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आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA Nos. 1309 & 1310/CHD/2016**
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The ITO (TDS) Patiala	बनाम	The Distt. Manager, M/s Punjab State Warehousing Corporation ,Sirhind, Distt. Fatehgarh Sahib
स्थायी लेखा सं./TAN NO: PTLP11339G		
(Appeals against the orders of CIT(A), Patiala dt 16.9.2016		

आयकर अपील सं./ **ITA Nos. 1312 & 1313/CHD/2016**
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The DCIT (TDS) Chandigarh	बनाम	The Distt. Manager, M/s Punjab State Warehousing Corporation , College Road, Sangrur
स्थायी लेखा सं./TAN NO: PTLP10500A		
(Appeals against the orders of CIT(A), Patiala dt 21.9.2016		

आयकर अपील सं./ **ITA No. 1314/CHD/2016**
निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT (TDS) Chandigarh	बनाम	The Distt. Manager, M/s Punjab State Co-op Supply & Marketing Fed.Ltd., Chaudhary Complex Road Bassi Pathana
स्थायी लेखा सं./TAN NO: PTLT11060A		
(Appeals against the orders of CIT(A), Patiala dt 30.9.2016		

आयकर अपील सं./ **ITA Nos. 1424 & 1425/CHD/2017**
निर्धारण वर्ष / Assessment Years : 2011-12 & 2013-14

The Assistant General Manager, (F&A), (Person Responsible). Food Corporation of India, Regional Office, Shimla-09	बनाम	The ITO (TDS), I.T. Office, Kasumpti, Shimla
स्थायी लेखा सं./TAN NO: PTLF10282G		
(Appeals against the orders of CIT(A), Shimla dt 28.07.2017		

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आयकर अपील सं./ ITA No. 78/CHD/2018

निर्धारण वर्ष / Assessment Year : 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Food Corporation of India, District Office, Telephone Exchange Road, Sangrur
स्थायी लेखा सं./TAN NO: PTLF10133E		
(Appeals against the orders of CIT(A), Patiala dt 27.11.2017		

सुनवाई की तारीख/**Date of Hearing : 07.09.2018**

निर्धारिती की ओर से/Assessee by : Sh. Manjit Singh, Sr.DR

राजस्व की ओर से/ Revenue by : Sh. Atul Goyal, CA, Sh. B.M.Monga & Sh. Rohit Kaura

आयकर अपील सं./ ITA Nos. 316 & 317/CHD/2018

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Grains Procurement Corpn. Ltd., District Manager, Fathegarh Sahib
स्थायी लेखा सं./TAN NO: PTLD11399D		
(Appeal against the order of CIT(A), Patiala dt 08.12.2017		

आयकर अपील सं./ ITA Nos. 318 & 319/CHD/2018

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Grains Procurement Corpn. Ltd., District Manager, Patiala
स्थायी लेखा सं./TAN NO: PTLP10653G		
(Appeal against the order of CIT(A), Patiala dt 08.12.2017		

आयकर अपील सं./ ITA No. 321 /CHD/2018

निर्धारण वर्ष / Assessment Year : 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Coop. Supply & Marketing Federation Ltd., Maharaja Market, Sunami Gate, Sangrur
स्थायी लेखा सं./TAN NO: PTLP11672D		
(Appeal against the order of CIT(A), Patiala dt 08.12.2017		

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आयकर अपील सं./ **ITA No. 322/CHD/2018**

निर्धारण वर्ष / Assessment Year : 2012-13

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Coop. Supply & Marketing Federation Ltd., Saheed Sewa Singh Thikri Wala Nagar, Adjoining Arbindo School Patiala
स्थायी लेखा सं./TAN NO: PTLT10044G		
(Appeal against the order of CIT(A), Patiala dt 08.12.2017		

आयकर अपील सं./ **ITA No. 77/CHD/2018**

निर्धारण वर्ष / Assessment Year : 2012-13

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Coop. Supply & Marketing Federation Ltd., Maharaja Market, Sunami Gate, Sangrur
स्थायी लेखा सं./TAN NO: PTLT11672D		
(Appeal against the order of CIT(A), Patiala dt 30.11.2017		

आयकर अपील सं./ **ITA No. 336/CHD/2018**

निर्धारण वर्ष / Assessment Year : 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Coop. Supply & Marketing Federation Ltd., SST Nagar, Patiala
स्थायी लेखा सं./TAN NO: PTLT10044G		
(Appeal against the order of CIT(A), Patiala dt 20.2.2018		

नवाई की तारीख/**Date of Hearing : 07.09.2018**

निर्धारिती की ओर से/Assessee by : Sh. Manjit Singh, Sr.DR

राजस्व की ओर से/ Revenue by : Sh. Atul Goyal

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आयकर अपील सं./ **ITA No. 320 /CHD/2018**

निर्धारण वर्ष / Assessment Year : 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Civil. Supply Corporation Ltd., Hanumanpura Road, Sirhind, Dist. Fatehgarh Sahib,
स्थायी लेखा सं./TAN NO: PTLP11242A		
(Appeal against the order of CIT(A), Patiala dt 22.12.2017		

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आयकर अपील सं./ ITA Nos. 323 & 324/CHD/2018
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Civil Supply Corporation Ltd., Chotti Baradari, Patiala
स्थायी लेखा सं./TAN NO: PTLP10886B		
(Appeal against the order of CIT(A), Patiala dt 22.12.2017		

आयकर अपील सं./ ITA No. 325 /CHD/2018
निर्धारण वर्ष / Assessment Year : 2013-14

The DCIT (TDS) Chandigarh	बनाम	M/s Punjab State Civil Supply Corporation Ltd., District Office, Patiala Gate, Sangrur
स्थायी लेखा सं./TAN NO: PTLP10082C		
(Appeal against the order of CIT(A), Patiala dt 22.12.2017		

सुनवाई की तारीख/Date of Hearing : 07.09.2018

निर्धारिती की ओर से/Assessee by : Sh. Manjit Singh, Sr.DR
राजस्व की ओर से/ Revenue by : Sh. Vibhor Garg, Advocate

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आयकर अपील सं./ ITA Nos. 1241 & 1242/CHD/2016
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The ITO (TDS-2) Chandigarh	बनाम	The Manager, Distt. Office, M/s Punjab Agro Food Grains Corpn. Ltd, SCO No. 15, Ist Floor, Phase 6, Mohali
स्थायी लेखा सं./TAN NO: PTLP13084B		
(Appeal against the order of CIT(A)-2, Chandigarh order dt 01.09.2016		

