

Provisions of Sec. 194C couldn't be triggered in absence of any contract to get work done

Summary – The High Court of Gujarat in a recent case of Swastik Construction, (the Assessee) held that where in absence of any contract entered by assessee with a specific person to get any work done by such person, provisions of section 194C would not be attracted and assessee would have no liability to deduct TDS

Facts

- The assessee was engaged in the construction industry. Works were carried out by casual workers who were floating and moving from one place to another. The assessee handed over the labour payments to one or two persons on the site for being disbursed among the labours and had not availed the services of a labour contractor.
- The Assessing Officer made disallowance of payment made under section 40(a)(ia) on the ground that the assessee had failed to deduct tax at source on the payment of labour charges to the alleged headman/contractors of labour supplier.
- The Commissioner (Appeals) held that labour charges being direct expenses, were covered under section 28(1) and did not fall within ambit of section 40(a)(ia) and deleted the disallowance.
- On further appeal, the Tribunal affirmed the order of the Commissioner (Appeals).
- On appeal to the High Court:

Held

- In the impugned order, the Tribunal has observed that for the purpose of invoking section 194C of the Act, there has to be a relation of contractor and contractee between the assessee and the head of the labourers. In the present case, the assessee had merely handed over the labour payments to one or two persons on the site for being disbursed among the labourers and had not availed the services of a labour contractor and was, therefore, not required to deduct any tax at source on such payments and confirmed the deletion made by the Commissioner (Appeals).
- Section 194C is attracted when any payment is made for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person. In the facts of the present case there is no contract between the assessee and any specified person for carrying out any work as contemplated in the section. The assessee had got the work done directly through labourers and had merely paid them through the head labourer. In the absence of any contract to carry out any work with a specified person, the provisions of section 194C would not be attracted and hence there would be no liability to deduct tax at source so as to attract the provisions of section 40(a)(ia). The Tribunal, therefore, did not commit any error in

confirming the order passed by the Commissioner (Appeals). No question of law can be said to arise in relation to this ground of appeal.