

Payment made to labour contractor to procure material on behalf of builder assessee won't attract sec. 194C TDS

Summary – The Bangalore ITAT in a recent case of Dhanashekar Muniswamy, (the Assessee) held that where assessee entered into a contract with a party to supply labourers for construction of flats, mere fact that assessee procured materials also through said contractor without any profit markup involved therein for contractor, it could not be regarded as a case of composite work contract and, thus, assessee was not required to deduct tax at source while making reimbursement of cost of materials supplied

Facts

- The assessee was carrying on the business of real estate developer. It entered into a labour contract with one 'V' for supply of labourers for constructing an apartment.
- During the construction of the said apartment, the materials were also procured through the labour contractor.
- In course of assessment, Assessing Officer noted that assessee had not deducted tax at source while making payments to labour contractor for supply of materials.
- In response to query raised, the assessee explained that the said payment was in nature of reimbursement of expenses and, therefore, TDS was not required to be deducted on the said payment.
- The Assessing Officer did not accept the contention of the assessee and held that the contract in question was a composite work contract for construction of flat and, therefore, the assessee ought to have deducted tax at source even in respect of payment made for supply of material. In view of assessee's failure to do so, the Assessing Officer disallowed payments in question under section 40(a)(ia).
- The Commissioner (Appeals) confirmed said disallowance.
- On second appeal:

Held

- It is clear from the details of the payments that the assessee made the payments under two heads, one for labour charges and another for the supply of material. The Assessing Officer held that payment was made as a composite payment under the contract agreement and, therefore, the provisions of section 194C are applicable in this case. The contract in question was entered into by the assessee and the labour contract or for supply of the labour. It is also specifically provided under the contract in question that the assessee shall pay the contractor Rs. 34 lakhs for providing labour for construction of the apartments in question.

- The assessee has explained that to avoid any dispute on the quality of the material to be used in the construction, it procured the material through the contractor. Therefore, it is manifest from the record and particularly from the contract that the contract in question was exclusively for supply of labour in the construction of the apartments and therefore the material procurement was outside the agreement in question.
- It is also found that the invoices for purchase of material in question was in the name of the assessee and, therefore, the contractor has a limited role of inspecting the quality of material in procurement of the material. It is not the case of the revenue that the contractor has charged anything for the purpose of procurement of the material used in the construction. The payment made by the assessee is only the cost of the material purchased and, therefore, there was no element of any income or profit of the contractor in respect of the procurement of material in question.
- It was found that the contract agreement in question is only in respect of labour charges for a fixed amount and further the material purchased through the contract was in the name of the assessee as the invoices were issued by the vendor of the material in the name of the assessee. In these undisputed facts and circumstances, this payment for supply of material - cannot be attributed as a part of the contract charges under the work contract and, therefore, the provisions of section 194C are not applicable on such payment.
- When the payment in question was not forming part of the work contract and it was only a reimbursement of purchase of material that too in the name of the assessee, provisions of section 194C were not applicable on such payment. Accordingly the impugned disallowance is not justified and the same is deleted.