आयकर अपील सं./ ITA No. 669/CHD/2017
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Punjab State Cooperative Supply and Marketing Federation Ltd., Giani Zail Singh Nagar, Ropar	बनाम	The ACIT (TDS) Chandigarh
स्थायी लेखा सं./TAN NO: PTLM10476E		
(Appeal against the order of CIT(A)-1, Chandigarh order dt 30.01.2017		

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आयकर अपील सं./ **ITA Nos. 685 & 686/CHD/2016**

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The ITO (TDS-2) Chandigarh	बनाम	M/s Punjab State Grains Procurement Corpn. Ltd., District Manager, SCO 43-33, Phase 2, Mohali
स्थायी लेखा सं./TAN NO: PTLP13172F		
(Appeal against the order of CIT(A)-2, Chandigarh order dt 01.3.2016		

सुनवाई की तारीख/Date of Hearing : 26.09.2018

निर्धारिती की ओर से/Assessee by : Sh. Manjit Singh, Sr.DR

राजस्व की ओर से/ Revenue by : Sh. Atul Goyal, CA

आयकर अपील सं./ **ITA No. 162/CHD/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT (TDS) Chandigarh	बनाम	M/s Punjab State Grains Procurement Corpn. Ltd., Barnala
स्थायी लेखा सं./TAN NO: AACCP9582D		
(Appeal against the order of CIT(A), Patiala dated 7.12.2015		

अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

सुनवाई की तारीख/Date of Hearing : 26.09.2018

निर्धारिती की ओर से/Assessee by : Sh. Manjit Singh, Sr.DR

राजस्व की ओर से/ Revenue by : None

उदघोषणा की तारीख/Date of Pronouncement : 30.10.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

These are bunch of appeals preferred by the Department and assessee for different assessment years against the separate orders of the respective Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT(A)']

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Since common issues are involved in all these appeals, hence, these were heard together and are being disposed of by this common order. **ITA No. 1309/Chd/2016 for assessment year 2012-13** is taken as a lead case.

<u>ITA No. 1309/Chd/2016</u>

2. The Department in this appeal has taken the following grounds of appeal:-

(i) In the facts and circumstances of the case, the Ld. CIT (A) is erred in deleting the demand ignoring that the provisions of section 194C are squarely applicable on the work carried out by the millers.

(ii) In the facts and circumstances of the case, the Ld. CIT(A) is erred in deleting the demand created on account of non / short deduction of tax u/s 201 (I) / 201(1 A) of the Income-tax Act, 1961 ignoring the fact that the assessee deductor applied provisions of section 194C on the cash part of the payments but not on the payments which were paid in kind and thus not deducted TDS on whole payment.

(iii) In the facts and circumstances of the case, the Ld. CIT(A) is erred in linking the judgment of Hon'ble ITAT, Bench 'A', New Delhi in the case of M/s Ahaar Consumer Products Pvt. Ltd. with the facts of the present case as in the case of M/s Ahaar Consumer Products Pvt. Ltd. there had not involved any payment of consideration for the services rendered whereas in the present case execution of work upon supplied material is in lieu of payments on which TDS has also been deducted by the assessee.

(iv) The appellant craves leave to amend, add, alter or delete any of the aforesaid grounds till the disposal.

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3. The brief facts relating to the issue for consideration are that the assessee is a Procurement Agency of Punjab Government which procures paddy on behalf of the Food Corporation of India / Government, get it milled and supply rice to Food Corporation of India (FCI). The entire cost in this respect is borne by the FCI / Government of India. The paddy is given to the millers for milling at the rates as fixed by FCI / Government of India. The Millers were provided with paddy and they after milling have to supply rice in the ratio of 67% of the paddy milled to the Procurement Agencies as per the specification. As per the agreement between the millers and the Procurement Agencies, the millers get Rs. 15/- per quintal as 'milling charges' as fixed by the FCI / Government of India. Further, as per the policy of the Government and as per agreement between the Procurement agencies and the millers, the by-products, if any, arising from the process is the property of the millers and the procurement agencies have no right / liability in respect thereof. The assessee deducted the tax at source (TDS) u/s 194C of the Income-tax Act, 1961 (in short 'the Act') on the aforesaid amount of Rs. 15/- per quintal given to the millers on account of milling charges as per the agreement and as per Government policy. The Assessing officer, however, noted that since as per agreement, the by-products i.e. remaining 33% part out of the milled / shelled paddy is retained by the millers and the same has a marketable value which, in fact, constitute as a part of the consideration paid by the assessee to the millers, whereon the assessee failed to deduct any TDS. He, therefore, show caused the assessee as to why the assessee should not be declared to be assessee in default under the provisions of section 201 / 201A of the Act for non deduction of TDS as per the provisions of section 194C of the Act.

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The assessee explained that as per the milling policy issued by the Government of Punjab and as well as agreement entered into with the millers, the rice millers are paid milling charges for custom milling of the paddy at the rate as fixed by the Government of India and it has been agreed that all by-products viz. broken rice, rice kani (rice bran and husk) shall be property of the miller. The value of the said by- product is not part of the consideration paid for custom milling of the paddy. The milling charges are paid as per the rates fixed by the Government of India which is at the rate of Rs. 15/- per quintal of the paddy milled and TDS has been deducted on the aforesaid payment as per provisions of law. The Assessing officer, however, was not satisfied with the above submissions of the assessee and held that milling cost paid by the assessee were discounted cost and need to be increased by the cost of by-product for the purpose of deduction of tax at source. He, therefore, held that the assessee as assessee in default u/s 201(1) and 201(1A) of the Act for non-compliance of the provisions of section 194C of the Act on account of short deduction of TDS.

4. Being aggrieved by the order of the Assessing officer the assessee preferred appeal before the Ld. CIT(A).

5. The Ld. CIT(A) while relying upon the decision of the Delhi Bench of the Tribunal in the case '**ITO Vs. Aahar Consumer Products Pvt Ltd., ITA No. 2910-1939-1654 & 1705/Delhi/2010 for assessment year 2007-08 dated 28.2.2011** and further relying upon the decision of the Amritsar Bench of the Tribunal in the case of 'D.**M. Punjab Civil Supply Corporation Ltd, Hoshiapur in ITA No. 158/Asr/2016 for assessment**

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year 2012-13 vide order dated 4.8.2016 held that neither the assessee was obliged to make any payment more than the milling charges agreed to in the agreement nor any amount was credited in the accounts of the millers as payable which required the assessee to deduct tax thereupon. He, therefore, held that the assessee was not liable to deduct tax u/s 194C of the Act in respect of the value of the by-products. He, accordingly allowed the appeal of the assessee and quashed the demand raised by the Assessing officer on account of short deduction of tax .

