IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

I.T.A. Nos.224/Coch/2016
Assessment Year : 2011-12

The Assistant Commissioner of Income-tax, Kottayam.	**Vs.**	St. Mary's Rubbers Private Ltd., 54B/IX, Parathodu Panchayath, Koovapally P.O., Kanjirapally Kottayam-686 518. [PAN: AAHCS 5763Q]
(Revenue-Appellant)		**(Assessee-Respondent)**

Revenue by	Shri A. Dhanaraj, Sr. DR
Assessee by	Shri Prasanth Srinivas,CA

Date of hearing	14/06/2017
Date of pronouncement	15/06/2017

O R D E R

Per ABRAHAM P.GEORGE, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against an order dated 10/03/2010 of the CIT(A).

2. Revenue, through its grounds, is aggrieved on the deletion of disallowance of Rs.60,80,063/- made by the Assessing Officer u/s. 40(a)(ia) of the Income Tax Act, 1961 (in short 'the Act') for non deduction of tax at source on payments made by the assessee to C&F agents.

3. Facts apropos are that the assessee, a manufacturer and seller of centrifuged latex, had filed its return of income for the impugned assessment year, declaring income of Rs.70,89,989/-. An assessment u/s. 143(3) was completed on 21/12/2011, computing total income of the assessee at Rs.77,87,140/-. Thereafter, the assessment was reopened for a reason that shipping freight of Rs.9,70,828/- was paid without deducting tax at source. During the course of assessment proceedings, it was noted by the Assessing Officer that assessee had paid Rs.60,80,063/- as clearing and forwarding charges to one M/s. Mark Logistics. Claim of the assessee before the Assessing Officer was that these were reimbursement of expenditure incurred by the said agent. As per the assessee, said C&F agent was incurring expenditure on its behalf and therefore, it was not liable to deduct tax at source. However, Assessing Officer was not impressed. According to him, the assessee should have deducted tax at source on the payments effected to M/s. Mark Logistics. Since assessee had not deducted such tax, Assessing Officer applied section 40(a)(ia) of the Act and made a disallowance of Rs.60,80,063/-.

4. Aggrieved, assessee moved in appeal before the CIT(A). Before the CIT(A), assessee produced a statement from M/s. Mark Logistics According to this statement, the amounts given by the assessee to M/s. Mak Logistics were reimbursement of expenditure. In the said statement, M/s. Mark Logistics certified

that expenditure was incurred on behalf of the assessee and not C&F charges. They also stated that they had deducted tax at source while effecting payments to various persons with whom they had entrusted the work of the assessee. Ld. CIT(A) sought a remand report from the Assessing Officer. As per the CIT(A), in the remand report, the Assessing Officer has admitted that amounts paidby assessee fo M/s. mark Logistics were re-imbursements. CIT(A) held that payment of Rs.60,80,063/- made by the assessee to M/s. Mark Logistics were in the nature of reimbursement of expenditure and the payments received by them were not C&F charges. Relying on the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Narmada Valley Fertilizer Co. Ltd. (361 ITR 0192), the CIT(A) held that for re-imbursement of expenditure, deduction of tax was not required. He deleted the disallowance made u/s. 40(a)(ia) of the Act.

5. Ld. DR, assailing the order of the CIT(A), submitted before us that assessee had paid Rs.60,80,063/- for the services received by the assessee from M/s. Mark Logistics, which were contractual in nature. According to him, these were not reimbursement of expenditure and even if it was reimbursement, as per the Ld. DR, there would have been profit booking by M/s. Mark Logistics in-built in the billings. In his opinion, Assessing Officer has rightly considered the payments as liable for deduction of tax at source u/s. 194C of the Act. According to him, CIT(A), merely based on the submissions of the assessee, had allowed the claim of the assessee. Reliance was placed on the judgment of the Hon'ble Jurisdictional High Court in the

case of CBDT vs. Cochin Goods Transport Association (236 ITR 993) and the judgment of the Hon'ble Apex Court in the case of Associated Cement Co. Ltd. vs. CIT and another (201 ITR 435).

