

No withholding taxes from freight paid to foreign shipping co. which was assessed under sec. 172

Summary – The Ahmedabad ITAT in a recent case of Steelco Gujarat Ltd., (the Assessee) held that Whether as long as ship, in respect of which freight payments are made, is owned or chartered by non-resident or entity which is where provisions of section 172 are applicable, provisions of section 195 or 194C cannot be invoked

Facts

- During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee had made payments in respect of freight without deduction of tax at source. The Assessing Officer thus disallowed said payment under section 40(a)(ia) of the Act.
- In appellate proceedings, assessee raised a plea that in terms of [Circular No. 723, dated 19-9-1995](#) the provisions of sections 194C and 195 were not applicable to freight payments.
- The Commissioner (Appeals), however, was not swayed by said submission. He upheld the action of the Assessing Officer.
- On second appeal:

Held

- In view of the [Circular No. 723, dated 19-9-1995](#), as long as the payment is made to a non-resident in respect of shipping business, the tax deduction requirement under sections 194C and 195 does not come into the play. It is so that the reason that CBDT in its wisdom has been considerate enough to realize that there is a strong and effective mechanism for recovering tax dues in respect of income embedded in freight payment made to the non-resident shipping company. The scheme of section 172 permits a vessel owned by non-resident owner or charterer to leave Indian port only upon taking care of dues of Indian authorities in respect of tax on income embedded in freight receipts.
- It is also elementary that under section 119 the CBDT has the powers to relax rigour of law in appropriate cases and once the CBDT does so the relaxation so given is to be implemented by the field authorities in letter and in spirit. In effect thus, even if there is a deviation from the strict legal provisions by virtue of a CBDT Circular, such permitted deviations are to be duly respected and honoured by the field authorities.
- In view of this analysis, when one goes through the Circular No.723 (*supra*), it is found that it is a conscious decision of the Board that sections 194C and 195 will not apply to the situations which are covered by section 172. In case of a ship owned or chartered by non-resident company, provisions of section 172 undisputedly come into play. Accordingly, as long as the ship, in respect of which

freight payments are made, is owned or chartered by non-resident or entity which is where provisions of section 172 are applicable, the provisions of section 195 or 194C cannot be invoked.

- Upon careful perusal of the aforesaid Board Circular, one is unable to find any reference to suggest that this relaxation is contingent upon the assessee being able to produce evidence of assessment under section 172 in respect of such non-resident. To that extent, therefore, the stand of the Commissioner (Appeals) cannot be approved. As long as the assessee can demonstrate that the payment is made in respect of freight to non-resident shipping companies, the assessee does not have any tax withholding obligation under section 195 or section 194C. However, in the present case, it appears that complete details of invoices to the satisfaction of the Assessing Officer have not been furnished before the Assessing Officer or before the Commissioner (Appeals). There is at best partial compliance of this requirement.
- In view of these discussions as also bearing in mind entirety of the case, the matter deserves to be remitted to the file of Assessing Officer with the direction that as long as the assessee can demonstrate that the payment is made to a non-resident directly or through authorized agents and the payment is in respect of the freight, the Assessing Officer would not make any disallowance under section 40(a)(ia) on account of such payments. The assessee is not under any obligation to give evidence in respect of actual collection of tax from the non-resident shipping company under section 172 of the Act. All other contentions, not specifically adjudicated upon above, remain open. With these directions, matter stands restored to the Assessing Officer.
- In the result, appeal is allowed for statistical purposes.