6. Being aggrieved by the above order of the CIT(A), the Department has come in appeal before us.

7. The Ld., DR before us, has submitted that, in fact, Rs. 15/- per quintal paid by the assessee to the millers is not the actual consideration paid by the assessee to the millers. That Rs. 15/- is a meager sum paid by the assessee to the miller, whereas, actual consideration lies in the value of the by-products which are retained by the millers. That while fixing the milling charges by the Government, the value of by-product is duly taken into consideration and thereafter net milling charges payable are arrived at. That the cost of the by-product is inclusive of the total milling charges paid by the assessee to the millers and therefore, the assessee was supposed to deduct TDS on the total consideration paid in lieu of contract of custom milling of paddy done by the millers. He, in this respect has relied upon the custom milling policy of the Government as well as the draft agreement which is entered by the assessee with the millers, to stress upon the point that out of the total paddy, only 67% rice, which is treated as out turn ratio, is given back by the millers, however, the remaining 33%

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which constitutes by-products in the shape of broken rice, rice kani, rice bran and phuk and which has a quite reasonable market value, is retained by the millers. He has, further submitted that milling charges @ Rs. 15/- per quintal would be lesser than the milling cost including the transportation charges borne by the millers. No Miller will be ready to custom mill the paddy at this rate if, he is not given the right to retain the by-products. That the real value lies in the by-products, the market value of which is included in the consideration for milling charges. He, therefore, has submitted that the Assessing officer rightly held that the assessee was liable to deduct TDS taking into consideration not only of the cash amount of Rs. 15/- but also value of the by-products retained by the miller. He in this respect has further relied upon a letter bearing No. 192(20)2011-FCA/Cs dated 7.11.2012 of the Govt. of India addressed to the Secretary, Food and Civil Supplies Department, whereby, the Government of India has approved for payment at the provisional rate of Rs. 2004.95 for raw rice and Rs. 1976.03 for Par-boiled rice for the custom milled rice under the price support operation of the Government agencies during the Kharif Market Season 2011-12. He has further relied upon the annexure to this letter, whereby, the aforesaid support price of the custom milled rice has been fixed by the Government of India and by the Food Corporation of India payable to the State Government Agencies like assessee, who procure the paddy on behalf of the Government of India / Food Corporation of India and then get it custom milled from the millers and thereafter deliver the rice to the Central pool. In the annexure, the details have been given as to how the price of the Custom Milled Rice is fixed. While fixing the per quintal price of the rice, the minimum support

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price of the paddy has been taken into consideration and thereafter various statuary charges, fees and levies, milling charges of Rs. 15/- per quintal are added. He, thereafter has stressed that out turn ratio as per which, 67% of the rice is supposed to be the finished product (rice) coming out of the raw product (paddy). Accordingly, a price of one quintal of common rice is fixed at Rs. 2004.95 and Rs. 2056.10 of Grade 'A' raw rice and so on. The Ld. DR thereafter has relied on a press release issued by the Ministry of Consumer Affairs, Food & Public Distribution letter dated 8.12.2015, whereby, the Union Food Ministry has clarified that the milling charges for paddy paid by the Central Government to the State Agencies are fixed on the rate recommended by the Tariff Commission which takes into account value of the by-products derived from the paddy while suggesting net rate of the milling price payable to the rice millers. It has been further mentioned that as it is not practically feasible for the Food Corporation of India (FCI) or the state Agencies (SGA) to take over the by-product derived from the processing of paddy and market them out, therefore, the basic framework of Traffic Commission formula for milling charges has been arrived at which is based on the premise that the rice millers will retain the by-products themselves and the value of these by-product's will be taken into account by the Tariff Commission while calculating and recommending the net milling charges to be paid to the millers. That the existing rates for milling of paddy was fixed on the basis of recommendation given by the Tariff Commission in the year 2005, however, subsequently the demand was raised by the State Government Agencies for increase in the milling charges. However, it was observed that with the increase of milling cost, there was likely increase in the

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income of the millers from the appreciation of value of the by-product. That the Tariff Commission was requested to conduct study in this respect in the year 2009 and its report was received in the year 2012. That it had been pointed out that some news reports stated that on count of value of by-products, the Government was losing every year more than Rs. 1000 crores, however, there was no evidence in this respect. It has been further pointed out in the said press note that though, such reports talks of increase in value of the by-product of paddy buy they do not talk about increase in the expenses of the rice millers. On the other hand, there was demand from the States for upward revision of the milling charges, therefore, the Tariff Commission has been asked to conduct a fresh study and review the normative milling charges in December 2013, itself, and that the report was expected by December 2015.

The Ld. DR has further relied upon the report of the Comptroller and Auditor General of India (C&AG) on Procurement and Milling of Paddy for Central Pool (Report No. 31 of 2015), whereby, the study was conducted taking into consideration the performance Audit covered from 2009-10 to 2013-14, wherein, it has been recommended that the Government of India may take up with the State Governments to impress upon the millers to provide the data about milling and other costs to Tariff Commission for timely completion of study for re-fixation of milling charges and out-turn ratio of rice from paddy. The Ld. DR has riled upon the page 2 of the said report, whereby, a Flow Chart depicting various stages, from the procurement of paddy to delivery of rice to FCI / State Governments /SGAs are shown. It has been mentioned that by products cost recovery at the rate Rs. 33.96 / 37.38 per quintal adjusted while fixing milling charges of Rs.

