appeals were filed and as to why the same was withheld and suppressed, the learned Senior Counsel appearing for the appellants did not offer any satisfactory explanation. Learned Senior Counsel, however, accepted that the orders passed by the Assessing Officer in compliance of the Tribunal's order ought to have been brought on record and disclosed in the memo of appeals.

13. Learned Senior Counsel appearing for the appellants also had no satisfactory answer to offer as to why the orders passed by the Assessing Officer on 19.03.2020 (Annexure-P/4 series) were not challenged by the appellants, if the appellants were aggrieved by the same. As on today, the order dated 19.03.2020 passed by the Assessing Officer in due



compliance of the Tribunal's order dated 06.12.2019, have attained finality.

14. From the discussions made above, it is apparent that the appellants, by not disclosing about the orders dated 19.03.2020, passed by the Assessing Officer in compliance of the Tribunal's order dated 06.12.2019, at the time of filing of the memo of appeals, have not acted fairly and truthfully. The appellants ought to have disclosed all material facts as they were under mandatory obligation to place all facts before this Court. By suppressing and withholding the facts and not making full disclosure of all material facts, it can be said that the appellants have indulged in jugglery which has no place in judicial proceedings. Under these circumstances, the appellants have disentitled themselves from claiming any relief.

15. For the reasons as stated hereinabove, these appeals are dismissed. This Court wanted to impose heavy cost on the appellants but is refraining from doing so.

(Nani Tagia, J)

(Alok Kumar Sinha, J)

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