

TDS liability under sec. 194C would attract even on oral contract

Summary – The Mumbai ITAT in a recent case of Gopal S. Rajput., (the Assessee) held that Assessee would be liable to deduct tax at source under section 194C on payments made as transportation charges to intermediate parties who arranged actual transporters from open market for carriage of goods by transport for assessee, even if there was no written contract between assessee and intermediary party

Facts

- The assessee was engaged in the business of transportation.
- The Assessing Officer observed that no tax had been deducted at source on transportation charges paid by assessee to different parties although the same were covered under section 194C. Accordingly, the transportation charges were disallowed and added back to the total income of the assessee under section 40(a)(ia).
- On appeal, the assessee contended that the payments had not been made by the assessee 'in pursuance of a contract' within the meaning of section 194C. The Commissioner (Appeals) accepted the appeal of assessee and held that the Assessing Officer had not given any finding of facts as to whether there was any contract, written or oral between the assessee and individual parties to whom the payments was made and, therefore, provisions of section 194C were not attracted.
- On revenue's appeal:

Held

- Section 194C stipulates that if any person as specified in the section is responsible for paying any sum to resident ('the contractor') for carrying out any work in pursuance of contract between such person and the contractor, such person shall deduct tax at source as provided under the section 194C. It further provides that individual assessee are also covered under the provisions of section 194C for deduction of tax at source, provided the stipulated conditions are fulfilled as detailed in the proviso. The section 194C further provides that payments to sub-contractor by the contractors shall also be liable for deduction of tax at source under section 194C. It also provide that the work shall also include carriage of goods or passenger by any mode of transport other than railways.
- The assessee in the instant appeal is in the business of transportation. The assessee has averred in the affidavit filed before the Commissioner (Appeals) that he has made the payments as transportation charges to various parties who are not actual transporters but who have independently arranged actual transporters from open market for carriage of goods by transport for the assessee. These intermediaries to whom the assessee has made payments as transportation

charges have in turn made payments to the actual transporters out of the money collected from the assessee. The main contention of the assessee is that the payments have not been made in 'pursuance of a contract' between the assessee with any of the person or the actual transporters.

- The word 'Contract' has not been defined under section 194C and in the absence of the definition of the word 'Contract' in the Act, one has to refer to the meaning of contract as used in commercial parlance which drew its source from Indian Contract Act, 1872 whereby it is stipulated according to section 2 that, every promise and every set of promises, forming the consideration for each other, is an agreement while 'contract' as defined in the same section means an agreement enforceable by law. Section 9 of the Indian Contract Act, 1872 provides that contracts can be either express or implied. An express contract is one where the proposal or acceptance of any promise is made in words while implied contract is one where such proposal or acceptance is made otherwise than in words. Even if there is no express contract, a contract may still exist by implication, *i.e.* contract consisting of obligations arising from the mutual agreement and intent to promise, which have not been expressed in words. An implied contract envisaged by section 9 of the Indian Contract Act, 1872 can be inferred from the facts and circumstances that indicate a mutual intention to contract. Circumstances may exist which, according to the ordinary course and common understanding, demonstrate such an intent that is sufficient to support the finding of an implied contract. Chapter V of the Indian Contract Act, 1872 treats certain relations resembling those created by a contract as contracts enforceable in law. The Indian Contract Act, 1872 thus envisages four types of contracts, namely (1) contracts made in writing (2) contracts made orally (3) contracts by implication or implied contracts and (4) quasi contracts. Thus, the contracts envisaged in section 194C are not limited to written contracts and all payments made in pursuance of written, oral, implied or quasi contracts are covered under section 194C. Thus, a contract need not be in writing; even an oral, implied or quasi-contract is good enough to invoke the provisions of section 194C.
- Thus, the assessee has entered into contract with these intermediaries for the work of hiring of transport for carriage of goods for the assessee for which payments are made by the assessee to these intermediaries who are not actual transporters but are arranging actual transporters independently from open market for carriage of goods for assessee and these payments made by the assessee to the intermediaries are consolidated payments which include two components/elements, *i.e.*, charges for actual transporters hired independently by the intermediaries for carriage of goods for the assessee and service charges of these intermediaries for arranging actual transporters from open market for carriage of goods for the assessee. These intermediaries have in turn independently sub-contracted the work to actual transporters who transported the goods for the assessee.
- The word 'work' in Explanation III to section 194C is defined in an extensive manner as the law makers have used the words "the expression 'work' shall also include" meaning thereby that the lawmaker intend to give extensive definition to the word 'work' instead of giving narrower or restrictive definition. The contract also include sub-contract as it could be seen from coverage of

payments to sub-contractors by contractors within the ambit of section 194C. In the instant case, the contractors *i.e.* intermediaries are transporting the goods by carriage for the assessee not themselves but through appointing sub-contractors independently, *i.e.*, actual transporters who are hired independently by contractors as sub-contractors for transporting the goods by carriage for the assessee and these sub-contractors are paid for by the intermediaries out of money collected from the assessee. Thus, the assessee has given work contract to intermediaries for hiring of transport for carriage of goods for the assessee which itself is a contract covered under section 194C and the assessee was liable to deduct TDS under section 194C on payments for carriage of goods through intermediaries as there was a contract covered under section 194C between the assessee and these intermediaries for the work of carriage of goods through transport which was executed by these intermediaries through sub-contractors *i.e.* actual transporters appointed independently by these intermediaries.

- The next contention of the assessee is that it has not made any single payment on any day to any person for more than Rs. 20,000/- in cash which contention again is devoid of merit as section 194C as applicable for the relevant assessment year provides that if payments in aggregate exceeding Rs. 50,000/- are made during the assessment year to any contractor, it shall get covered within the ambit of section 194C and perusal of details of payment made by the assessee will clearly reveal that payment exceeding Rs. 50,000/- in aggregate has been made by the assessee to each of the contractors during the assessment year. Thus, under the facts and circumstances of the case the assessee was liable to deduct tax at source under section 194C on these payments of transport charges made to intermediaries during the assessment year which the assessee failed to do so as there was a contract between the assessee and these intermediary persons to whom the payments for transportation were made by the assessee covered under section 194C and the Assessing Officer has rightly disallowed the said amount under section 40(a)(ia) consequentially for non-deduction of tax at source under section 194C.