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15.32 / 25.48 per quintal of Raw rice and Par-boiled rice respectively. The Ld. DR, thereafter, referred to pages 7 & 8 of the said report, wherein, it has been mentioned that the milling charges were fixed by government long back in 2005 on the basis of recommendation of the Tariff Commission of India and that since then milling charges have not been revised. However, the rice millers are still carrying outing the work at the same milling charges without any demand for increase in the milling charges, even though, the cost of milling is increased significantly. This is, because the selling price of the by-products i.e rice bran, broken rice and husk generated in milling process has increased substantially. Therefore, the Performance Audit in question was conducted to examine such issues. While referring to Chapter V which deals with the (by-product out-turn ratio), the Ld. DR has pointed out from the report that a study was conducted for fixation of milling charges way back in April 2009 and that out of 12 states covered in the study, only four states responded. The milers were stated to be hesitant to disclose their financial information and as a result the Tariff Commission had not been able to suggest the formula for increase in the milling charges. It is also mentioned that even the sale value by-products ranges from a low of Rs. 10.13 (during 2011-12 in the state of Uttar Pradesh) to a high of Rs. 2226.47 (during 2013-14 in the state of Andhra Pradesh.).

That after considering the excess realization, based on the data given by the four states, it was recommended that the Government of India should ascertain the full quantum of excess realization by millers in order to realistically revise the milling charges and reduce the final subsidy

burden on the exchequer. Accordingly, the following recommendations have been made:

> *"The GoI may take up with the State Governments to impress upon the millers to provide the date about milling and other costs to Tariff Commission for timely completion of study for refixation of the milling charges and out-turn ratio."*

The Ld. DR has further pointed out from the said report of C&AG that it was also considered to revise out-turn ratio as in certain states like Andhra Pradesh the out-turn ratio of the rice out of paddy was fixed at 75% for the seasons covered during the period 2009-10 to 2013-14. Further, as per certain reports, the out-turn ratio for certain varieties of paddy was in two districts of Andhra Pradesh reported at 72.08%. It was therefore, recommend that out-turn ratio of 67% for certain varieties of paddy and in certain areas / region was required to be reassessed to ensure that he millers do not reap undue benefit at the cost of Government of India leading to non-deduction of subsidy on this account. The Ld. DR relying on the above observation in the Audit report vehemently stressed that the millers got much more amount for milling purpose in kind, in the shape of value of by-products retained by them and that the value of these being part of the consideration of milling charges was required to be considered for the purpose of deduction of tax at source.

8. The Ld. DR has further relied upon the decision of the Hon'ble High Court of Andhra Pradesh in the case of '**Kanchanganga Sea Foods Ltd. vs CIT' (2004) 265 ITR 644 (A.P.),** which has been further confirmed by the Hon'ble Supreme Court in of **'Kanchanganga Sea Foods Ltd. vs**

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CIT' (2010) 325 ITR 549 (SC) and submitted that in the aforesaid case the consideration for hiring vessels was passed on by the assessee in kind i.e by way of 85% catched fish and it was held that the payment contemplated u/s 195 not only includes cash payment or payment by cheques or draft but also a payment even by any other mode and, therefore, the payment of hire charges made by the assessee by giving 85 per cent of the fish catch to the non-resident amounts to 'payment' as contemplated under section 195 of the Act. The Ld. DR, therefore, has submitted that the proposition of law laid down by the Hon'ble High Court in the case of 'Kanchanganga Sea Foods Ltd. vs CIT' (supra) can safely be applied in the case of the present assessee before us. That the present assessee, apart from making the payment of Rs. 15/- by way of cheques / cash, has also made the payment 'in kind' by way of authorizing the millers to retain the by-products.

9. On the other hand, the Ld. Representatives of the assessees have submitted that the issue under consideration is squarely covered by the various decisions of the different Benches of the Tribunal, the lead case being in the case of **'M/s Aahar Consumer Products Pvt. Ltd.' in ITA Nos. 2910-1939-1654 & 1705/DEL/2010 dated 28.2.2011** by the Delhi Bench of the Tribunal. Apart from that, they have also relied upon the following case laws:-

i) The District Manager, Punjab State Civil Supply Corp, Ltd. Vs. ACIT (TDS), Chandigarh, ITA No. 214 & 215/ CHD/2017, dated 07.09.2017. (Chandigarh 1TAT).

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ii) The DOT (TDS), Chandigarh Vs. The Area Manager, Distt Office, FCI, Chandigarh, ITA No. 897/CHD/2017, dated 11.08.2017. (Chandigarh ITAT)

iii) The DOT (TDS), Chandigarh Vs. District Manager, Punjab State Warehousing Corporation, Patiala, ITA No. 1291,1292,1293,1294, 1295,67,68/CHD/2016 dated 13.07.2017. (Chandigarh ITAT)

iv) The ACIT (TDS), Vs. Punjab State Grain Procurements Corporation Ltd., Barnala ITA No. 69,70,71/CHD/2016 dated 11.08.2016. (Chandigarh ITAT)

v) M/s The Punjab State Co-operative Supply & Marketing Federation Ltd. Vs, ITO, Jalandhar, ITA No. 54, 55 & 56/Asr/2016, dated 01.07.2016. (Amritsar ITAT)

vi) ITO vs. Aahar Consumer Products Pvt. Ltd., 1TA No. 2910-1939-1654 & 1705/DEU/2010, dated 28.02.2011. (Delhi ITAT)

vii) Chief Accounts; Officer Vs. ITO, [2014] 52 Taxmann.com 453 (Bangalore Trib.)

viii) CIT Vs. Chief Accounts Officer, ITA No. 94 & 466 of 2015, dated 29.09.2015, (Karnataka High Court).

ix) Red Chillies Entertainment Pvt. Ltd. Vs. ACTT, ITA No. 5271/Mum/2013 dated 31.05.2016. (Mumbai ITAT)

10. It has been further submitted that the reliance of the Ld. DR in the case of 'Kanchanganga Sea Foods Ltd. vs CIT' (supra) was misplaced. That the Coordinate Bench of the Tribunal in the case of 'DCIT (TDS) Vs. The Area Manager, Food Corporation of India' in ITA No. 897/Chd/2017 dated 11.8.2017 has already dealt with the said decision. The Tribunal, even after considering the said decision, has decided the issue in favour of the assessee. It has been submitted that the issue in the case before the Hon'ble Supreme Court in the case of

