

Sum paid to 'foreman' who procured labours at short notice didn't require sec. 194C TDS

Summary – The Visakhapatnam ITAT in a recent case of A. Kasiviswanadham, (the Assessee) held that Payment to shipping labour group leaders (maistries) does not attract TDS provisions and, consequently, no disallowance is called for under section 40(i)(ia)

Facts

- The assessee was engaged in the business of transport and other allied shipping activities. The nature of the work of the assessee requires lot of labour with in short notice of time and depends on the arrival of the cargo. The assessee had incurred labour expenses and the payments were made through maistries who procured the labour as per the need of the assessee.
- The Assessing Officer inferred that there was a principal/agent relationship between the assessee and maistries and the transactions were in the nature of supply of labour contract and, accordingly, held that such payments are liable for deduction of tax at source under section 194C. Since the assessee had not made the TDS on labour charges, the Assessing Officer disallowed the expenditure under section 40(a)(ia).
- On appeal, the Commissioner (Appeals), the assessee argued that there were 33 individuals referred to in the assessment order as maistries. Their job was to procure the labours as and when required and the payments were made through one of the labour(maistry). The amounts debited to the accounts of the maistries were the actual payments made to the labourers and maistries had only facilitated the payments to the individual labour. The assessee further submitted before the Commissioner (Appeals) that there was no agreement in writing or oral between the assessee and the maistries and in the absence of any contract between both the parties, it cannot be construed that there exists any principal agent relationship/contract between them.
- The Commissioner (Appeals) observed that the labour maistries were not the labour contractors and the payments made to labour maistries did not partake the character of contract payment as contemplated under section 194C. He, accordingly, held that the payments made to the maistries did not attract deduction of tax at source under section 194C and, directed the Assessing Officer to delete the addition.
- On appeal to the Tribunal:

Held

- The assessee is engaged in labour oriented industry which requires the labour as and when the ship arrives with in a short notice of time. The assessee identified some of the maistries or group leaders to procure the labour who can work as per the requirement of the job. As stated by the assessee, the group leaders are only responsible for procuring the labour and work was got done by the assessee under their personal supervision. As at the end of the week, the payment to the labour was distributed through the group leaders who are also called maistries for the sake of convenience

instead of making the payment individually. There was no written or oral agreement or contract between the maistries and the assessee for getting the work done through the maistry or to supply the labor. As argued by the assessee, maistry is first among four to five persons of a group of labourers and for the sake of convenience the assessee has made the payment to the group leader who in turn paid the amount to the remaining labourers in the group. Neither there was a contract for supply of labour nor there was contract for getting the work done through labour by the assessee with the maistries. This fact was established with the receipts obtained from the maistries who distributed the amounts to the respective labourers.

- The Assessing Officer simply considered the payments made to the group leaders and landed in a presumption that there was contract in existence for supply of labour between the maistries and the assessee. The Assessing Officer did not examine the maistries before coming to such conclusion. As per the provisions of section 194C, there must be contract for deduction of TDS including supply of labour for carrying out any work. In the instant case, the revenue has not established that there was a contract in existence between the assessee and the maistries.
- There has to be a relation of contractor and contractee between the assessee and the head of labourers. Merely handing over the labour payments to one or two persons on the site for distributing the amount among the labours does not partake the character of availing the service of the labour contractor and hence, does not attract the provisions of TDS.
- In the instant case, there is no dispute that the payment is genuine. There is no dispute with regard to the fact that the assessee has got the work done by the labourers under their supervision. The department could not establish that there is express or implied contract between the assessee and maistries. Therefore, the payments made to the labour through maistries cannot be construed as a contract between the assessee and maistries and does not attract the TDS under section 194C and, consequently, no disallowance is called for under section 40(i)(ia).
- Gujarat High Court in the case of *Pr. CIT v. Swastik Constructions* [\[2018\] 254 Taxman 163/91 taxmann.com 10](#) has held that payment made to labour maistries does not attract the TDS and, consequently, no disallowance is called for under section 40(i)(ia). Accordingly, the order of the Commissioner (Appeals) is to be upheld.