

Sum paid for transportation of goods won't attract sec. 194-I TDS if use of container was incidental

Summary – The Rajkot ITAT in a recent case of Pushpak Logistics (P.) Ltd., (the Assessee) held that where assessee-company, engaged in business of cargo handling, made payments for transportation of goods to transporter which also supplied containers, since use of containers was only incidental to transporting of cargo, assessee was justified in deducting tax at source under sec. 194C from payments in question

Facts

- The assessee-company was engaged in the business of cargo handling for shipments. In the course of this work, the assessee engaged the services of one 'S' for transportation of goods from shore to the ship, and *vice versa*. The goods required to be transported were first stuffed in the containers given by the logistic service provider *i.e.* 'S' and then it was transported, by sea, to the agreed place. The billing for transportation was done on the basis of the size of the container, and, once the goods reached the destination, the containers were to be returned to the service provider. Any damage to the containers, during the course of the transportation, was on assessee's account. The assessee was deducting tax at source under section 194C from the payments made to 'S' for transportation of goods. The Assessing Officer noted that the definition of rent under section 194-I also covered rent for equipment and proceeded to treat the payments made to 'S' as payments for hire of containers on which tax ought to have been deducted at source under section 194-I.
- He, thus, raised demand for short deduction of tax at source under section 201, read with section 194-I, and interest thereon.
- The Commissioner (Appeals) deleted said demand on the ground that the payments made by the assessee, in substance, were payments for transportation of goods and not mere rental of the containers.
- On revenue's appeal:

Held

- It is noted that the arrangement, for which the impugned payments are made, is an arrangement for transportation of goods from ship to the shore and *vice versa*, which, as the Assessing Officer himself puts it, 'unloading (and loading) the goods from the ships'. The use of containers is incidental to the whole process of transportation of goods between ship and shore and it cannot be considered as a standalone transaction in its own character. The question of tax deduction under section 194-I could have, if at all, arisen only when it was a rental simpliciter of the equipment. That is not even the case here. No doubt the bills have been raised on the basis of the size of the containers because irrespective of the weight of the container, it is size which determines how much space is taken by the goods transported.

- The billing on the basis of the size of the container cannot lead to the conclusion that the billing is for container rental rather than transportation of goods contained in the container. The very foundation of the impugned demand raised by the Assessing Officer is thus devoid of any legally sustainable foundation. The activity, for which the impugned payments are made, is the activity of transporting the goods which is a service in nature. The assessee was thus quite justified in deducting tax at source under section 194C.
- What is to be seen is whether use of the asset which is said to have been used, is incidental activity for attaining some other goal or is it the core activity which can be viewed on standalone basis in its own character. On the facts of this case, the use of containers is only incidental and cannot be viewed as a core or standalone activity. It is merely incidental to transportation of, or loading and unloading of, cargo. The payments cannot, therefore, be treated as constituting payment for rent of containers.
- In the present case, the assessee has filed tax returns of the recipient to demonstrate that the recipient has duly included the payments in question in the computation of his income, and duly discharged tax liability on the same. No infirmity is pointed out in the information so furnished. The Assessing Officer was, for this reason also, not justified in raising the demands in question. He had noted the contention of the assessee, in this respect, but left it at that. Such an approach cannot meet any judicial approval.
- In view of these discussions, as also bearing in mind entirety of the case, the conclusions of the Commissioner (Appeals) is upheld.
- In the result, revenue's appeal is dismissed.