

Payment made for supply of building material isn't liable to TDS

Summary – The Chandigarh ITAT in a recent case of Krypton Datamatics Ltd., (the Assessee) held that Payments made by assessee for supply of building materials was not liable to deduction of tax at source under section 194H

Facts

- During the year under consideration, the assessee had undertaken contract work from 'S' Ltd. The contract was executed through the material supplied by various parties. The assessee had not deducted tax at source from the said payments.
- The issue of non-deduction of TDS was specifically raised by the Assessing Officer to the assessee which was also duly replied by the assessee. In the said circumstances, the Assessing Officer had applied the provisions of section 271C for non-deduction of tax at source.
- The Commissioner opined that even after observing that the TDS was required to be deducted from the said payments, the Assessing Officer had not invoked the provisions of section 40(a)(ia).
- He thus invoked provisions of section 263 and passed a revisional order setting aside assessment.
- On appeal:

Held

- It is a trite law that the Commissioner can assume jurisdiction under section 263 if he finds the order of the Assessing Officer to be erroneous insofar as prejudicial to the interest of the revenue. The two conditions of the order being erroneous as well as prejudicial to the interest of the revenue are to be satisfied simultaneously as per section 263. In case the Commissioner finds the order to be erroneous, he has to give a specific finding why the order is erroneous and the order is said to be erroneous if on an important issue, the Assessing Officer fails to make any enquiry.
- However, there are cases where though the Assessing Officer makes enquiry on a particular issue but the Commissioner feels that the Assessing Officer had made inadequate enquiry in such cases, if the Assessing Officer has taken one of the possible views in the circumstances of the case, the Commissioner cannot impose his view and hold the order to be erroneous. In such cases if the Assessing Officer makes enquiries but fails to apply the law properly, the order can be held to be erroneous. However, in such cases, the Commissioner is bound to give his finding on the facts and circumstances of the case as per law.
- Once the order is held to be erroneous, the Commissioner also has to show that some prejudice is caused to the revenue because of the order being so erroneous. It is not the case of absence of any enquiry since the Assessing Officer has raised the issue of non-deduction of TDS during the assessment proceedings, which were duly replied by the assessee. The Assessing Officer has

conducted independent enquiries from the suppliers of the material also. Therefore, this is definitely not a case of no enquiry at all. Even the Commissioner has no quarrel about the same as he himself mentioned these facts in his show-cause notice.

- This is also not a case of inadequate enquiry as query raised by the Assessing Officer regarding non-deduction of TDS has been properly addressed by the assessee and the Assessing Officer also prefers to issue letter to the concerned parties, which were duly replied by them directly to the Assessing Officer. On this basis, the Assessing Officer decided not to make disallowance under section 40(a)(ia). Therefore, judging this case on the scale of no enquiry or inadequate enquiry *etc.* would not serve the purpose.
- On perusal of replies of material suppliers, it is found that all the payees have confirmed that the payment to them have been made for supply of earth, mitti and stones *etc.* Since payment for supply of material was not exigible to TDS, there was no need for the assessee to deduct such tax at source and resultantly the provisions of section 40(a)(ia) would not come into play. In this way, there was no need for the Assessing Officer to make disallowance of these expenses. Since these letters are a part of assessment records, it is opined that the Assessing Officer did not invoke the provisions of section 40(a)(ia) and did not make disallowance, getting convinced by the fact that the payments were made for supply of material.
- The fact that the Assessing Officer in his order did not mention these investigations made by him does not itself make his action illegal. He may not have referred to these documents may be because he was convinced that no disallowance is called for. Therefore, in such a scenario, on the facts and circumstances of the case, there is no error in the order of the Assessing Officer. In this case, the Commissioner had tried to read too much from the mind of the Assessing Officer. Once, one reaches to a conclusion that provisions of section 40(a)(ia) are not applicable on the facts and circumstances of this case, whatever was going through in the mind of the Assessing Officer at that time, it is a fact that he has reached to a correct conclusion.
- In this background, the order of the Assessing Officer cannot be said to contain any error on this count. The fact that the payments were made for supply of material also got strengthened by the fact that the assessee was engaged in such kind of project from 'SC' Ltd. during the year. The issue of nomenclature 'commission' given to the said payments also got clarified during the assessment proceedings. Therefore, there is no question of invoking the provisions of section 194H of the Act. Further, there being no contract or non-contract, the provisions of section 194C are also not applicable. The nature of payments is quite clear from the replies sent by the supplier to the Assessing Officer directly.
- The fact that the Assessing Officer has initiated proceedings under section 271C, may have weighted too much in the mind of the Commissioner while holding the order to be erroneous. But, initiating penalty proceedings under section 271C by the Assessing Officer is not a relevant factor to decide whether the disallowance under section 40(a)(ia) was called for or not. Since, the payments were

not prone to invoking the provisions under section 40(a)(ia), the disallowance, in any case, was not called for.

- In view of the above, there being no error in the order of the Assessing Officer, the jurisdiction assumed by the Commissioner under section 263 was not as per law.
- In the result, the appeal of the assessee is allowed.