



## No tax deduction at source under Section 194C of the Income-tax Act on freight charges reimbursed to the supplier

### Background

Recently, the Calcutta High Court in the case of Hightension Switchgears Private Limited<sup>1</sup> (the taxpayer) held that the taxpayer is not liable to deduct tax at source under Section 194C of the Income-tax Act, 1961 (the Act) on freight charges reimbursed to the supplier. While dealing with Section 194C of the Act, the High Court observed that the liability to deduct tax at source on the freight charges was that of the supplier while making payment to the transporter.

### Facts of the case

- The Income-tax Appellate Tribunal (the Tribunal) in the taxpayer's case observed that the taxpayer paid the freight charges as per invoices to the suppliers namely, M/s. Reliance Industries Ltd. (RIL) and M/s. Gulshan Sugars & Chemicals Ltd. On the said bills/invoices the name of the transporters was also mentioned through which the goods have been transported to the taxpayer.
- The said suppliers have supplied the goods to the taxpayer and as far as the transport of the said goods, the goods were transported to the taxpayer by acting as an agent on behalf of the taxpayer. The taxpayer has reimbursed the freight charges to the suppliers, who in turn have paid to the concerned transporters.
- The taxpayer had not deducted the tax at source under Section 194C of the Act in respect of freight charges reimbursed to the suppliers of goods. Accordingly, the Tribunal disallowed the payments under Section 40(a)(ia) of the Act.

### High Court's ruling

- The RIL sold the goods to the taxpayer and Reliance Logistics Limited (RLL) was the main contractor of the seller for transportation of materials by road from the plant.
- The RLL in its turn deputed various transporters for dispatch of materials to various locations. Delhi Assam Roadways Corporation Limited, whose name appears in all the seven invoices, was thus deputed by RLL. Delhi Assam Roadways Corporation Limited was a sub-contractor of RLL.
- The invoices have shown that the seller has realised from the taxpayer freight for the goods.
- Further on perusal of price list concerning freight, it appears that freight was payable by the seller of the goods to the goods transport agency.
- The seller under the contract of sale was bound to send the goods to the buyer. It was, therefore, for the seller to arrange for the necessary transport. The taxpayer has merely reimbursed the cost of transportation incurred by the seller.
- Therefore, the Tribunal was wrong in holding that the suppliers have supplied the goods to the taxpayer and as far as the transport of the said goods, the goods were transported to the taxpayer by acting as an agent on behalf of the taxpayer. Therefore, the taxpayer has reimbursed the freight charges to the suppliers, who in turn have paid to the concerned transporters. The said view of the Tribunal is patently wrong.

<sup>1</sup> Hightension Switchgears Private Limited v. CIT (ITA 8 of 2011) (Cal) – Taxsutra.com

- On reading of Section 194C of the Act, it was observed that the liability to deduct tax was that of the seller. In case seller is unable to show that it had made the deduction, Section 40(a)(ia) of the Act may be applied to it but not to the taxpayer.
- Even assuming that the Tribunal's view is conceptually correct, no other conclusion is possible. The agent being the supplier in this case admittedly paid to the transporters and also deducted tax at source. When the agent had complied with the provision, the principal cannot be visited with penal consequences. For one payment there could not have been two deductions.

### Our comments

The issue in this case was with respect to applicability of Section 194C of the Act to reimbursement of freight charges to suppliers. The Calcutta High Court held that in view of Section 194C of the Act the Tribunal was not correct in holding that (i) the goods were transported by the suppliers to the taxpayer by acting as an agent on behalf of the taxpayer. (ii) Reimbursement of the freight charges to the suppliers, who in turn have paid to the concerned transporters is liable for deduction of tax at source under Section 194C of the Act. While dealing with Section 194C of the Act, the High Court observed that the liability to deduct tax at source on the freight charges was that of the supplier while making payment to the transporter.

The Rajasthan High Court in the case of *Shree Choudhary Transport Company*<sup>2</sup> observed that the taxpayer had entered into a contract with a cement factory to transport cement. The taxpayer hired the services of the truck owners, as sub-contractors. The Rajasthan High Court held that the goods received were sent through truck owners by the taxpayer. There was no privity of direct contract between the truck owners and the cement factory. According to the contract between the taxpayer and the cement factory, it was the taxpayer's responsibility to transport the cement. Accordingly, Section 194C was applicable to the taxpayer.



<sup>2</sup> *Shree Choudhary Transport Company v. ITO* [2009] 225 CTR 125 (Raj)

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