

## **No sec. 194C TDS on sums paid to contractor for job-work if liability for execution of contract was on assessee**

**Summary – The Pune ITAT in a recent case of Premprakash Vishwakarma, (the Assessee) held that where assessee engaged in carrying out work of roughing and finishing of raw material on CNC machines on job work basis, engaged various labour contractors to do a part of said job work, in view of fact that assessee himself was responsible for executing contract and labour contractors had no privacy of contract with customer, payments made to said labour contractors were not in nature of sub-contracts and, hence, there was no obligation to deduct TDS on those payments.**

### **Facts**

- The assessee was engaged in work of roughing and finishing of raw material on CNC machines part of which was done through job work.
- Sometimes, the roughing could not be done at the assessee's premises since the assessee did not have the requisite plant and machinery. For that purpose, the assessee assigned the job to other parties for roughing the raw material and later on, the finishing was done by the assessee by using its CNC machines.
- The Assessing Officer opined that the payment of labour charges by the assessee were in the nature of sub-contract payments and, hence, the assessee ought to have deducted TDS on the said payments.
- Since the assessee failed to deduct tax at source under section 194C, the Assessing Officer disallowed payments in question by invoking provisions of section 40(a)(ia).
- The Commissioner (Appeals) confirmed said disallowance.
- On second appeal:

### **Held**

- The issue came up for consideration is as to whether the labour charges paid by the assessee are in the nature of contract awarded by the assessee or sub-contract awarded. The customer provides the raw material to the assessee for carrying out certain job work. Since the assessee do not have certain machines and hence, the assessee in turn, gives the contract to other labour contractors to carry out part of the job. Ultimately the assessee is liable for the work carried out by them.
- When the assessee gives the contract to the other labour contractor, it is a contract between the assessee and the labour contractor and the original customer is not at all involved in the same. In case, the labour contractor does not carry out the job or does a faulty job, the assessee is liable to the ultimate customer and not the labour contractor. Accordingly, that the labour contract given by

the assessee is in the nature of separate contract of work and therefore, assessee was not liable to deduct TDS under the provisions of section 194C.

- The assessee is fully responsible for executing the main contract and the labour contractor has no relation with the principal customer. One of the main features for a contract to qualify as a sub-contract is that the sub-contractor should be eligible not just for the rewards but also risk associated with the execution of the main contract of the principal. The main element of risk of the alleged sub-contract is missing in assessee's case and therefore, the payments made by the assessee to various labour contractors for above mentioned works could not be said to be as payment to sub-contractor.
- The assessee has in fact, engaged various labour contractors as discussed above for which, the assessee himself was responsible for executing the contract and the labour contractors had no privity of contract with principal customer and, moreover, no risk factor was associated with the alleged sub-contract. The whole control of the work was in the hands of the assessee and labour contract was executed under the full control of the assessee himself.
- For a contract to qualify as a sub-contractor, the sub-contractor should spend their time and energy and also undertake the risk attached with the main contract. As the element of risk taking was missing, the contract could not be held as sub-contract. Accordingly, the payments made to the labour contractors were not in the nature of sub-contracts and hence, there was no obligation on the assessee to deduct TDS on the said payments.
- In the result, appeal filed by the assessee is allowed.