

Freight to C&F agent wasn't reimbursement and liable to TDS as agent didn't made TDS while making payment to Airlines

Summary – The Panaji ITAT in a recent case of Zephyr Biomedicals., (the Assessee) held that where assessee could not adduce any evidence that C & F agent deducted tax at source while making payment to carrier so as to prove that amount which was paid by assessee to C & F agent represented reimbursement of freight paid by C & F agent on behalf of assessee to airlines, provisions of section 194C were applicable

Facts

- The Assessing Officer, during the course of the assessment, noted that the assessee had not deducted TDS on freight amount paid to the Forwarding & Clearing agent (C&F agent)
- The assessee explained that the amount paid were in the nature of reimbursement of the expenses as the agent only collected the amount which were paid by them to the airlines.
- The Assessing Officer, therefore, disallowed sum of Rs. 73,21,304 by applying provisions of section 40(a)(ia).
- The Commissioner (Appeals) deleted the disallowance.
- On appeal:

Held

- The assessee claimed that it has reimbursed to C&F agent the actual air freight paid by them to the airlines and it is not payment made to the C&F agent. It was found that there are bills of Jet Airways raised by Jet Air Freighters to the assessee. The assessee has issued cheque bearing no. 46101, dated 16-5-2008 for total amount of Rs. 2,05,660 which according to the assessee includes the sum of Rs. 1,25,272 relating to the air freight cartage. It was found that from the covering of the bill that the bills issued by Jet Air Freighters and not by the C&F agent as contended by the assessee. The amount paid by the assessee through the cheque is also Rs. 2,05,660 and not Rs. 1,25,272. The invoice nowhere states that it represents reimbursement of the air freight but it is the invoice made by Jet Air Freighters. This document, does not prove that the assessee has reimbursed the air freight paid by the C&F agent. The bills raised by Jet Air Freighters are directly in the name of the assessee. In view of the facts, one does not agree with the contentions of the assessee. The onus lies on the assessee to prove that the payment made by it to the C&F agent represents the reimbursement and not the amount paid for any services rendered by them.
- While gone through Circular no. 715, dated 8-8-1995. It was noted that in reply to question no. 7 the CBDT has opined as under (relevant extract is reproduced):

'Question 7: Whether a travel agent/clearing and forwarding agent would be required to deduct tax at source from the sum payable by the agent to an airline or other carrier of goods or passengers?

Answer: The travel agent, issuing tickets on behalf of the airlines for travel of individual passengers, would not be required to deduct tax at source as he acts on behalf of the airlines. The position of clearing and forwarding agents is different. They act as independent contractors. Any payment made to them would, hence, be liable for deduction of tax at source. They would also be liable to deduct tax at source while making payments to a carrier of goods.'

- This question relates to a situation where the C&F agent makes the payment to the airlines or other carrier of goods or passenger. This question, is not relevant to decide whether the assessee is required to deduct tax at source when payment is made to C&F agent. Question no. 6 deals with a case where the payment is made for carriage of the goods or passenger by any mode of transport to C&F agent. In reply to this question, the Board has clearly laid down in Circular no. 715, dated 8-8-1995 that 'As regards payments made to clearing and forwarding agents for carriage of goods, the same shall be subjected to tax deduction at source under section 194C of the Act.' The assessee could also not adduce any evidence that the C&F agent deducted tax at source while making payment to the carrier so as to prove that the amount which was paid by the assessee to the C&F agent represents reimbursement of the freight paid by the C&F agent on behalf of the assessee to the airlines. It is not the intention of the Legislature that neither the C&F agent deducts the tax when it makes the payment to the carrier nor the assessee deducts the tax at source when it makes payment to C&F agent. If the assessee claims that the amount paid to the C&F agent by the assessee represents reimbursement, the onus is on the assessee to prove that it represents the reimbursement of the claim. Hence, provisions of section 194C are clearly applicable in the case of the assessee.