

**A.F.R.**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**W.P.(C) Nos.35140 of 2021 & 30312 of 2020**

(In the matters of applications under Articles 226 and 227 of the Constitution of India, 1950)

*M/s Oriclean Private Limited, Cuttack ....*  
*(in both the cases)*

*Petitioner(s)*

*-versus-*

*Assistant Commissioner of Income ....*  
*Tax, Circle TDS, Bhubaneswar and*  
*Ors.*  
*(in both the cases)*

*Opposite Party(s)*

Advocates appeared in this case through Hybrid Arrangement Mode:

*For Petitioner (s) : Mr. Bibhu Prasad Das, Advocate*  
*(in both the cases)*

*For Opposite Part(s) : Mr. Sidharth Sankar Mohapatra, Sr. SC*  
*for Income Tax Department (in both cases)*  
*Mr. Supriyo Ranjan Mahapatra, Adv.*  
*(for O.P.4 in W.P.(C) No.35140 of 2021)*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**MR. JUSTICE G. SATAPATHY**

**DATE OF HEARING: -29.11.2023**

**DATE OF JUDGMENT: -22.12.2023**

**Dr. S.K. Panigrahi, J.**

1. Since common question of facts and law are involved in both the Writ Petitions, the same were heard together and are being disposed of by

this common judgment. However, this Court felt it apposite to deal the W.P.(C) No.35140 of 2021 as the leading case for proper adjudication of both the cases.

2. The Petitioner (M/s Oriclean Private Limited, Cuttack) has made a prayer to quash the Certificate No.1AB08200820IRE issued on 07.08.2020 in W.P.(C) No.30312 of 2020 and the Certificate No.1AC0821ROW issued on 16.08.2021 in W.P.(C) No.35140 of 2021 by the Assistant Commissioner of Income Tax, Circle TDS, Bhubaneswar under Section 197 of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for brevity) to the buyer, Hindustan Unilever Limited. In Certificate No.1AC0821ROW issued on 16.08.2021 the rate of collection of TDS on all sales effected by the Petitioner/ Company was fixed at 1.20% and in Certificate No.1AB08200820IRE issued on 07.08.2020 the rate of collection of TDS on all sales effected by the Petitioner/ Company was fixed at 1.25%. The Petitioner also seeks a direction from this Court to the Assistant Commissioner of Income Tax, Circle TDS, Bhubaneswar to issue a Certificate under Section 197 read with Section 206(C)(9) of the Act to the Hindustan Unilever Limited for NIL Tax Deduction at Source (TDS) on all sales effected by the Petitioner/ Company. The Petitioner has also made a prayer in W.P.(C) No.30312 of 2020 to quash the order dated 28.10.2020 rejecting the application filed by the Petitioner/ Company for issuance of Certificate to reduce the rate of collection during the credit of the sale proceeds to its account.

**I. FACTUAL MATRIX OF THE CASE:**

3. The facts of the case leading to filing of the present Writ Application are that on 28.03.2013, the Petitioner Company, M/s. Oriclean Pvt. Ltd. entered into a Purchasing Agreement with Opposite Party No. 4, M/s. Hindustan Unilever Ltd., having its registered office at Hindustan Unilever House, B.D. Sawant Marg, Chakala, Andheri (E), Mumbai-400099 whose main business is manufacture and sale of detergents, etc.
4. As per the Purchase Agreement, the Seller Company, i.e. the Petitioner, M/s. Oriclean Pvt. Ltd. would manufacture/ process and package the products in accordance with the specifications and formulations stipulated in the said agreement and using the technology provided by the buyer, Opposite Party No. 4, M/s. Hindustan Unilever Ltd. The Petitioner Company shall procure all raw materials and packing materials required for the manufacture of 3 (Three) Detergents, namely 'Wheel', 'Surf Excel' and 'Domex', directly from third party suppliers on Invoices raised on its own name. The Buyer M/s. Hindustan Unilever Ltd, would purchase such Products manufactured, processed and packaged by the Seller, M/s. Oriclean Pvt. Ltd. for a consideration on certain terms and conditions which was mutually agreed upon.
5. From the date of entering into the Purchase Agreement, the dealings between the buyer and seller were continuing smoothly until the Buyer, M/s. Hindustan Unilever Ltd. started deducting TDS (Tax Deducted at Source) @ 2% under section 194 (C) of the Income Tax Act,

1961 on all Sale Invoices of the Petitioner Company with effect from May, 2019.

