

Sum paid for harvesting of sugarcane from farmers' fields would attract TDS even if farmer wasn't a party to contract

Summary – The High Court of Karnataka in a recent case of Ryatar Sahakari Sakkare Karkhane Niyamit., (the Assessee) held that where assessee, a co-operative sugar factory, entered into agreement with harvester/transporter for harvesting and transportation of sugarcane from farmers' fields with their consent to assessee's factory, TDS was to be deducted on payment to harvester/transporter for said activity

Facts

- The assessee, a co-operative society, was engaged in manufacture of sugar. It availed services of harvester/transporter for harvesting and transportation of sugarcane from farmers' fields to its factory. It did not deduct TDS on payments thereto on ground that (i) agreement between assessee and harvester was not legally enforceable contract since farmer in whose land the harvester worked and harvested sugarcane was not a party to a contract nor he ratified the contract and (ii) its factory was situated in remote area and it did not have benefit of proper tax consultants to advice with regard to statutory compliance.
- The Assessing Officer disallowed payments for want of TDS holding that said payments were pursuant to a valid contract and thus were liable for TDS.
- The Commissioner (Appeals) upheld order of the Assessing Officer.
- The Tribunal remitted matter for re-adjudication holding that it was not proved whether the amounts were paid before the year end and therefore the Assessing Officer should not disallow payments in view of *CIT v. Vector Shipping Services (P.) Ltd.* [2013] 38 taxmann.com 77/218 Taxman 93 (Mag.) (All.).
- On cross-appeals before the High Court:

Held

Agreement between assessee and harvester was a valid contract

- There is no dispute with regard to the fact that the assessee has entered into specific agreements for harvesting and transportation of sugarcane and the harvester has been admittedly paid harvesting and transportation charges by the assessee. This leads to an irresistible inference that the produce namely the sugarcane has been harvested and transported by the contractor. Harvesting and transportation can be effected only with consent of the owner of the sugarcane namely farmer.

Co-operative entity could not be granted waiver from compliance of statutory obligations

- Non-compliance of statutory obligations shall always have their own consequences to flow. Therefore, argument that creating additional burden of tax, penalty and interest would run counter to the interest of co-operative does not advance the case of the assessee any further.

Assessee had benefit of proper legal advice

- Assessee was represented by a Chartered Accountant before the Tax Authority. In addition, books of the assessee are audited as required under section 44AB. Deduction of tax at source under sections 194C, 194I and 194J are elementary aspects and shall be within the knowledge of all practicing Chartered Accountants. The assessee has spent large sums of money towards legal advice. Assessee has not complied with section 194J even while making payments towards professional charges to the advocates. It is fairly well settled that ignorance of law is no excuse. The Doctrine '*ignorantia juris neminem excusat*', has been interpreted by the Supreme Court and English Courts in several cases. There cannot be a universal, strict and straight jacket application of this doctrine.
- However, so far as strict application of the maxim '*ignorantia juris neminem excusat*' is concerned, the Supreme Court in the case of *Pankaj Jain Agencies v. Union of India* AIR 1995 SC 360 while repelling an argument that the petitioner did not have knowledge of an enactment held that a publication in a gazette is a sufficient notice.
- Assessee is involved in manufacturing Sugar and its byproducts in a large scale. Therefore, the assessee has no escape but to comply with various fiscal statutes such as Income Tax, Sales Tax, Customs Act, Central Excise Act etc., and labour laws such as Factories Act, ESI Act, PF Act etc. Further, there is clear evidence on record to show that the assessee has paid large sums of fee to the lawyers and availed services of chartered accountant also. These two aspects namely, evidence of expenditure towards fee paid to the lawyers and engagement of services of chartered accountant are sufficient circumstances to hold that non-deduction of tax at source is not due to ignorance of law.

Conclusion

- In the result, the appeals filed by the revenue are allowed and it is held that in the facts and circumstances of this case, the Tribunal was not correct in interpreting the language of section 40(a)(ia) to mean that the consequence of disallowance is attracted only in respect of amounts which remain payable on the last day of the financial year.