

ITAT slams revenue for invoking sec. 194C on sums paid to NR shipping companies

Summary – The Chandigarh ITAT in a recent case of Bhogal Export, (the Assessee) held that provisions of section 194C are not applicable if goods are dispatched through non-resident shipping companies or through their resident agents.

ORDER

In this appeal the revenue has raised the following grounds of appeal:

- "1 That the Ld. CIT(A)-II, Ludhiana, on facts as well as in law has erred in partly deleting the addition of Rs. 29,68,618/- out of total addition of Rs. 34,55,352/- made by the A.O on a/c of violation of section 40(a)(ia) of the I.T. Act, 1961.
2. That the order of the CIT(A)-II, Ludhiana be set aside and that of the A.O. be restored."

On Ground No. 1 - After hearing both the parties ITAT held that during assessment proceedings the AO noticed that the assessee had made payments towards freight and cartage charges amounting to Rs. 36,70,608/-. When the details were filed it was noticed that TDS has been deducted only from Jai Bhawani and TDS has not been deducted from other parties. According to the Assessing Officer the assessee was duty bound to deduct TDS from other parties u/s 194C of the Act. Therefore, a show cause notice was issued to the assessee that why provisions of section 40(a)(ia) should not be applied for failure to deduct the tax. In response the assessee replied as under:

In view of Circular No. 723 dated 19.09.1995 the provisions of section 194C or 195 is not applicable where provision of section 172 is applicable. Section 172 is governing section for Foreign Shipping Companies to collect tax ship wise.

For applying the scope of Circular No. 723 there are two factors which should be available i.e. the person who is getting payment must be of agent acting on the behalf of Foreign Shipping Companies and the ships carrying the goods must be belonging to Foreign Shipping Companies.

The Assessing Officer examined the circular No. 723 and observed that the circular would apply in cases where the payments were made to Non Resident Shipping Companies. or their Resident agents, therefore, the circular was not applicable. Accordingly he invoked provisions of section 40(a)(ia) and added a sum of Rs. 34,55,352/- to the income of the assessee.

On appeal the submissions made before the Assessing Officer were reiterated. The Id. CIT(A) after examining the submissions and found merit only in respect of payments for shipping bill and allowed relief to the extent of Rs. 29,68,618.75 and confirmed the balance addition of Rs. 4,44,368.06.

The ITAT based on the discussed position of the case and on the basis of facts available in the assessment records and also the detail submission submitted by the counsel of the assessee held that it is clear that the Ocean freights and Inland Haulage Charges are out of purview of section 194C. Therefore, I delete the addition of Rs. 29,68,618.75 and uphold the addition of Rs. 4,44,368.06. This ground of appeal of the appellant is, therefore, partly allowed.

In the result, appeal of the Revenue is dismissed.