6. In reply, Ld. AR submitted that the Delhi Bench of this Tribunal in the case of ITO vs. Deepak Bhargawa in I.T.A. No. 343/Del/2012 dated 13th November, 2014 had clearly held that section 194C would not be applicable for reimbursement of expenditure. As per the Ld. AR, facts of this case were very similar to that case. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in the case of DCIT vs. Dhanyaa Seeds (P) Ltd. (42 taxmann.com 277) and that of the Hon'ble Gujarat High Court in the case of Pri. CIT vs. Consumer Marketing (India) (P.) Ltd. (64 taxmann.com 16).

7. We have heard the rival submissions and perused the orders. Certificate issued on 23.08.2014 by M/s. Mark Logistics reads as under:

"St. Mary's Rubbers Private Ltd.,
54B/IX, Parathodu Panchayath,
Koovapally P.O., Kanjirapally
Kottayam-686 518.

Dear Sir, *23.08.2014*

Amounts re-imbursed by you towards expenditure incurred by us on your behalf during the financial year 2008-09 – clarification - regarding

During the financial year 2008-09 we have received the following amounts from you towards RE-IMBURSEMENT of expenditure incurred by us on your behalf, on which we have deducted tax at source, wherever applicable. Date wise list is enclosed separately.

Documentation charges	*10,854*
Postage, courier, grounding charges	*181,300*
Certificate of origin, invoice legislation etc.	*24,300*
Transportation by road in goods carriage	*2,681,528*
Self stuffing charges	*80,400*
Sundry charges	*217,700*
Tally wages paid	*44,500*
Handling charges paid	*489,497*
Other expenses	*2,349,984*
Total (Rs.)	*6,080,063*

Yours faithfully,

(Authorized signatory
(Name and designation
For MARK LOGISTICS
sd/-
Shaji Kurian
Manager

Enclosure List of amounts reimbursed by you as stated above"

7. M/s. Mark Logistics has also given details of bills, copies of which are placed in paperbook pgs. 23 to 32 and these also clearly show that they were claiming reimbursement of expenditure incurred by them on behalf of the assessee. In the case of Deepak Bhargava (supra), where also the question was disallowance u/s. 40(a)(ia) of the Act for non deduction of tax at source on payments effected to

clearing and forwarding agents, what was held by the Tribunal is reproduced hereunder:

> *"6.1 The CIT(A) has categorically held that the amount of Rs.18,16,637/- is nothing but reimbursement of expenses incurred by the payee on behalf of the assessee. Copies of the few bills raised by the two agencies were placed on record at Pages 40 to 66 of the assessee's paper book. On perusal of the same, it is clearly evident that these are nothing, but reimbursement of expenses incurred by the clearing agencies on behalf of the assessee. Therefore, these amounts did not constitute income of the clearing agent and no TDS was required to made thereon. Therefore, the provision of Section 194C will not be applicable in respect of reimbursement of expenses."*

The Tribunal, while giving the above decision, had also considered the effect of CBDT Circular No.715 dated 08.08.1995 and also ruled that the said Circular was applicable only where consolidated bills were raised inclusive of contractual payments and re-imbursement of actual expenditure. Same view was taken by the Bangalore Bench of this Tribunal in the case of DCIT vs. Dhanyaa Seeds (P) Ltd. (supra). Hon'ble Gujarat High Court in the case of Pr. CIT vs. Consumer Marketing (India) (P.) Ltd.(supra) held that when separate bills are there for reimbursement of expenditure received by C&F agent, TDS was not required to be made on reimbursement. It is an admitted position in the case before us that assessee had in addition to reimbursement of expenses, separately paid brokerage and commission Rs.2,52,410/- which was subjected to disallowance in the original assessment. Considering all these, we are of the opinion that the CIT(A) was justified in deleting the disallowance made u/s. 40(a)(ia) of the Act. We do not find any reason for interference with the order of the CIT(A) .

8. In the result, the appeal of the Revenue stands dismissed.

Pronounced in the open court on 15-06-2017.

sd/-	sd/-
(GEORGE GEORGE K.)	(ABRAHAM P. GEORGE)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 15th June, 2017
GJ
Copy to:
1. St. Mary's Rubbers Private Ltd., 54B/IX, Parathodu Panchayath,Koovapally P.O., Kanjirapally, Kottayam-686 518.
2. Assistant Commissioner of Income-tax, Kottayam.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

Income Tax Appellate Tribunal - Delhi
Deepak Bhargawa, New Delhi vs Department Of Income Tax on 13 November, 2014

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'B : NEW DELHI

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.343/Del /2012
Assessment Year : 2007-2008

Income Tax Officer Ward-39(2) R.No.236, C.R. Bldg., New Delhi	Vs.	M/s Deepak Bhargawa 24, New Market Qutab Road, Delhi-110006 (PAN AADPB 9643 F)
(Appellant)		(Respondent)

Appellant by : Smt. Parminder Kaur, Sr. D.R.
Respondent by: Ms. Ruchika Jain, C.A.

ORDER

PER SHRI GEORGE GEORGE K, JM:

1. This appeal at the instance of the Department is directed against the CIT(A) order dated 14.11.2011. The relevant Assessment Year is 2007-08.

2. Though five grounds are raised in this appeal, all the grounds, relates to the issue of disallowance of two payments of Rs.18,16,637/- and Rs.9,00,300/- by invoking the provision of Section 40(a)(ia) of the I.T. Act.

3. Brief facts of the case are as follows.

Assessment Year : 2007-2008 The assessee an individual is engaged in the business of Import & Trading in Electrical goods for the year in dispute. The return of income was filed on 31.10.2007 declaring income of Rs.1,99,892/-. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the Act. The scrutiny assessment u/s 143(3) of the Act was completed vide order dated 29.12.2009 by making the following two disallowances of expenditure by invoking provision of u/s 40(a)(ia) of the Act.

i) Disallowance u/s 40(a)(ia) on account of Rs.18,16,637/-.

non deduction of TDS on clearing and forwarding charges

ii) Disallowance on commission payments Rs.9,00,300/-

u/s 40(a)(ia) on account of purported default in timely deduction and deposit of TDS.

Total Rs.27,16,937/-

4. Aggrieved by disallowance of the above said expenditure, assessee filed an appeal before the First Appellate Authority. The CIT(A) allowed the appeal of the assessee. The relevant findings of the CIT(A) on the two issues reads as follows.

As regards disallowance of clearing and forwarding charges of Rs.18,16,637/-.

"I have carefully considered the contention of the assessing officer and written submission of the appellant. The assessing officer is not justified in invoking the provisions of section 194C & 195 of the IT Act and Assessment Year : 2007-2008 making a disallowance u/s 40a(ia) of the IT Act amounting to Rs.18,16,637/-. The case of the appellant is clearly covered by the provisions of section 172. Tax at source is to be deducted only from the income of the payee & not from the charges reimbursed to them. As per circular no. 715, if the payee has raised a single bill for his fees as well as for other charges, then tax has to be deducted from the entire bill amount which means if separate bills has been raised for reimbursement of expenses & for the services rendered by them the tax is required to be deducted only from the bill for the services rendered by the payee & reimbursements are not subjected to T.D.S.

In this case the appellant is receiving the material on Freight Prepaid basis (C&F). The foreign shipping companies were charging only the incidental charges like Port charges, Container payment, Stationery charges, License fees, Stamp charges, Bank charges, De-stuffing charges etc. These bills also include part payment of import duty paid by the appellant. Since Import Duty & Port charges are payment to Govt, as per provisions of law T.D.S. is not deductable. Other expenses which were reimbursed are also not subjected to T.D.S. In view of the facts and circumstances of the case the disallowance made by the Assessing Officer of Rs.18,16,637/- u/s 40a(ia) is uncalled for and is therefore deleted. This ground of appeal is allowed."

As regrds disallowance of commission on sales of Rs.900,300/- made u/s 40(a)(ia).

"I have gone through the order of the Assessing Officer and the written submission of the appellant and also perused the case laws relied upon by the appellant. In this case the appellant has deducted the tax also deposited the same within the stipulated time prescribed as per the provisions section 40(a)(ia). The Assessing Officer is unjustified in making a disallowance of Rs.9,00,300/-. Therefore, the disallowance made is deleted."

5. The Revenue being aggrieved is in appeal before us. The Ld. D.R. supported the order of the Assessing Officer. On the other hand, Ld. A.R. reiterated the submissions made before the Income

Tax Authority and relied on the findings of the CIT(A).

Assessment Year : 2007-2008

6. We have heard rival submission and perused the material on record. As regards the disallowance of Rs.18,16,637/- made by the AO, these were payments made to M/s Sai Dutta Clearing Agency and Sh. Kamal Sehgal. The aforesaid clearing and forwarding agencies had been raising two separate bills on the assessee namely:

> i) First bill in respect of the service charges of the agency provided to the assessee and on the said bill the assessee deducted tax and paid the same to government account on time.
>
> ii) The second bill was raised by above said clearing agencies pertains to reimbursement of expenses incurred by the agency on behalf of the assessee. These reimbursement of expenses the assessee has non deducted TDS. Hence, these payments were made subject matter of disallowance u/s 40(a)(ia) of the Act.

6.1. The CIT(A) has categorically held that the amount of Rs.18,16,637/- is nothing but reimbursement of expenses incurred by the payee on behalf of the assessee. Copies of the few bills raised by the two agencies were placed on record at Pages 40 to 66 of the assessee's paper book. On perusal of the same, it is clearly evident that these are nothing, but reimbursement of expenses incurred by the clearing agencies on behalf of the assessee. Therefore, these amounts did not constitute income of the clearing agent and no TDS was required to made thereon. Therefore, the provision of Section 194C will not be applicable in respect of reimbursement of expenses. 6.2 Circular No.715 dated 08.08.1995 was issued by CBDT on "Clarifications on various provisions relating to tax deduction at source Assessment Year : 2007-2008 regarding changes introduced through Fiannce Act, 1995". The said circular in reply to question no.30, provided as under:

"Sections 194C and 194J refer to any sum paid. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source."

6.3 The aforesaid circular was applicable only where the consolidated bills are raised for the gross amount inclusive of contractual payments as well as reimbursement of actual expenses. The same would therefore, not be applicable to the facts of the present case where bills are raised separately for the reimbursement of expenses incurred by payee.

6.4 The following judicial pronouncements support the view that circular No.715 (supra) will not have application, when bills are raised separately for reimbursement of expenses.

a. Hon. Jurisdictional (Delhi) Bench of ITAT in the case of "ITO Vs. Dr. Willmar Schwabe India (P.) Ltd. [2005] 3 SOT 71 (Delhi).

b. Hon. Rajkot Bench of ITAT in the case of DCIT Vs. Choice Sanitary Industries [2011] 9 taxmann.com 120 (Rajkot). 6.5. The Tribunal Bench of the Rajkot in the case of DCIT Vs. Choice Sanitary Industries (supra) held that:

"We have considered the rival submissions and gone through the material placed before us. The ld. DR relied upon the order of the Assessing Officer whereas the ld. AR relied upon the order of the CIT(A). We find that the main objections of the Assessing Officer in making the disallowance are that as per CBDT circular 715 dated 08.08.1995, the reimbursement of actual expenses cannot be deducted from the commission charges paid by the assessee. The ld. CIT(A) drawing support from the co-ordinate bench decision in the case of ITO v. Dr. Assessment Year : 2007-2008 Willmar Schwabe India (P) Ltd. [2005] 95 TTJ (Delhi) 53 wherein it has been held that the circular is applicable only in cases where the bills are raised for the gross amount inclusive of professional fees as well as reimbursement of actual expenses held that the circular was not applicable in the case of the assessee as C&F agent raised two separate bills, one for the commission and the other for the reimbursement of expenditure."

6.6 Similarly the jurisdictional Bench of the Tribunal in the case of ITO Vs. Dr. Willmar Schwabe India (P.) Ltd. (Supra) held as under: "After considering the rival submissions and perusing the relevant material on record, we find no infirmity in the impugned order of learned CIT(A) on this issue. It is observed that as agreed by and between the assessee company and M/s. Indochem Techno, Conslutants Ltd., a vehicle was to be provided by the assessee company to the said consultant for attending to its work and thus, the assessee company was to bear the vehicle expenses actually incurred by the said party. Bills for such expenses incurred by the said consultant were separately raised by them on the assessee company in addition to bills for fees payable on account of technical services and sine the amount of bills so raised was towards the actual expenses incurred by them, there was no element of any profit involved in the said bills. It was thus a clear use of reimbursement of actual expenses incurred by the assessee and the same, therefore, was not be the nature of payment covered by section 194J requiring the assessee to deduct tax at source therefrom. The CBDT Circular No. 715, dated 08.08.1995 relied upon by the Assessing Officer in support of his case on this issue was applicable only in the cases where bills are raised for the gross amount inclusive of professional fees as well as reimbursement of actual expenses and the same, therefore, was not applicable to the facts of the present case where bills were raised separately by the consultants for reimbursement of actual expenses incurred by them. As such, considering all the facts of the case, we are of the view that the provisions of section 194J were not applicable to the reimbursement of actual expenses and the assessee company was not liable to deduct tax at source from such reimbursement. In that view of the matter, we uphold the impugned order of learned CIT(A) on this issue and dismiss the relevant grounds of the Revenue's appeal "

Assessment Year : 2007-2008 6.7. In view of the aforesaid orders of the Tribunal, we hold that CIT(A) is justified in deleting the disallowance of Rs.18,16,637/- and we dismiss this ground of the Revenue.

7. As regards, the disallowance of Rs.9,00,300/-. The brief facts are as under:-

7.1 The assessee had entered into an agreement with the firm M/s Sangeeta Traders to provide commission on sales made to them. As per the terms of agreement, commission @ 1.5% of the sales was to be credited to the account of the firm at the end of the financial year i.e. on 31ST March of every year after deduction of tax at source. The assessee has followed this policy and credited commission of Rs.9,41,828/- to the account of M/s Sangeeta Traders on 31.03.2007. Tax on the aforesaid amount of commission was duly deducted u/s 194H on 31.03.2007 and deposited on 21.05.2007 to the credit of central government. The A.O. however, held that the assessee should have provided commission separately for a period upto Feb. 2007 and should have deducted and deposited T.D.S. thereon by 31.03.2007 disallowed a sum of Rs.900,300/- u/s 40(a)(ia) of the Act out of total amount of commission of Rs.9,41,828/- paid to M/s Sangeeta Traders.

7.2. The CIT(A) deleted the disallowance for the reason that the assessee has deposited the tax deducted within time stipulated as per the provision of Section 40(a)(ia). In the instant case, admittedly the tax has been paid well Assessment Year : 2007-2008 before the due date furnishing of the return u/s 139(1) of the Act. Hence, proviso 1 to Section 40(a)(ia) is applicable to the facts of this case. The proviso though it is applicable w.e.f. 01.04.2010, several judicial pronouncements have held the said proviso to be retrospective. Hence, we hold the CIT(A) is justified in deleting the disallowance of Rs.9,00,300/-. It is ordered accordingly.

8. In the result, appeal of the Revenue is dismissed.

The decision was pronounced in the open court on 13TH November, 2014.

Sd/-	Sd/-
(J.S. REDDY)	(GEORGE GEORGE K.)
Accountant Member	Judicial Member

Dated: 13th November, 2014.

Aks/-

Copy forwarded to
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

1119. Clarifications on various provisions relating to tax deduction at source regarding changes introduced through Finance Act, 1995

The Finance Act, 1995, has enlarged the scope of income-tax deduction at source by making various amendments. In regard to the changes introduced through the Finance Act, 1995, a number of queries have been received from the various associations and professional bodies on the scope of tax deduction at source. It would be desirable to clarify the doubts by issuing a public circular in the form of question answers as under :

Question 1 : What would be the scope of an advertising contract for the purpose of section 194C of the Act?

Answer : The term 'advertising' has not been defined in the Act. During the course of the consideration of the Finance Bill, 1995, the Finance Minister clarified on the Floor of the House that the amended provisions of tax deduction at source would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media, which includes both print and electronic media. The deduction is required to be made at the rate of 1 per cent. It was further clarified that when an advertising agency makes payments to their models, artists, photographers, etc., the tax shall be deducted at the rate of 5 per cent as applicable to fees for professional and technical services under section 194J of the Act.

Question 2 : Whether the advertising agency would deduct tax at source out of payments made to the media ?

Answer : No. The position has been clarified in the answer to question No. 1 above.

Question 3 : At what rate is tax to be deducted if the advertising agencies give a consolidated bill including charges for art work and other related jobs as well as payments made by them to media ?

Answer : The deduction will have to be made under section 194C at the rate of 1 per cent. The advertising agencies shall have to deduct tax at source at the rate of 5 per cent under section 194J while making payments to artists, actors, models, etc. If payments are made for production of programmes for the purpose of broadcasting and telecasting, these payments will be subjected to TDS @ 2 per cent. Even if the production of such programmes is for the purpose of preparing advertisement material, not for immediate advertising, the payment will be subject to TDS at the rate of 2 per cent.

Question 4 : Where the tax is required to be deducted at source on payments made directly to the print media/Doordarshan for release of advertisements ?

Answer : The payments made directly to print and electronic media would be covered under section 194C as these are in the nature of payments for purposes of advertising. Deduction will have to be made at the rate of 1 per cent. It may, however, be clarified that the payments made directly to Doordarshan may not be subjected to TDS as Doordarshan, being a Government agency, is not liable to income-tax.

Question 5 : Whether a contract for putting up a hoarding would be covered under section 194C or 194-I of the Act ?

Answer : The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sub lets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not under section 194C of the Act.

Question 6 : Whether payment under a contract for carriage of goods or passengers by any mode of transport would include payment made to a travel agent for purchase of a ticket or payment made to a clearing and forwarding agent for carriage of goods ?

Answer : The payments made to a travel agent or an airline for purchase of a ticket for travel would not be subjected to tax deduction at source as the privity of the contract is between the individual passenger and the airline/travel agent, notwithstanding the fact that the payment is made by an entity mentioned in section 194C(1). The provision of section 194C shall, however, apply when a plane or a bus or any other mode of transport is chartered by one of the entities mentioned in section 194C of the Act. As regards payments made to clearing and forwarding agent for carriage of goods, the same shall be subjected to tax deduction at source under section 194C of the Act.

Question 7 : Whether a travel agent/clearing and forwarding agent would be required to deduct tax at source from the sum payable by the agent to an airline or other carrier of goods or passengers ?

Answer : The travel agent, issuing tickets on behalf of the airlines for travel of individual passengers, would not be required to deduct tax at source as he acts on behalf of the airlines. The position of clearing and forwarding agents is different. They act as independent contractors. Any payment made to them would, hence, be liable for deduction of tax at source. They would also be liable to deduct tax at source while making payments to a carrier of goods.

Question 8 : Whether section 194C would be attracted in respect of payments made to couriers for carrying documents, letters, etc. ?

Answer : The carriage of documents, letters, etc., is in the nature of carriage of goods and, therefore, provisions of section 194C would be attracted in respect of payments made to the couriers.

Question 9 : In case of payments to transporters, can each GR be said to be a separate contract, even though payments for several GRs are made under one bill ?

Answer : Normally, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for a specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the TDS.

Question 10 : Whether there is any obligation to deduct tax at source out of payment of freight when the goods are received on "freight to pay" basis ?

Answer: Yes. The provisions of tax deduction at source are applicable irrespective of the actual payment.

Question 11 : Whether a contract for catering would include serving food in a restaurant/sale of eatables?

Answer : TDS is not required to be made when payment is made for serving food in a restaurant in the normal course of running of the restaurant/cafe.

Question 12 : Whether payment to a recruitment agency can be covered by section 194C ?

Answer : Provisions of section 194C apply to a contract for carrying out any work including supply of labour for carrying out any work. Payments to recruitment agencies are in the nature of payments for services rendered. Accordingly, provisions of section 194C shall not apply. The payment will, however, be subject to TDS under section 194J of the Act.

Question 13 : Whether section 194C would cover payments made by a company to a share registrar ?

Answer : In view of answer to the earlier question, such payments will not be liable for tax deduction at source under section 194C. But these will be liable to tax deduction at source under section 194J.

Question 14 : Whether FD commission and brokerage can be covered under section 194C ?

Answer : No

Question 15 : Whether section 194C would apply in respect of supply of printed material as per prescribed specifications ?

Answer : Yes.

Question 16 : Whether tax is required to be deducted at source under section 194C or 194J on payment of commission to external parties for procuring orders for the company's product ?

Answer : Rendering of services for procurement of orders is not covered under the provisions of section 194C. However, rendering of such services may involve payment of fees for professional or technical services, in which case tax may be deductible under the provisions of section 194J.

Question 17 : Whether advertisement contracts are covered under section 194C only to the extent of payment of commission to the person who arranges release of advertisement, etc., or whether deduction is to be made on the gross amount including bill of media ?

Answer : Tax is to be deducted at the rate of 1 per cent of the gross amount of the bill.

Question 18 : Whether deduction of tax is required to be made under section 194C for sponsorship of debates, seminars and other functions held in colleges, schools and associations with a view to earn publicity through display of banners, etc., put up by the organisers ?

Answer : The agreement of sponsorship is, in essence, an agreement for carrying out a work of advertisement. Therefore, provisions of section 194C shall apply.

Question 19 : Whether deduction of tax is required to be made on payments for cost of advertisement issued in the souvenirs brought out by various organisations ?

Answer : Yes.

Question 20 : Whether payments made to a hotel for rooms hired during the year would be of the nature of rent ?

Answer : Payments made by persons, other individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I.

Question 21 : Whether the limit of Rs. 1,20,000 per annum would apply separately for each co-owner of a property ?

Answer : Under section 194-I, the tax is deductible from payment by way of rent, if such payment of the payee during the year is likely to be Rs. 1,20,000 or more. If there are a number of payees, each having definite and ascertainable share in the property, the limit of Rs. 1,20,000 will apply to each of the payee/co-owner separately. The payers and payees are, however, advised not to enter into sham agreements to avoid TDS provisions.

Question 22 : Whether the rent paid should be enhanced for notional income in respect of deposit given to the landlord ?

Answer : The tax is to be deducted from actual payment and there is no need of computing notional income in respect of a deposit given to the landlord. If the deposit is adjustable against future rent, the deposit is in the nature of advance rent subject to TDS.

Question 23 : Whether payments made by company taking premises on rent but styling the agreement as a business centre agreement would attract the provisions of section 194-I ?

Answer : The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (*i*) of *Explanation* to section 194-I.

Question 24 : Whether in a case of a composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover, section 194-I of the Act would be attracted ?

Answer : If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof.

Question 25 : Whether the receipts prior to 1-7-1995 are to be aggregated to determine limit of Rs. 20,000 for each financial year ?

Answer : Clause (*B*) of proviso to section 194J(1) makes it clear that tax shall be deducted at source if the aggregate sums credited or paid or likely to be credited or paid during the financial year are likely to exceed Rs. 20,000. Therefore, in regard to financial year 1995-96, the limit of Rs. 20,000 will have to be worked out taking into account all the payments from 1-4-1995 to 31-3-1996. But the deduction of tax at source would be made at the specified rate only from the payment made on or after 1-7-1995.

Question 26 : Whether payments made to a hospital for rendering medical services will attract deduction of tax at source under section 194J ?

Answer : Yes.

Question 27 : Whether commission received by the advertising agency from the media would require deduction of tax at source under section 194J of the Act ?

Answer : Yes.

Question 28 : Whether the services of a regular electrician on contract basis will fall in the ambit of technical services to attract the provisions of section 194J of the Act? In case the services of the electrician are provided by a contractor, whether the provisions of section 194C or 194J would be applicable ?

Answer : The payments made to an electrician or to a contractor who provides the service of an electrician will be in the nature of payment made in pursuance of a contract for carrying out any work. Accordingly, provisions of section 194C will apply in such cases.

Question 29 : Whether a maintenance contract including supply of spares would be covered under section 194C or 194J of the Act ?

Answer : Routine, normal maintenance contracts which includes supply of spares will be covered under section 194C. However, where technical services are rendered, the provision of section 194J will apply in regard to tax deduction at source.

Question 30 : Whether the deduction of tax at source under sections 194C and 194J has to be made out of the gross amount of the bill including reimbursements or excluding reimbursement for actual expenses ?

Answer : Sections 194C and 194J refer to any sum paid. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source.

Question 31 : Whether TDS from income in respect of units is applicable to dividend or is it applicable to capital appreciation distributed at the time of repurchase/redemption of the units ?

Answer : The provisions of section 194K regarding deduction of tax at source from income in respect of units are applicable to periodical distribution of income, which is in the nature of dividend. These provisions do not apply to capital gains arising at the time of repurchase or redemption of the units.

Question 32 : Whether TDS on reinvestment term deposit should be made on accrual basis, which is quarterly, or once in a financial year ?

Answer : Tax has to be deducted at source at the time of credit of interest to the account of the payee or at the time of payment thereof, whichever is earlier. If credit is given to the account of the payee or payment is made to him annually, the tax may be deducted annually. It may be clarified that a credit to interest payable

account or suspense account, etc., is also taken as credit to the account of the payee, even though this credit is not reflected separately in the payee's account.

Question 33 : Whether variable deposit schemes are liable to deduction of tax at source from interest ?

Answer : Under section 194A, tax is to be deducted from interest from banks on time deposits. As variable deposits are in the nature of time deposits, tax is deductible at source from interest on such deposits.

Question 34 : Whether tax has to be deducted from principal on renewal of deposits made after 1-7-1995 but which matured on or before 30-6-1995 when the renewal is made retrospectively?

Answer : Tax has to be deducted from interest credited or paid, whichever is earlier, on time deposits with a bank made on or after 1-7-1995. When a time deposit is renewed retrospectively, the relevant date for deciding the applicability of section 194A would be that date of renewal. Thus, if the time deposit is renewed after 1-7-1995, the tax deduction at source will have to be made from interest paid or credited in respect of such a time deposit.

Circular : *No. 715, dated 8-8-1995.*

OPINION

Facts:

1. While undertaking clearance of goods through Customs, the Custom Brokers make payment of various charges such as Shipping line charges, Airline charges, Port charges, Airport charges, Freight, etc., on behalf of the client which are in the nature of reimbursable, and the Custom Broker deducts TDS on these payments.
2. Upon clearance the Custom Brokers raised two separate bills i.e. one for his own agencies/ brokerage and 2nd bill for reimbursable (receipted) charges paid on behalf of client.
3. While making payment to Custom Brokers considerably Importer/ Exporter deducts TDS on both the bills i.e. agency/ brokerage plus reimbursable.

Issues:

Whether TDS to be deducted on various reimbursements to Custom Agents such as Shipping line charges, Airline charges, Port charges, Airport charges, Freight, etc., paid by him on behalf of the client if billed separately by him?

Relevant Provisions of Income Tax Law:

1. As per Clarifications issued by CBDT under Circular No. 715 dated 08.08.1995-Clarifications on various provisions relating to TDS,

   "Question No 30

   Whether the deduction of tax at source under sections 194C and 194J has to be made out of the gross amount of the bill including reimbursements or excluding reimbursement for actual expenses?

   Reply:

   Sections 194C and 194J refer to any sum paid. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source."

2. Judgments of various appellate authorities also held that TDS is not required to be deducted on the reimbursable amount, if billed separately.

   Case Laws-
   "ITO-Vs-Deepak Bhargawa (ITAT) Delhi dated 13.11.2014
   ACIT (TDS) Vs St. Mary's Rubbers Private Limited (ITAT Cochin) dated 15.06.2017

Opinion

After considering the department clarification and various legal pronouncements I am of the opinion that TDS is required to be deducted on payment made to Clearing Agent for various reimbursements, if one consolidated bill is issued for both reimbursable charges as well as agency/brokerage. **However, if separate bills are issued for reimbursable expenses and agency/brokerage than TDS is required to be deducted only on the agency/brokerage bill.**