'Kanchanganga Sea Foods Ltd. vs CIT'(supra) was as to whether the payment of charter fee to the non-resident was chargeable to tax in India or not. Further, that in the case of 'Kanchanganga Sea Foods Ltd. vs CIT'(supra), the percentage of receipt of sale was fixed in monetary terms and that the mode of payment was also specified. It was under such circumstances that it was held that the receipt value of 85% catch fish was in India and further that the sale value of the catch fish was already determined and the amount was debited as an expenditure by the assessee company in its account; whereas, in the case of present cases, no such amount has been debited as an expenditure by the assessees nor any payment made thereof has been credited to the account of the millers. That in the case of 'Kanchanganga Sea Foods Ltd. vs CIT' (supra), it was never the question before the Hon'ble Supreme Court that TDS was deductible on anything paid in kind. Further, that the said case has already been considered by the Banglore Bench of the Tribunal in the case of 'Chief Account officer Vs. ITO' [2014] 52 Taxmann.com 453 (Banglore) and it was held that the facts in the case of 'Kanchanganga Sea Foods Ltd. vs CIT' (supra) were totally on a different footing and the proposition laid down in the case of 'Kanchanganga Sea Foods Ltd. vs CIT' (supra) could not be applied, where the value of the CDR was not quantifiable. The Tribunal further held that provisions of section 194LA of the Act would apply only when there was monetary payment. Referring to the decision of the Hon'ble Supreme Court in the case of **'H.H. Sri Rama**

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Verma v CIT' [1991] 187 ITR 308 / 57 Taxman 149, wherein, the expression 'sum' was also held to be referred to payment of money and not of donations 'in kind' in context of the provisions of section 80G of the Act. The Hon'ble Supreme Court held that on the plain reading of the section 80G of the Act , it was apparent that the assessee was entitled to claim deduction on the amount of money paid by him as donation as per the relevant provisions. That the use of expression 'any sum paid' contemplates payment of an amount of money and does not contemplate donation in kind. Therefore, the Tribunal held that even in section 194LA of the Act, the expression 'any sum' has been used and, therefore, the CDR which was in the form of 'in kind' was not liable for deduction of tax at source. It was further held by the Tribunal that the expression in Sec. 194LA, *"at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode,"* means that payment can be in the mode of giving cash, or by issuing cheque or draft or any other mode like telegraphic transfer or mail transfer, via money order or postal order, bill of exchange, promissory note, electronic transfer like RTGS, NEFT etc. That CDR cannot be brought within the meaning of the expression "by any other mode" used in Sec. 194LA of the Act. That the rule of "Ejusdem Generis" in interpretation of statutes, which lays down that where general words follow enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held

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as applying only to persons or things of the same general kind or class as those specifically mentioned, is fully applicable to the interpretation of Sec. 194LA of the Act. That it is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. The Tribunal held that the general word in Sec.194LA of the Act is "payment of such sum" and the mode of payment qualified is cash, issue of cheque or draft or by any other mode. The expression ‘any other mode’ has therefore to be confined only to payment of "any sum" in a mode other than cash, cheque or draft and not to a case where CDRs are issued.

11. The Ld. representatives of the assessee referring to the above decision have submitted that the provisions of section 194C being identically worded, the same proposition of law will apply and, hence, even otherwise, the assessees were not liable to deduct TDS even though it is assumed that the payment in kind in the shape of by-products of the paddy were paid to the millers. It has been further submitted that the above said decision of the Banglore Bench (supra) of the Tribunal has been upheld by the Hon'ble Karnataka High Court vide order dated 29.9.2015 (supra). Further, the said decision of the Hon'ble Karnataka High Court (supra) has been followed by the Mumbai Bench of the Tribunal in the case of ‘Red Chillies

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Entertainment Pvt Ltd.' (supra) in the context of the provisions of section 194J of the Act and it was held that since the payment was made by the assessee was in kind, the provisions of section 194J were not applicable. Further, objecting to the reliance on the CAG report (supra) by the Ld. DR, the Ld. Counsel for the assessees have submitted that the report was not admissible in evidence and further that the report of the CAG cannot bye pass the statutory provisions of law. It has, therefore, been contended that firstly there was no payment in kind by the assessees to the millers as the assessees never want to retain the by-product of paddy and further, even otherwise, the provisions of section 194C of the Act in respect of un-quantified and indeterminable value of the by- products are not attracted.

12. Further, the Ld. ARs of the assessee have submitted that though the millers were liable to return 67% of the paddy in weight as custom milled rice to the Government, however, there was no evidence on the file that the by-product retained by the miller constitute 33%. It has been further submitted that in the process of milling / shelling, there is a loss of the product which is called "processing loss" and it cannot be said that the by-products retained with the millers is exact 33% of the paddy. . That the Government is not interested in taking the by-product and moreover it cannot be quantified in terms of money, hence, the TDS provisions of section 194C of the Act would not apply. Further, referring to the para 13 of the decision in the case

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of 'M/s Aahar Consumer Products Pvt. Ltd.' in ITA Nos. 2910-1939-1654 & 1705/DEL/2010 dated 28.2.2011, it has been submitted that the coordinate Delhi Bench of the Tribunal in the case of an assessee who was supplying wheat and getting back 'Atta' or 'Dalia', as the case may be, in an agreed proposition, held that for such an exchange, there was absolutely no payment of any consideration. That even if it is to be treated as a 'work contract' and not as contract of sale, it was difficult to say that there was any payment as a consideration for the labour or the work that was rendered. It was held that it was a case of exchanging of the product i.e wheat was exchanged with 'Atta' or 'Dalia' which was entirely a new product. That there was no payment of any sum by the assessee to the miller. It was further held that even if one has to say that there was a constructive payment, it was difficult to quantify the same and to say that assessee was under an obligation to deduct tax at source at such construed payment. It was also observed that even the assessee had not claimed such a payment as expenditure and it had not claimed any deduction there upon. Further, It was concluded as under:-

> *"14. We must also view the whole transaction under the agreement from a different angle. The assessee gives the wheat and accepts Atta and Dalia in return by weight to weight basis and what he got in return are the value added products of lower quantity. The assessee by this method has prevented itself from factors like fall in the prices of either raw material or of the finished products. The market value of the wheat and the end products are totally different and fluctuate in different directions. All*

these fluctuations are warded off by the present agreement, which is just exchange of goods for goods and does not involve any cash outflow. Although services were taken, it is difficult to say that the residuals and the losses left by the assessee in favour of AIL are purely consideration for the job that is done. The market fluctuations in the price structure of the raw material and the end product cannot be just ignored in the whole transaction nor the process loss. The process loss could be either more or less than the percentage agreed to between the parties. But still the parties settle the transactions at an agreed proportion. In other words, the residual that is left by the assessee, apart from covering the labour cost of processing, also includes the protection from market fluctuations as also protection from adverse process loss. To conclude, the entire residual is only for the purpose ITA No.2310/Del/2010 & Othrs 25 of job work is not fair and correct having regard to the totality of the transaction entered into by the parties.