6. The Explanatory Notes to the provisions of the Finance (No.2) Act, 2009, as issued in Circular No. 05/2010 F.No. 142/13/2010-SO (TPL), Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) on 03.06.2010, further provide for a Clarification regarding "work" under Section 194C of the Income Tax Act, 1961. As per the Notes "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer. Such a contract is a contract for 'sale'. This will however not apply to a contract which does not entail manufacture or supply of an article or thing (e.g. a construction contract). However, manufacturing or supplying of a product according to the requirement or specification of a customer by using material purchased from such customer is included within the definition of 'work'. It is further provided that in such a case TDS shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value."

## **II. PETITIONER'S SUBMISSIONS:**

7. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

8. In view of the Explanatory Notes to the provisions of the Finance (No.2) Act, 2009, as issued in Circular No. 05/2010 F.No. 142/13/2010-SO (TPL), Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) on 03.06.2010, it is hereby clear that the case of the Petitioner Company does not fall within the purview of the definition of 'Work', as the Petitioner Company procured raw materials along with other packing materials at its own cost from different Suppliers with separate invoices raised on its own name. It procured only one Raw Material from a Unit of the Buyer Company, M/s. Hindustan Unilever Ltd., through a separate tax invoice for the manufacture of one of the three products that it supplied to the Buyer Company in accordance with Clause 5.6 of the 'Purchase Agreement' dated 28.03.2020, which states as under-

*"Ingredients and components shall be purchased by the Seller in its own name and on their own account and not in any circumstances as agent for or otherwise on behalf of the Buyer. The Seller shall ensure this is clear in all correspondence and documentation with their suppliers. The Seller shall agree to all terms and conditions of purchase of ingredients and components with the Supplier [including any the Buyer Group company Seller) of such ingredients and components. If the Supplier of ingredients and components is the Buyer they shall be supplied on such terms as are agreed by both parties in writing and on independent commercial terms."*

9. It is therefore humbly submitted that the Agreement entered into between the Petitioner Company and M/s. Hindustan Unilever Ltd. is a 'Contract for Sale' and not a 'Works Contract' as the Scope of work

done under the Agreement does not fall within the definition of 'Work' as explained in the preceding paragraphs.

10. Thus, the Petitioner Company was in no manner liable to pay TDS @2% for the Products manufactured and sold to the Buyer as per the specifications mentioned in the Purchase Agreement, as the Petitioner Company manufactured the required products using Raw Materials procured from independent Suppliers in accordance with the terms of the Purchase Agreement and procured just one raw material from a Unit of Hindustan Unilever Ltd., therein treating the said Supplying Unit as a Separate Individual Supplier and getting a Separate Invoice issued in its name for the same.
11. All the dealings between the Opposite Party No. 4, M/s. Hindustan Unilever Ltd. and the Petitioner Company, M/s. Oriclean Private Ltd. were running smoothly until May, 2019, when the Opposite Party No. 4, M/s. Hindustan Unilever Ltd. started deducting TDS @ 2% from the Credit made to the Petitioner Company for the Sale of Products manufactured by the Petitioner Company, disregarding the means of procurement of raw materials for the production/manufacture of the said Products.
12. The Petitioner Company, in pursuance of such arbitrary deduction of tax at source by M/s. Hindustan Unilever Ltd., filed an application under Form 13 (Application by a person for a Certificate Under section 197 and/ or 206 C (9) of the Income Tax Act, 1961, for no deduction/ collection of tax or for the deduction/ collection of tax at a lower rate), before the Opposite Party No. 3, Assessing Officer, Income Tax



Department on 03.07.2019, for the issuance of a Certificate to the Opposite Party No. 4, M/s. Hindustan Unilever Ltd., certifying the fact that the Petitioner Company is entitled to 'NIL' deduction of Income Tax (TDS) at the time of payment of Credit to it by the Opposite Party No. 4 as the Petitioner Company had not entered into a 'Works Contract', but only into a 'Contract for Sale' with the Buyer M/s. Hindustan Unilever Ltd. for the manufacture and sale of finished products.

