

## Even payment made under oral contract would attract TDS under sec. 194C

**Summary – The High Court of Jharkhand in a recent case of Md. Tabarak, (the Assessee) held that where assessee made payments on regular basis to owners of goods carrying vehicles though in terms of 'oral contract', assessee was liable to deduct TDS under section 194C**

### Facts

- The assessee was engaged in business of transportation. During relevant year, the assessee made payments to certain vehicle owners owning goods carrying vehicles such as loading charges, hire charges and repairs and maintenance charges *etc.* The assessee claimed that he was simply a broker earning certain amount as 'brokerage' per truck for aforesaid activities. Thus, assessee claimed deduction of expenses even without deducting tax at source under section 194C.
- The Assessing Officer rejected the assessee's explanation. He opined that it was a case of simply hiring of vehicles on contract basis and thus assessee was required to deduct tax at source under section 194C. In view of assessee's failure to deduct tax at source, the Assessing Officer disallowed payments made by assessee under section 40(a)(ia).
- The Tribunal however deleted disallowance made by the Assessing Officer on the ground that in absence of any written and oral contract existing between the parties, payments in question could not be regarded as one made to sub-contractors.
- On revenue's appeal:

### Held

- Repeatedly, it has been argued out by the counsel for the respondent that there is no existence of the contract between the respondent and the so called transporters or between the assessee and so called sub contractors. If there is no evidence on record as to the existence of the contract between the respondents-assessee and the parties to whom Rs. 98,76,419/- is paid, section 194C is not applicable.
- The assessee's arguments cannot be accepted for the following reasons:—
  - (a) The words used under section 194C of the Act, 1961 'any person responsible for paying any sum to any resident (hereafter in this section referred to as contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and specified person shall.....'. The words in pursuance of a contract 'also includes the oral contract'.
  - (b) The oral contract has to be deduced from the existing evidence.
  - (c) Every time there cannot be a written contract and the taxpayers' tendency specially, those who want to evade the tax will never prove or assist the authorities in giving evidence of the contract, especially when huge amount of cash is involved. Therefore, whenever any assessee is

claiming huge cash paid *e.g.* in this case Rs. 98,76,419 which is paid in cash to the aforesaid different persons on different dates then it is a prime duty of the Income Tax Authorities to look at the transactions carefully. In the facts of the present case repeatedly several amounts have been paid in cash exceeding Rs.20,000 in breach of section 40A(3) towards vehicle hire charges, without deducting the tax at source and, therefore, this amount of Rs.98,76,419 is to be added in the income of the assessee as deduction is not permissible under section 40(a)(ia). When any assessee is paying once in a blue moon for a transportation charges, section 194C may not be applicable. But, looking to the totality of the evidence, in the facts of the present case as stated in the assessment order para 3.4 passed by Assessing Officer, it appears that repeatedly huge amount has been paid in cash to sub-contractors, which was an evidence of the oral agreement between the assessee and sub-contractor he therefore, every time there is no need of written agreement. It is a prime duty of the respondent authority to look at the transactions carefully when consistently huge cash is being paid by the assessee, in breach of section 40(A)(3) and without deduction of tax at source. This is not the only evidence in this case. The assessee looking to the books of account have made the payment towards labour charges, repair and maintenance as well as towards the loading and unloading. Thus, the assessee is not a broker at all, but, is more than a broker. Broker will never pay the repair and maintenance as happened in this case. Payments have been made for spare parts, tyres and tubes, batteries, for engine, for motors auto body, for leaf spring *etc.* during the financial year 2008-09. Looking to this aspect of the matter, no error was committed by the Commissioner, while dismissing the appeal preferred by the assessee. The Tribunal, has failed to appreciate the cumulative effect of the evidences on record.

- The aforesaid amount of loading and unloading charges cannot be allowed to be deducted from the income of the assessee as TDS has not been deducted under section 194C to be read with section 40(a)(ia).
- The respondent argued that an explanatory note has been issued by the respondent-Department by way of [Circular No. 5/2005 dated 15th July 2005](#). It has been observed that to curb the bogus payment this provision of Section 40(a)(ia) of the Income Tax Act has been incorporated and it is submitted by the respondent that the payment has already been made by the respondent-assessee for vehicle hire charges and towards loading and unloading charges and, therefore, these are not the bogus transactions and, therefore, the order passed by the Tribunal, may not be disturbed by this Court.
- The arguments canvassed by the assessee cannot be agreed mainly for the reasons that section 40(a) (ia) to be read with section 194C have not been incorporated to increase the morality of the assessee. In a taxing Statute, once there is a breach of section, the consequences are bound to follow happen. Looking to the provisions of section 194C if the amount is paid in pursuance of the contract - which may be oral also, section 194C is applicable. In the facts of the present case when aforesaid huge amount is paid towards vehicle hire charges in one year and also towards loading

and unloading charges huge amounts is paid in cash. TDS ought to have been deducted before making such payments by the respondent to his sub-contractors and as this TDS has not been deducted, the amount paid towards vehicle hire charges and amount paid towards loading and unloading charges which are at Rs. 98,76,419/- and at Rs. 12,76,700 is not deductible from the taxable amount under section 40(a)(ia).