

No TDS liability on reimbursement of exp. incurred by C&F agent if separate bill was raised by him

Summary – The High Court of Gujarat in a recent case of Consumer Marketing (India) (P.) Ltd., (the Assessee) held that No TDS liability on reimbursement of exp. incurred by C&F agent if separate bill was raised by him

Facts

- During the year, the assessee had debited a certain amount as clearing and forwarding charges, but out of this amount, deducted TDS only on a lesser amount. It stated that the clearing and forwarding agent incurred certain expenses on its behalf and he was merely acting as a front man and these expenses had no nexus with the commission he was supposed to get for his work. Part of the clearing and forwarding expenses, which formed reimbursement of expenses, did not attract the TDS provisions. The clearing and forwarding agent raised a debit note for the expenses to be reimbursed by it along with necessary bills/receipts/supporting evidence. He also raised an invoice for the services rendered by him with service tax. It was this invoice which attracted TDS, which had been duly deducted.
- The Assessing Officer disallowed a certain amount on which tax was not deducted at source and added it back to the income of the assessee.
- The Commissioner (Appeals) deleted the disallowance made by the Assessing Officer. He held that no TDS was required to be deducted in the case where reimbursement bills were separately raised. The assessee had also made payment to clearing and forwarding agent and separate bills were raised in respect of reimbursement of expenses incurred by the agent on behalf of the assessee.
- The Tribunal upheld the order of the Commissioner (Appeals).
- On appeal to High Court:

Held

- In the instant case, it is apparent that the assessee had deducted the TDS in respect of the payment made to the clearing and forwarding agent for the services rendered by him and separate bills had been raised in respect of reimbursement expenses incurred by the agent. Since the reimbursement bills were separately raised, there was no requirement to deduct TDS in respect thereof. Under the circumstances, it cannot be said that there is any legal infirmity in the impugned order passed by the Tribunal in holding that disallowance under section 40(a)(ia) could not be made in respect of reimbursement bill which was separately raised, as no TDS was required to be deducted in respect thereof.
- Therefore, the order of the Tribunal deserved to be upheld.