15. In the light of this discussion, we allow the assessee's appeal and dismiss the revenue's appeal on this issue.

13. It has been further submitted on behalf of the assessees that in the absence of any machinery provisions to quantity the value of the by-product, the provisions of section 194C were otherwise not enforceable. The Ld. Counsel for the assessees have further submitted that earlier in many cases, some of which have been referred to above, the issue has been decided by the various Benches of the Tribunal in favour of the assessee and Department has not challenged the same in

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the High Court and in view of this, the findings arrived at in those cases have become final against the Department and thus the issue is squarely covered in favour of the assessee.

14. In rebuttal, the Ld. DR has submitted that in all the earlier decisions, the reliance has been placed on the decision in the case of the Delhi Bench of the Tribunal in the case of 'M/s Aahar Consumer Products Pvt. Ltd.' (supra) and the facts in the case of Aahar Consumer Products Pvt. Ltd. (supra) were quite distinguishable of the present case and further that now the issue is squarely covered by the decision of the Hon'ble Andhra Pradesh High Court in the case of 'Kanchanganga Sea Foods Ltd. vs CIT' (supra), which has been further affirmed by the Hon'ble Supreme Court. Further, that in the light of the CAG report (supra) and the clarification by the Government, milling charges are fixed taking into consideration the value of the by-product which is a part of the consideration paid by the assessees to the millers for paddy milling contract.

15. We have considered the rival contentions, gone through the record and the case laws referred to above. The main contention of the Department is that by-product retained by the millers have considerable market value and further that a sum of Rs. 15/- paid as 'milling charges' is a nominal cost which is insufficient to meet even the actual cost of services rendered by the millers including milling and drying of the paddy, 'katai' of the paddy before de-husking, de-

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husking of the paddy, filling up bags of the rice, transportation, weight check etc., apart from the milling of the paddy. That the real consideration lies in the value of the by-product retained by the miller, therefore, the assessees i.e. Procurement Agencies were required to deduct 'TDS' on the value of the by-products paid 'in kind' as consideration for the milling charges.

16. On the other hand, the stand of the assessees before us is that the by-product did not constitute as a payment of consideration for the work contract of milling of the paddy. That the assessees have not debited even the value of the by-product as their expenditure in their books of account and have not claimed any deduction in respect thereof. Further, that even the provisions of section 194 C of the Act were applicable in respect of the monetary payment and not for payment 'in kind'. That, even otherwise, the issue has now been squarely covered by the various decisions, not only of the Chandigarh Bench of the Tribunal, but other Benches also, and mainly by the decision of the Hon'ble Delhi Bench of Tribunal in the case of 'M/s Aahar Consumer Products Pvt. Ltd.' (supra). That in the absence of any contrary decision of higher authority directly on the issue, the said decisions should be followed by this Bench.

17. To properly appreciate the facts and the issue under consideration, we deem it fit to reproduce here the provisions of section 194C of the Act.

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"Payments to contractors.

194C. *(1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor 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—*

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) 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.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided *that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds [50][one lakh] rupees, the*

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> *person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.*
>
> *(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.*
>
> *(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed."*

18. Now coming to the draft agreement entered into by the assessee with the millers, copy of which has been placed by the Department at page 27 of their paper book, wherein, the following clause (8) is relevant:-

> *"8. The by-products viz. Broken rice, rice kani, Phuk (rice husk) etc. obtained during the manufacture of rice shall be the property of the miller and the Government / Procuring Agency shall have no right or responsibility in this regard."*

19. As per the above clause (8), the by-product obtained during the manufacture of rice shall be property of the miller and the Government / Procurement Agencies will have no right or responsibility in this respect. The Procurement Agency gets the paddy milled or to say gets the rice manufactured out of the raw material (paddy) on behalf of the Government of India / FCI. For the said purpose, the procurement

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agency enters into an agreement with the miller. The milling charges are fixed by the Government of India. It is not in the hands of the procurement agencies or millers to negotiate on the consideration payable for 'milling charges'. Admittedly, for the year under consideration, milling charges have been fixed @ Rs. 15/- per quintal. The out-turn ratio has also been fixed, which means that the miller has to return 67% of the manufactured rice, irrespective of the fact that the yield of rice manufactured was low or high from the paddy entrusted to him; which of course, not only depends upon the variety and quality of paddy but also on the climactic changes. Under the circumstances, the nature of contract, in our view, is not purely a work contract rather it is something more than that. In this contract, the miller has no choice to say that he will return the rice as well as the by-products as per the outcome of the actual milling of the paddy and that he will only claim the milling charges. There is no option for the miller to say that owing to the variety / quality of the paddy or other circumstances, the yield of manufactured rice was less and that he was liable to return what he actually got after milling or to say that his work was only of the milling of the paddy and that he was not liable for the yield coming out of the paddy, unless and until some deficiency either in service or otherwise is attributable on his part. No such choice is available to the millers. Another important factor in this case is that neither the Government of India / FCI is interested to receive back / return of the by-product of the paddy nor the Procuring

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Agencies who gets the rice shelling on behalf of the Government of India. As noted above, it has been mentioned in the specific term 'that the by-product is the property of the miller' which means that the property in the by-product passes immediately to the miller on the very coming of it into existence. Though, before the milling of the paddy, the Government / procurement agencies remain the owner of the paddy, however, the moment the paddy is milled, the Government / procurement agencies lose their ownership and control over the paddy and the by-product but have right only on the 'milled rice' for which they pay a stipulated amount of Rs. 15/- as milling charges. The relevant words in the clause (8) of the Agreement that "*the Government / Procuring Agency shall have no right or responsibility in this regard*" speaks that to retain the by-product cannot always said to be 'right' over a thing but sometimes it becomes a 'responsibility' also and the Government / Procurement Agencies are not willing to own this responsibility. This decision is taken by the agencies perhaps on the ground that they want to escape the responsibility of procurement of the by-product, transporting this by-product and even selling this by-product, when they, themselves, are not sure about the fetchable market value of this type of by-product. Hence, to get rid of this responsibility and in their business interest, they do not want to take back / retain the by-product and, therefore, it is specifically agreed that the by-product will be the property of the miller. The by-product is agreed to be kept with the miller as per the policy of the

