

Hiring of machinery for excavation work on monthly basis wasn't work contract; not liable to sec. 194C TDS

Summary – The Delhi ITAT in a recent case of LDS Engineers (P.) Ltd., (the Assessee) held that machinery taken on monthly rental was not covered under term 'work contract' and hence, no disallowance could be made on account of non-deduction of TDS under section 194C on payment.

Facts

- The assessee made payment to LDS Engineers towards 'Excavation charges'.
- The Assessing Officer held that the tax at source was required to be deducted on the payment made to LDS Engineers and the failure to do so attracted the provisions of section 40(a)(ia). He, therefore, made disallowance of the said sum.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer and treated the amount paid to LDS Engineers as covered under section 194C.
- On appeal to the Tribunal :

Held

- LDS Engineers raised an invoice on the assessee, which shows that amount is towards hire charges of machine for excavation at the rate of Rs. 56,000 per month. This shows that the said payment was made by the assessee on account of hiring of machine on monthly rental for excavation and was in the nature of hire charges.
- The Assessing Officer has not referred to any particular section under which the amount paid by the assessee to LDS Engineers required deduction of tax at source. The Assessing Officer has not even correctly understood the transaction. He characterized the payment to LDS Engineers as 'Excavation Charges', whereas the correct position is that the amount was paid for hiring of machinery for excavation on a fixed monthly rental.
- The Commissioner (Appeals) correctly identified the nature of transaction by considering it as 'the payment for hiring of machines *i.e.* dumpers as partaking the character of work'. But, machinery given on a monthly rental cannot be construed as 'work contract'. In view of the above discussion it is held that the authorities below were not justified in making and sustaining disallowance under section 40(a)(ia) in the given circumstances.