Continuous payments made to transporters would be aggregated to consider TDS limit under sec. 194C

Summary – The Bangalore ITAT in a recent case of Sri Shivamurthy (the Assessee) held that Where assessee engaged in transportation of iron ore, obtained services of various transporters, since hiring of transporter was not on isolated occasion but it was for continuous transportation of iron ore and, moreover, rate of transportation was agreed between parties on basis of quantity, payments made to particular transporter of iron ore during year under consideration had to be aggregated for purpose of invoking section 194C(3)

Facts

- The assessee was engaged in the transportation of iron ore on behalf of 'M' Ltd., Bangalore from mines to different ports.
- In the course of assessment proceedings, the assessee submitted lorry-wise details of transportation charges debited in the accounts, date of charges paid/debited, lorry number, amount paid to each truck, etc.
- The Assessing Officer also obtained the details of the amount paid to a particular transport operator exceeding Rs. 50,000 during the whole year and found that the assessee had not deducted tax at source while making payment to said transporter.
- He thus opined that the assessee violated provisions of section 194C(3) and, consequently, payments made to said transporters were disallowed under section 40(*a*)(*ia*).
- The assessee challenged the action of the Assessing Officer contending that the payment against each bill/GR to each truck had to be considered as a separate contract and therefore the individual payment to each transporters being less than Rs. 50,000, TDS was not required under section 194C.
- The Commissioner (Appeals) rejected the assessee's plea and confirmed disallowance made by the Assessing Officer.
- On second appeal:

Held

- The Assessing Officer during the appellate proceedings has examined the details of transportation. These details have not been disputed by the assessee. The assessee has given the details of truck number and trip of each truck in the assessment order. It is not a case of hiring transporter by the assessee for completion of a particular task. Transporters were hired by the assessee for continuous transportation of iron ore from mines to different ports. Therefore the act of transportation which was undertaken by the assessee and was got done through hiring of other transporters is continuous business activity of the assessee throughout the year. Further the payment has been made by the assessee as per the rate agreed between the assessee and transporters per M.T. basis and not on the basis of per trip per lorry. Therefore though the payment has been splitted by

© 2017, Tenet Tax & Legal Private Limited

separate invoices however, the basis of payment is per M.T. and therefore per trip per truck becomes irrelevant for the purpose of payment and it is only a method/modus of making the payment as per the convenience of the parties.

- In the case in hand the hiring of the transporter was not on isolated occasion but it was for continuous transportation of iron ore mineral to ports and further the agreement between the assessee and the transporter is based on per M.T. transportation. Therefore, the rate of transportation was agreed between the parties on the basis of the quantity and not on the basis of per trip. Accordingly, the payment made to the particular transporter for transportation of iron ore from mines to ports during the year under consideration has to be aggregated for the purpose of section 194C(3) of the Act. In this case, the Assessing Officer has only aggregated the amount paid in respect of a particular truck and there may be a case that more than one truck has been hired by the assessee from a particular transporter. Accordingly, there is no merit or substance in the contention raised by the assessee.
- As regards the alternative plea that the amendment to section 40(*a*)(*ia*) by the Finance Act, 2014 has to be considered with retrospective effect, it is pertinent to note that in the amendment by the Finance Act, 2014 the legislature has specifically mentioned that the said amendment is effective from 1-4-2015. In the ordinary circumstances when an amendment has been specifically brought into statute with effect from a specific date then the same cannot be considered as retrospective in nature until and unless the said amendment is for the purpose of supplying an obvious omission in a former legislation or to explain a former legislation. Therefore it is clear that only in the case where the amendment is brought into statute for supply of omission in the existing legislation or it is explanatory in nature it can be considered retrospective.
- This is not the case of the assessee that amendment in the provisions of section 40(*a*)(*ia*) discriminates different assessees for the same assessment year. Therefore the amendment to section 40(*a*)(*ia*) has been brought prospective with effect from 1-4-2015 and the same cannot be considered as retrospective.
- In the result, appeal of assessee is dismissed.

© 2017, Tenet Tax & Legal Private Limited