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Government and there is no option to the miller even to say that it will not retain the by-product or to demand any sum more than the fixed rate on account of milling. There is no such option available to the miller. Under the circumstances, as contended by the Ld. DR also, though the milling charges are fixed taking into consideration the fact that the by-product have also some marketable value, however, the value of the by-product as per the term of the agreement entered into by the procurement agencies with the millers, cannot said to be a consideration for the work contract of milling of the paddy. These cases are of peculiar circumstances, where the assessee / availer of services is not interested in retaining the by-product. Even as per agreement, the procurement Agency / assessee never becomes the owner of the by-product. The very point of coming into existence of the by-product, the same remains the property of the miller. When as per the terms of the agreement, the by-product is never involved to be the property of the procurement agencies, under the circumstances, it cannot be said that the said by-product has been handed over as consideration in kind by the procurement agencies to the millers. When one is not the owner of the product and the property in the product has never passed on to that person, he, under the circumstances, cannot pass the same to the others. The property in the by-product from the very inception remains with the miller and, hence, the same cannot be said to be as consideration received by the miller. In the peculiar facts and circumstances of this milling contract, though

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the consideration is fixed taking into consideration other factors, the likely benefit that the miller will get out of milling process in the form of by-products, however, such benefits cannot be said to be consideration for the contract. As observed above, though such benefit may be of worth value to the miller, but it may prove to be a liability to the Procurement agencies, hence, taking into consideration the peculiar circumstances and in the interest of business, a decision has been arrived at by the Government of India not to take responsibility of the by-product, thereby, also losing any rights in the said by-product. As observed above, if the contention of the Revenue is to be accepted, then under the circumstances, the miller can insist upon to say to the other party that he is not interested in retaining the by-product or to negotiate on the milling charges or to claim higher milling charges, irrespective of the value of the by-product either at a negotiable rate or at fixed rate. However, as observed above, neither such an option is available to the miller under the contract nor the property in the by-product, any time comes into the ownership of the procurement agency. Hence, in view of this, neither the value of the by-product can be said to be consideration for the work contract nor the provisions of section 194C of the Act will be applicable in this respect. Moreover, as pointed out in the CAG report (supra) and as discussed above, the value of the by-product is not ascertained to the Government, though the Government through its agencies such as Tariff Commission or the office of the CAG has tried to ascertain the

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value of the by-product and thereafter to revise the milling charges accordingly. However, till date, the Government has failed to ascertain the same. The milling charges as fixed in the year 2005 are continued as such. This fact also shows that in the absence of any ascertained / confirmed data regarding the marketable value of the by-product, the Government has opted not to claim any ownership over it and thereby even not any right or responsibility in respect of it. Under the circumstances, even when the market value of the by-product is not ascertainable, hence, the procurement agencies will not otherwise will be in a position to deduct TDS by assuming any value of such by-product.

20. Now coming to the reliance placed by the Ld. DR in the case of ‘Kanchanganga Sea Foods Ltd. vs CIT’ (supra), the brief facts of the case of ‘Kanchanganga Sea Foods Ltd. vs CIT,’ as extracted from the decision of the Supreme Court, were as under:-

> “2. *Facts giving rise to the present appeals are that the appellant M/s. Kanchanganga Sea Foods Limited is a company incorporated in India and engaged in sale and export of sea food and for that purpose obtained permit to fish in the exclusive economic zone of India. To exploit the fishing rights, the appellant-company (hereinafter referred to as the "assessee") entered into an agreement dated 7th March, 1990 chartering two fishing vessels i.e., two pairs of Bull Trawlers, with Eastwide Shipping Co. (HK) Ltd. a non-resident company incorporated in Hong Kong. Clause 4 of agreement which is relevant for the purpose reads as follows :-*
>
> *"4. Deponent Owners to provide:*

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The Deponent Owners will provide fishing vessels, as approved by Government of India, for all inclusive charter fee of US $ 600,000.00 per vessel per annum. The charter fee is inclusive of fuel cost, maintenance repairs, wages, food for the crew and any other expenses incurred in connection with the operation of the vessel. They will provide training to the Indian crew in all aspects of fishing techniques, maintenance and running of the engine. In addition:

> *a) The Deponent Owners should pay the charterers Rs.75,000/- or 15% of the gross value of the catch whichever is more. 1*
>
> *b) Annual charter fee shall be maximum of US $ 600,000 per vessel per annum payable by way of 85% of gross earning from the fish sales subject to the condition that this will not exceed 85% of the sales value of the catch per vessel per annum on voyage to voyage basis. Minimum 15% of the earning by way of sales value of catch of fish should accrue to the charterer. Payment to the Deponent Owners should not exceed the above charter fee.*
>
> *c) Export value of catch from the chartered vessels should not be lower than the prevailing international market price at the time of export."*

Thus, according to the terms of the agreement the Eastwide Shipping Co.(HK) Ltd., the owner of the fishing Trawlers (hereinafter referred to as the "nonresident company") was to provide fishing Trawlers to the assessee for all inclusive charter fee of US $ 600,000 per vessel per annum. In terms of the agreement the assessee was to receive Rs.75,000/- or 15% of the gross value of catch, whichever is more. The charter fee was payable from earning from the sale of fish and for that purpose 85% of the gross earnings from the sale of fish was to be paid to the non-resident company."

21. A perusal of the above reveals that in the case of 'Kanchanganga Sea Foods Ltd. vs CIT', as per the terms of the agreement, it was agreed between the assessee and the non-resident company that non-resident company, who was the owner of the fishing vessels, will provide the

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same to the assessee at the inclusive charter fee of US$ 6,00,000 per vessel per annum. The hiring charges were thus quantified in terms of money, which will be payable by him by way of 85% of gross earnings from the fish sales and subject to the condition that this will not exceed 85% of the sale value of the catch per vessel per annum on voyage to voyage basis, which means that though the hiring / usage charges of the vessel were fixed at US$ 6,00,000 per vessel, the mode of recovery was through sale price of the 85% of the total catch, however, if the 85% of the total catch is not enough to realize the maximum value of US$ 6,00,000, the owner of the vessel will not be entitled to claim more catch or more price, it has to restrict the hiring charges to the sale value of 85% of the catch. Further, it had been agreed that the assessee 'Kanchanganga Sea Foods Ltd' (supra) would receive minimum 15% of the earning by sale value of catch of fish. It was further agreed that the payment to the owner of the vessel, however, will not exceed the above said agreed charter fee of US$ 6,00,000, which means that the consideration was settled at sale price of 85% of the catch but maximum to the extent of US$ 6,00,000. However, if the sale price of 85% of the catch would exceed US$ 6,00,000, then the exceeded amount will not be retained by the assessee and not by the owner of the vessel. Similarly, minimum of 15% of the earring from the sale of fish would be retained by the assessee, however, it could exceed from that, if the value of the sale price of the remaining 85% of the catch would exceed US$ 6,00,000.

