

Purchase of goods as per given specification isn't a works contract without supply of material to seller

Summary – The Ahmedabad ITAT in a recent case of Aroma De France, (the Assessee) held that where assessee purchased printed packing material from a supplier for purpose of packing of its finished products and provided only specification for such supply and no raw material was supplied by it to supplier, transaction was in pursuance of a contract for 'sale' and not a contract for 'work' as alleged and thus, provisions of section 194C did not get triggered

Facts

- During assessment proceedings, a survey action was carried out at the premises of the assessee wherein it was noted that the assessee was in possession of huge stock of printed packing material. It was noticed by the revenue that the assessee had fixed vendors to carry out printing as per exact specifications of the assessee. Thus, the revenue claimed that the transaction towards obtaining the packing material from the suppliers was in the nature of contract rather than in the nature of purchase of material.
- The Assessing Officer recorded certain queries raised in survey concerning the issue in the assessment order and also placed reliance on circular No.715 dated 8-8-1995. He finally concluded that the transactions on account of printed packing material was covered within the meaning of section 194C. He, thus, found that the expenditure incurred on printed packing material was liable for TDS obligations in terms of section 194C which had not been complied with. He, accordingly, invoked section 40(a)(ia) and disallowed the aforesaid payment for non-deduction of TDS.
- On appeal, the Commissioner (Appeals) concluded that impugned transactions on account of supply of printed packing material to the assessee was in pursuance of a 'contract for sale' and not a 'contract for work' as alleged. He held that the action of the Assessing Officer in disallowing the expenditure incurred by the assessee towards printed packing material for non-deduction of tax at source under-section 194C was unsustainable in law and, accordingly, reversed the action of the Assessing Officer.
- On appeal:

Held

- The contention advanced on behalf of the assessee was that section 194C would apply to a person responsible for paying any sum to any recipient for carrying out any work including supply of labour for carrying out any work in pursuance of a contract would be under statutory obligation to deduct TDS at a certain percentage of the contract as specified in aforesaid provision. Ostensibly, obligation under section 194C towards expenditure incurred arises out of 'carrying out any work'. As noted, expression 'work' specifically includes supply of product as per specific requirement of customer; however, subject to a caveat. The definition 'work' seeks to include only those kind of supply as per specifications of a customer which are made by using material purchased from such customer. It is

undisputed fact in the instant case that the supply of printed packing material is the responsibility and the supplier without involving any cross-supply of raw material from the assessee. Such phraseology employed in the provision of the statute to include supply as per specification by using the material supplied by the assessee gives a resounding impression that supply of packing material *albeit* as per the requirement and specification of the customer but without seeking supply material from the customers stands excluded from the scope of expression 'work' as provided in the aforesaid provision.

- The Assessing Officer has harped on the fact that the assessee has right of rejection in case the specified work of printed material is not done as per the specifications provided by the assessee imparts such transactions with the character of 'contract of work'. There is no merit in such plea. Even ordinary purchase which does not suit the requirement of customer can be rejected. Such simple and ordinary stipulations for supply of packing material as per exact specification of such magnitude as involved in the present case are ordinary feature of a contract of sale *per se*. Such typical condition will not alter the character and complexion of contract of 'supply of goods' to a 'contract of work' *per se*.
- Circular No.715 dated 8-8-1995, In question as to whether section 194C would apply in respect of supply of printed material as per prescribed specifications was noted in affirmative by the apex body for the Direct Taxes. However, in the same vain, it is noted that expression 'work' is now similarly defined in clause (iv) of the substituted *Explanation* by the amendment carried out by the Finance (No.2) Act, 2009, with effect from 1-10-2009 The Commissioner (Appeals) has dealt that the objections of the revenue with regard to the aforesaid CBDT Circular in great length and distinguished the situation prevailing in the aforesaid impugned assessment year 2012-13 with reference to several judicial precedents.
- From the invoices raised by the supplier it is noted that the printed packing material so supplied to the assessee are subjected to various taxes *viz.* excise duty, VAT, and CST on the sale price. Ostensibly, it is the ownership of the printed packing material which is passed on to the assessee on delivery of the goods by the vendor by a sale contract. Thus, in the totality of the circumstances, the transaction on account of supply of printed packing material to the assessee was in pursuance of a contract for a 'sale' and not a contract for 'work' as alleged. Consequently, provisions of section 194C do not get triggered in the facts of the case. Hence, section 40(a)(ia) has no application in the given facts. The disallowance made by the Assessing Officer was thus, unwarranted.