13. On receipt of the aforesaid Application dated 03.07.2019 under Form 13 the Opposite Party No. 3, Assistant Commissioner of Income Tax (ACIT), Circle TDS Bhubaneswar, on 06.08.2019 issued a Certificate Under section 197 of the Income Tax Act, 1961, certifying that a tax deduction of 0.30% is to be deducted with respect to the payment or credit of the Sale amount to the account of the Petitioner Company, instead of deducting the same at the previous rate of 2% from the date of issue of such Certificate, i.e. from 03.07.2019 till 31.03.2020.
14. The Petitioner Company, at the beginning of the next Financial Year, 2020-21 (Assessment Year, 2021-22), submitted another Application dated 25.06.2020, under Form 13 to the Assessing Officer, requesting therein for the issuance of a Certificate in favour of the Petitioner Company to reduce the rate of TDS being collected from all the Sales being effected by it to the Buyer to 0.10% instead of the previous rate of 0.30%.
15. The office of the ACIT, TDS Circle, Bhubaneswar, after one and a half month of receiving the above referred application dated 25.06.2020,

issued a Certificate under section 197 of the Income Tax Act, 1961 on 07.08.2020, therein arbitrarily certifying that a deduction of TDS @ 1.25% is to be made by the Creditor, Opposite Party No. 4 Company, while making Payment or Credit of the Sale amount to the account of the Petitioner Company from the date of issue of the Certificate i.e. 07.08.2020 till 31.03.2021, thereby increasing the amount of TDS to be collected from the Petitioner Company for the Sale of Products to the Buyer Company from the previous 0.30% to 1.25% without any basis and in an arbitrary manner.

16. The Petitioner Company issued a Letter dated 16.08.2020, addressed to the Assistant Commissioner of Income Tax, Circle TDS, Bhubaneswar, requesting a revision of the Certificate issued for Deduction of TDS from the Petitioner Company to 0.10% instead of 1.25%, therein stating that though the Estimated Income Tax payable for the Financial Year 2020-21 by the Petitioner Company amounted to a total of Rs. 81,00,000/- (Rupees Eighty One Lakhs) (approx.), by the time the said Letter was filed, a sum of Rs. 70,00,000/- (Rupees Seventy Lakhs) had already been deducted as TDS from the account of the Petitioner Company. Further collection of such TDS would cause unprecedented financial loss to the Petitioner Company. The Petitioner Company again on 18.08.2020, filed an application under the same Form 13 before the Assessing Officer, Income Tax Department, requesting the issuance of a Certificate in favour of the Petitioner Company, certifying TDS to be collected under section 194C of the Income Tax Act, 1961, at the rate of 0.10% instead of 1.25% by the OP No. 4.



17. Even though the Petitioner Company in the said Letter sought a reply from the Income Tax Authority as to the reason for such sudden enhancement in the percentage of TDS it failed to elicit any response.
18. Challenging the said illegal, unreasonable, malafide and arbitrary action of the Opposite Party Authorities, the Petitioner Company preferred a Writ Application before this Court in W.P.(C) No. 30312/2020, which is pending before this Court.
19. During such period of pendency of the previous Writ Application before this Court, the Opposite Party No. 4 kept collecting TDS at the rate of 1.25% on all Sales effected by the Petitioner Company, on the basis of the Certificate dated 07.08.2020, which clearly stipulated that the said Rate of Collection of Tax @1.25% would remain valid for the period between 07.08.2020 and 31.03.2021.
20. Pursuant to such arbitrary and continued collection of TDS at the rate of 1.25%, the Petitioner Company filed a fresh application before the Opposite Party No. 3, Assessing Officer, Income Tax Department, vide Application dated 30.06.2021 under Form 13 requesting 'NIL' deduction of TDS, (Tax deducted at Source), on the Sales effected by the Petitioner Company for the Assessment Year- 2022-23, i.e. for the remaining part of the Financial Year 2021-22.
21. The Office of the Opposite Party No. 1, A.C.I.T., Circle TDS, Bhubaneswar, after one and a half month of receipt of the above-referred Application dated 30.06.2021, issued a Concessional Certificate Under section 197 of the Income Tax Act, 1961 on 07.08.2020, therein arbitrarily certifying that a deduction of TDS @ 1.20% is to be made by

the Creditor, Opposite Party No. 4 Company, on all sales effected by the Petitioner Company, from the date of issue of the Certificate i.e. 16.08.2021 till 31.03.2022, without any justification.