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In these circumstances, the consideration was settled in monetary terms and subject to aforesaid exceptions. It was not the case that the consideration in kind was passed on the non-resident owner irrespective of the sale value of the catch. The sale value in monetary terms of the catch was the determining factor for the consideration to be passed. Hence, under the circumstances it cannot be said that the consideration was passed in kind, rather, it was passed in terms of the monetary value of the sale price received from the catch, subject to the condition that it would not be more than US$ 6,00,000. In the aforesaid case of 'Kanchanganga Sea Foods Ltd.', the assessee, Kanchanganga Sea Foods Ltd., remained the owner of the catch until its sale value was realized and had right to retain the realized value that was more than US$ 6,00,000 and at the same time it was entitled to retain the sale value of the 15% catch, even though, the sale value of the remaining 85% of the purchase would fetch less than US$ 6,00,000. It was the sale value of the catch which was the determining factor and till the catch was not sold or its value was not determined, the property in the catch fish would remain under the ownership of the assessee 'Kanchanganga Sea Foods Ltd'. However, in the case in hand, the neither the Procurement agency becomes the owner of the by-product nor there is any ascertainable value of the by-product. Even, the Procurement Agencies have neither any inclination to know the price of the by-product nor they have right to claim any amount out of

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the value of the by-product on the ground that its sale value has exceeded the milling charges. In view of the above discussion, the case law in the case of 'Kanchanganga Sea Foods Ltd**.'** is not applicable on the facts of the present case.

22. So far as the question that whether the provisions of section 194C of the Act will be attracted only in case the consideration is passed to the contractor in cash or in any other identical / similar mode, such as, by cheques, draft, money order or other electronic mode but not in respect of consideration paid 'in kind' is concerned, we are of the view, that it cannot be held straight away in all the cases that provisions will not apply for consideration passed 'in kind'. It all depends upon the relevant facts of each case. If the consideration or the value of the consideration for the 'work contract' is settled in monetary terms, or at a value of money, it will be immaterial if thereafter the consideration is passed in monetary terms or 'in kind.'. Suppose, the consideration in the contract is settled at a certain price and instead of paying the said price in cash or through banking channel, such as, by way of cheque / draft / RTGS etc., the availer of the services / assessee pays / transfer valuable goods of the equal monetary value to the contractor such as gold or any other precious metal or anything else having almost equal monetary value at which the price was settled, to say that the provisions of section 194 will not be attracted in that case, will be against the spirit, intent and purpose of section 194C of the Act and such an interpretation will defeat the

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real intent and purpose of the provisions. Another important factor to be taken into consideration is that the assessee must be the owner / should have the authority to pass on the consideration 'in kind' to the contractor. As discussed above, in this case, the property in the by-products comes into ownership of the millers from the very point of coming of it into existence, hence, in this case the assessees were not the owners of the by-products. Another factor for consideration is that the property passed 'in kind' should have some ascertainable and determinable value, which can be taken as part of the consideration paid for the work done. Further, it is the nature of the contract, term of the agreement, the intention of the parties and overall facts and circumstances of the case which are required to be analyzed and considered for determining whether the provisions of section 194C of the Act or other similar provisions of the Chapter would be attracted or not in a particular case. As discussed above in detail, since we have held that the property in the by-product was not passed on by the assessee / Procurement Agencies as milling charges, hence, it is held that TDS provisions of section 194C are not attracted in this case. This issue is decided in favour of the assessees / Procurement Agencies.

23. Even otherwise, while relying upon the decision of the Hon'ble Delhi Bench of the Tribunal in the case of 'M/s Aahar Consumer Products Pvt. Ltd.' (supra), the issue in the present appeals has already been decided in favour of the assessee and the Ld. CIT(A) in this case

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has followed the aforesaid decisions of the Tribunal in various cases and Department, as submitted before us, has not agitated the issue before higher Judicial authority, and even in the absence of any contrary decision of the higher Judicial Forum directly on this issue, the issue is otherwise covered in favour of the assessee by the various direct decisions of the Coordinate Benches of the Tribunal on this issue. In view of this, we do not find any infirmity in the order of the CIT(A) while allowing the appeals of the assessee.

24. In the result, all the appeals of the Revenue bearing ITA Nos.**1309 & 1310/Chd/2016, 1312 to 1314/Chd/2016, 78/Chd/2018, 316 to 325/Chd/2018, 77/Chd/2018, 336/Chd/2018, 1241 & 1242/Chd/2016, 685 & 686/Chd/2018 and 162/Chd/2016,** thus, having no merits are dismissed.

25. Now we shall take up assessees appeals in **ITA Nos. 1424 & 1425/Chd/2017 (A.Y. 11&12 & 13-14) and ITA No. 669/Chd/.2017 (A.Y.2012-13)**

ITA Nos. 1424 & 1425/Chd/2017 (A.Y. 11&12 & 13-14) and ITA No. 669/Chd/2017 (A.Y.2012-13) – Assessees appeals

26. Since the facts and issue involved in the appeals filed by the assessees are common and identical to that of the facts and issue raised by the Revenue vide its above referred appeals for different assessment years, which have been duly adjudicated by us and, wherein, after detailed discussion and deliberation on the matter, we have upheld the findings of

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the CIT(A)s by dismissing the appeals of the Revenue. Therefore, in view of the findings arrived at in the lead case in ITA No. 1309/Chd/2016 in 'ITO Vs. Distt. Manager, M/s State Warehousing Corporation' for assessment year 2012-13, all the appeals filed by the assessee stand allowed.

In the result, all the captioned appeals of the Revenue are dismissed, whereas, that of the assessees are allowed.

Order pronounced in the Open Court on 30.10.2018

Sd/-	Sd/-
अन्नपूर्णा गुप्ता	**संजय गर्ग**
(ANNAPURNA GUPTA)	**(SANJAY GARG)**
लेखा सदस्य/ Accountant Member	**न्यायिक सदस्य/ Judicial Member**

Dated : 30.10. 2018
"आर.के."

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar