TDS not deductible on freight chargers shown separately in Goods Purchase Bill

CIT v. Bhagwati Steels - (Punjab & Haryana HC) - In the instant case, it was held that the payment of freight charges by the assessee to the truck drivers was based on individual GRs which represented individual and separate contracts and there was no single contract for carriage or transportation of goods referred to between assessee and the impugned parties which would make the assessee liable for deduction of tax at source under section 194C of the Act.

It is evident that the expenses of freight incurred by M/s Tata Steel, which have been shown separately in the invoices raised on the assessee, cannot be construed to infer that the assessee has paid any amount for transportation of goods separately than the cost of the goods purchased by it. Ostensibly, in such circumstances, there would not arise any necessity of deduction of tax at source on the freight amount separately shown in the Invoices, in terms of section 194C of the Act. Therefore, following the parity of reasoning laid down by the Hon'ble Jurisdictional in the case of Food Corporation of India (supra) the amount raised by M/s Tata Steel in the invoices shown as freight did not create an obligation on the assessee to deduct tax on such amounts as per section 194C of the Act. In our view, if the freight expenses incurred by M/s Tata Steel are added to the cost of goods in the invoice raised, it cannot be inferred that the assessee has paid any amount of freight separately because the same is part of the cost of product purchased. The assessee could not be said to be an assessee in default for non deduction of tax at source in terms of section 194C of the Act on the amount of freight billed separately by M/s Tata Steel. As a consequence, it follows that the provisions of section 40(a) (ia) of the Act cannot be applied to disallow the amount of such freight amounting to Rs. 2,01,81,428/-. Following the aforesaid discussion, we set-aside the order of the Commissioner of Income-tax (A) and direct the Assessing Officer to delete the impugned addition. The assessee accordingly, succeeds on this Ground.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income Tax Appeal No.693 of 2009

Date of decision: 21-01-2010

The Commissioner of Income tax-I Chandigarh

VERSUS

M/s Bhagwati Steels

ORDER

M.M. KUMAR, J.

The Revenue has approached this court under Section 260 (A) of the Income Tax Act, 1961 (for brevity "the Act") challenging order dated 30.04.2009 passed by the Income Tax Appellate Tribunal, Chandigarh (for brevity "the Tribunal") in respect of assessment year 2006-07 while deciding ITA No.63/Chandi/2009. The Revenue has claimed that from the order of the Tribunal two substantive questions of law would emerge and are required to be adjudicated by this court which are as under:-

i) "Whether on facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the disallowance made u/s 40(a) (ia) of the Income Tax Act in view of the amended provisions of Sec. 194C(3)(i) of the Income Tax Act."

ii) "Whether on the facts and circumstances of the case the goods supplied by M/s. TATA STEEL not being inclusive of freight and therefore the freight charges charged separately by M/s. TATA STEEL falls under the provisions of Section 194C of the Income Tax Act, 1961."

Facts of the case in brief are that the assessee -respondent filed its return of income for the assessment year 2006- 07 declaring its income of Rs.37,03,513/-. Thereafter assessment was completed under Section 143(3) ofthe Act on 27.11.2008 assessing the income at Rs. 2,47,41,968/- as various additions were made by the Assessing Officer (A-1). The assessee – respondent filed an appeal before the CIT (A) who partly allowed the appeal vide its order dated 12.01.2009 (A-2). The assessee – respondent then filed another appeal before the Tribunal by pleading the following four grounds:-

i) "that the Learned CIT(A) wrongly confirmed addition of freight paid to truck drivers amounting to Rs.172,723/- u/s 40(a) (Income Tax Act) of the Income Tax Act, 1961."

ii) That the Learned CIT(A) wrongly confirmed disallowance of interest expenses amounting to Rs.4,72,216/-.

iii) That the Learned CIT(A) wrongly confirmed disallowance of Rs.2,01,81,428/- u/s 40(a) of the Income Tax Act out of purchase of raw material for freight paid by the supplier of raw material.

iv) That the Learned CIT(A) wrongly confirmed disallowance of labour and freight charges amounting to Rs.82937/- on estimate basis."