22. The rejection of the Petitioner Company's Application under Section 197 and 206C(9) of the Income Tax Act, 1961 for NIL/ reduced deduction of TDS by the opposite parties is illegal, arbitrary and violative of Article 19(1)(g) of the Constitution of India.
23. Where the material is provided by the buyer and the work of the manufacturer is carried out by the Contractor, the Agreement would constitute a Contract of Work, but on the other hand, where a manufacturer produces goods to the specifications of the buyer and the property passes to the buyer only upon delivery, the contract would be regarded as a Contract of Sale, if the raw materials are sourced by the manufacturer and is not supplied to him by the Buyer, this was in accordance with Clause 5.6 of the Purchase Agreement. As the case of the Present Petitioner does not fall within the purview of a works contract, the deduction of tax at source @ 1.20% is an arbitrary and illegal decision taken by the Opposite Party Authorities and therefore is liable to scrutiny by this Court.
24. The non-consideration of the repeated requests made by the Petitioner Company before the Opposite Party Authorities, and the subsequent issue of Certificate dated 16.08.2021, specifying the rate of collection of TDS from the Petitioner Company at 1.20% for the remaining period of the Financial Year 2021-22, without any basis and without stating any reason is illegal and bad in the eyes of law.

25. In the present case, the Petitioner Manufacturing Company procured raw materials from different independent sources on its own accord, and was not supplied with raw materials by the Buyer Company. However, in the process of such procurement, the Petitioner Manufacturing Company procured one raw material from a Unit of the Buyer Company in an independent commercial transaction with a separate invoice raised in its name on the same, and after the manufacture, processing and packaging as per the stipulations given by the Buyer Company, delivered the possession of such products to the buyer.
26. The supply of outsourced manufactured goods constitutes an outright sale and cannot be treated as Contract of Works within the scope of Section 194C of the Income Tax Act, 1961 and, therefore the present contract being such, it is out of the purview of Section 194C of the Income Tax Act, 1961.
27. The Agreement entered into between the Petitioner and the Opposite Part No. 4 Company amounted to a 'Sale and Purchase Agreement', and was clearly out of the purview of a 'Works Contract' for reasons specified above, it is hereby submitted that the Petitioner was never liable to any deduction in the form of TDS and has already been harassed enough in the hands of the Opposite Party Authorities who are wrongfully collecting TDS from all the Sales effected by the Petitioner Company.

### III. SUBMISSION OF OPPOSITE PART NO. 4:

28. Per *contra*, learned Senior Standing Counsel for the Opp. Parties intently made the following submissions:

- a. The assessee while applying for the non-deduction under section 197 under Rule 28 & 37G of the Income Tax Rules vide Form no.13, has expressed in writing that its case is covered under "Payment to Contractors" in the Column "Nature of payment" and nowhere it has been mentioned that it is a transaction of contract for sale. Based on its own facts the assessee had applied for non-deduction under section 197.
- b. Based on the agreement entered into between the Petitioner company and Hindustan Unilever Limited (HUL in short) i.e. the OP No. 4, it is amply clear that this is a "works contract" within the meaning of section 194C of the Income Tax Act, 1961. It is a fact that the assessee company vide its last application in FORM 13 under section 197 has got a non-deduction of certificate at a lower rate.
- c. It is further stated that the assessee is required to provide sufficient documents in support of the transaction that it is not a contract under the meaning of section 194C of the Act, rather it is a contract for sale and falls under circular no.05/2010 issued by the CBDT.
- d. Whether the materials used in manufacturing the products sold to HUL cannot be assessed and/or judged from a bare

reading of the agreement. The views in respect to purchase of materials can only be assessed from the verification of purchase invoices and books of accounts and confirmation from the HUL. In the agreement it is mentioned that the assessee can purchase materials from HUL. In absence of adequate information relating to purchase, it cannot be in the said "Nature of Payment" and nowhere it has been mentioned that it is a transaction of contract for sale. Based on its own facts the assessee had applied for non-deduction under Section 197.

- e. Based on the agreement entered into between the Assessee-Petitioner and Hindustan Unilever Limited i.e. the Opp. Party No. 4, it is amply clear that this is a "works contract" within the meaning of Section 194C of the Income Tax Act, 1961. The IUI, Suo moto deducts TDS at the applicable rate. It is a fact that the assessee company vide its last application in Form 13 under Section 197 has got a non-deduction of certificate at a lower rate.
- f. The onus of the transaction between the assessee and the HUL does not fall under Section 194C completely lies with the assessee. It is further stated that the assessee is required to provide sufficient documents in support of the transaction that it is not a contract under the meaning of Section 194C of the Act, rather it is a contract for sale and falls under Circular no. 05/2010 issued by the CBDT.



- g. As per the agreement entered into between the assessee and HUL, whether the materials used in manufacturing the products sold to HUL cannot be assessed and/ or judged from the reading/ analysis of the agreement. The views in respect to purchase of materials can be assessed only from the verification of purchase invoices and books of accounts and confirmation from the HUL. In most of the points including point no. 5.1 (as per the purchase agreement made by the HUL and the Petitioner) it has been expressly noted that the assessee can purchase materials from HUL. In absence of adequate information relating to purchase, it cannot be ascertained whether the entire purchase was made directly from the third party or from HUL.
- h. Based on the Departmental analysis the rate of deduction has been derived and accordingly approval has been given by the competent authority. Based on the Estimated Net Profit of the assessee for the F.Y. 2020-21, the rate of deduction has been derived and accordingly approval has been given.

**29. As per the submissions of OP No. 4:**

- a. Owing to a change in circumstances w.e.f. January 2019 in the transactions between the Petitioner and Opposite Party No.4 under the Purchasing Agreement, the Opposite Party No.4 was of the view that the same shall squarely fall under the definition of "Work" as defined in the

explanation to Section 194-C of the Income Tax Act, 1961. Accordingly, from May 2019, the Opposite Party No.4 in compliance with the statutory mandate as prescribed under Section 194-C of the Income Tax Act, 1961 started deducting Tax Deductible at Source at the rate of 2.00% on all the invoices issued by the Petitioner as per the provisions of Section 194-C of the Income-Tax Act, 1961.

- b. The Opposite Party No.4 has deposited the amount of Tax Deductible at Source with the Department of Income Tax in the PAN No. of the Petitioner within the timelines mandated under Section 200 of the Income Tax Act, 1961, and Rule 30 of the Income Tax Rules, 1962. Parallely, the Opposite Party No.4 has also issued a certificate to the Petitioner indicating the Unique Transaction Number on the details of the deposited amount of Tax Deducted at Source in favour of the Petitioner with the Department of Income Tax.
- c. The Petitioner furnished to the Opposite Party No. 4, a copy of lower tax deduction certificate to. 1AA0819IZL dated 06.08.2019 issued by the Opposite Party No. 1 under the provisions of Section 197 of the Income- Tax Act, 1961. The said certificate mandated the Opposite Party No. 4 to deduct tax at source at the rate of 0.30% instead of 2% while making the payments to the Petitioner during the period 06.08.2019 to 31.03.2020, subject to the transactional

threshold of INR 200 Crores. Therefore, the Opposite Party No. 4 was obligated to deduct the Tax Deductible at Source @ 0.30% under Section 194-C of the Income Tax Act, 1961 on all its transactions with the Petitioner for a value amounting to INR 200 Crores during the period 06.08.2019 to 31.03.2020.

- d. The Petitioner furnished a copy of another lower tax deduction certificate no. 1AB0820IRE dated 07.08.2020 issued to it by the Opposite Party No.1 under Section 197 of the Income Tax Act, 1961 certifying that the Opposite Party No. 4 will be required to deduct Tax Deductible at Source during FY 2020-21 at the rate of 1.25% under Section 194-C of the Income-Tax Act, 1961 on its transactions with the Petitioner up to a maximum value of INR 404.73 Crores.
- e. The Petitioner again furnished a copy of the lower tax deduction certificate No. 1AC0821ROW dated 16.08.2021 issued to it by the Opposite Party No. 1 under Section 197 of the Income Tax Act, 1961 certifying that the Opposite Party No. 4 will be required to deduct tax at source for FY 2021-22 at the rate of 1.20% under Section 194-C of the Income-Tax Act, 1961 on its transactions with the Petitioner for a maximum value of INR 407.43 Crores.
- f. The Opposite Party No.4 in compliance with the certificates dated 06.08.2019 for the FY 2019-20, 07.08.2020 for the FY 2020-2021, and 16.08.2021 for the FY 2021-2022 has

deducted Tax Deductible at Source at the rates prescribed in the certificates issued by the Opposite Party No.1 on all the invoices issued by the Petitioner as against the sales effected under the Purchasing Agreement. The Opposite Party No. 4 submits that a Chartered Accountant has also certified that: (a). the Opposite Party No. 4 has duly deducted TDS on its transactions with the Petitioner, as per the rates stipulated in the certificate issued by the Opposite Party No. 1 to the Petitioner under Section 197 of the Income Tax Act, 1961; and (b). based on such deductions, the Opposite Party No.4 has deposited the amount of TDS and has issued a certificate to that effect to the Petitioner.

#### IV. COURT'S REASONINGS AND ANALYSIS:

30. Having perused the document and having heard the parties, this Court is of the view that Section 194C of the Income Tax Act, 1961 clearly states that any person responsible for paying a sum to any resident for carrying out any work in pursuance of a contract between the Contractor and a Specific Person shall, at the time of credit of such sum to the account of the Contractor or at the time of payment thereof, deduct an amount equal to-

- *1% of such sum as income-tax on income comprised therein- where the payment is being made or credit is being given to an individual or to a Hindu Undivided Family; and*

- 2% of such sum as income-tax on income comprised therein- where the payment is being made or credit is being given to a person other than an individual or a Hindu Undivided Family.

31. The term 'Work', as used in Section 194C of the Income Tax Act, 1961 has been defined in the Explanation to the said Section and states that the term 'work' shall include-

*“the explanatory Notes to the Provisions of the Finance (No.2) Act, 2009 as issued in CIRCULAR NO. 05/2010 F. No. 142/13/2010-SO (TPL), Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) dated 03.06.2010, provide for a Clarification regarding the term 'work', as used under Section 194 C of the Income Tax Act, 1961, stating therein as under-*

*“work” shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer as such a contract is a contract for 'sale'. This will however not apply to a contract which does not entail manufacture or supply of an article or thing (eg. a construction contract). Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer is also included, within the definition of 'work'. It is further provided that in such a case TDS shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. here the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value.”*

32. The onus of proving the transactions between the assessee and the HUL that it does not fall under section 194C completely lies with the assessee. He is required to provide sufficient documents in support of the transaction that it is not a contract under the meaning of section 194C of the Act, rather it is a contract for sale and falls under circular no.05/2010 issued by the CBDT.
33. As per the purchase agreement entered into between the assessee and HUL, whether the materials used in manufacturing the products sold to HUL cannot be assessed and/or judged from the reading/ analysis of the agreement. The views in respect to purchase of materials can be only assessed from the verification of purchase invoices and books of accounts and confirmation from the HUL.
34. Moreover, in most of the points including point no. 5.1 (as per the purchase agreement made by the HUL, with the assessee-petitioner) it has been expressly noted that the assessee can purchase materials from HUL. In absence of adequate information relating to purchase, it cannot be ascertained whether the entire purchase was made directly from the third party or from HUL.
35. Based on the Departmental analysis the rate of deduction has been derived and accordingly approval has been given by the competent authority. Based on the Estimated Net Profit of the assessee for the F.Y. 2020-21, the rate of deduction has been derived and accordingly approval has been given.



36. The contention of the petitioner is not pertinent in this instant case, since the Petitioner itself submitted application in F.No.13 claiming receivable for the Hindustan Lever as "contractual receipts". Further it had not made M/s. Hindustan Lever Limited as a party to this case which indicates that it primarily had no objection with M/s. Hindustan Lever Limited treating its payment to the applicant as "contractual payment".
37. The Petitioner's claim that the Hindustan Lever had been wrongly deducting tax at source under section 194C, treating the contractual agreement for manufacturing of Hindustan Lever Limited products as "works contract" is not legally tenable since for all purposes the functioning of the applicant in respect of its transaction with Hindustan Lever, comes under the domain of "works contract". Further, it is also noted that the applicant had regularly claimed amount receivable from Hindustan Lever as 'contractual amount' in F.No.13 filed in earlier Financial Years including Financial Year 2019-20 and even in F. No. 13 filed for the Financial Year 2020-21.
38. Furthermore, the Petitioner did not adduce any documents/correspondences disputing the deduction of tax at source under section 194C of the I.T. Act by the Hindustan Lever Ltd. Evidently, the Petitioner did not consider such action by Hindustan Lever Limited as "dispute" suitable for agitation with Hindustan Lever Limited, unless rate of IDS for the Financial Year 2020-21 has been fixed at 1.25%.

39. In view of the above, both the Writ Petitions are disposed of.

*(Dr.S.K. Panigrahi)*  
*Judge*

*G. Satapathy, J.I agree.*

*(G. Satapathy)*  
*Judge*

*Orissa High Court, Cuttack,*  
*Dated the 22<sup>nd</sup> Dec. 2023/*