Re: Question No.1. On the first question, the Tribunal recorded a categorical finding of fact that there was no material on record to prove any written or oral agreement between the assessee and the recipients of goods for transportation or carriage thereof. The Tribunal had further observed that there was no material to show that the payments of freight had been made in pursuance to a contract of transportation of goods for a specific period, quantity or price. The aforesaid fact being an essential feature to test the applicability of Section 194(C) of the Act as considered by Division Bench of this court in the case of CIT versus United Rice Land Ltd. (2008) 217 CTR (P&H) 332. A further finding of fact is that the freight payment is Rs.1,72,723/- and none of the individual payment exceeded Rs.20,000/-. It was also not disputed that the payments were made on the basis of individual G.Rs. issued by the truck owners for each trip separately. Although aggregate of payments of two truck owners during the assessment year exceeded Rs.20,000/- which would still not lead to deduction of tax at source because there was no contract for a specific period, price or quantity for carriage of goods. The finding of the Tribunal in Para 11 reads thus:-

"11. In the instant case, evidently, there is neither any material to suggest that there is any written or oral agreement between the assessee and the impugned parties for carriage or transportation of goods and nor it is proved that the impugned sum has been paid to the parties in pursuance to a contract for specific period, quantity or price, therefore, following the parity of reasoning laid down by the Hon'ble Jurisdictional High Court in the case of United Rice Land Ltd. (supra), in the instant case, it has to be held that the assessee was not liable to deduct tax at source under section 194C of the Act on the payment of freight charges of Rs.1,72,723/-, as detailed by the Assessing Officer. Though the two parties in question have transported the goods for the assessee on more than one occasion during the financial year, yet it was based on individual G.Rs. which represent individual and separate contracts. There is no single contract for carriage or transportation of goods referred to between the assessee and the impugned parties which would make the assessee

liable for deduction of tax at source u/s 194C of the Act. Reliance placed by the Revenue on the proviso to section 194C(3)(i) also does not help since in this case, the assessee does not fall within the scope of sub-section (1) of section 194C following the reasoning laid down by the Hon'ble High Court in the case of United Rice Land Ltd. (supra). Consequently, the disallowance of such amount cannot be justified by invoking the provisions of section 40(a)(ia) of the Act. The order of the Commissioner of Income-tax (A) is set aside and the Assessing Officer is directed to delete the impugned addition. The assessee succeeds on this Ground."

In view of the above, question no.1 would not arise for determination as the factual foundation needed for answering the question is entirely against the Revenue. The finding of facts recorded by the Tribunal, being the last court of fact, cannot be gone into by this court merely because after re-appreciation of evidence and other view would be possible. Therefore, we find that there is no substance in the first question of law claimed by the Revenue.

Re: Question No.2. The other question claimed by the Revenue is that the Assessing Officer has rightly disallowed Rs.2,01,81,428/- by invoking the Section 40(a) (ia) of the Act. The Assessing Officer had found that the assessee was making purchases from M/s Tata Iron & Steel Company Ltd. (for brevity "Tata Steel"). The purchase invoice raised by M/s Tata Steel included freight charges and the assessee did not deduct any tax at source under Section 194(C) of the Act on those freight charges. The non-deduction of tax at source under Section 194(C) on such freight charges were disallowed by the Assessing Officer under Section 40(a) (ia) of the Act. The amount was computed to be Rs. 2,01,81,428/-. The CIT (A) affirmed the order passed by the Assessing Officer. On further appeal, the Tribunal referred to the provisions of Section 40(a) (ia) which disallowed the expenditure if such expenditure attracts deduction of tax at source. Such tax is either not deducted or if deducted it has not been remitted to the State Exchequer within the time allowed. The amount of Rs.2,01,81,428/- stood paid by the assessee / respondent to M/s Tata Steel as freight charges for carriage of its goods on which tax was not deducted in terms of Section 194(C) of the Act and therefore such amount is not deductible while computing the taxable income. When the matter was heard by the Tribunal a copy of the distribution agreement between the assessee and the M/s Tata Steel was placed on record. According to the agreement, the assessee - respondent had appointed distributor for marketing of products of M/s Tata Steel which envisages purchase of production by the assessee –

respondent and sale thereof. The Tribunal has quoted Clauses 2.14 of the agreement which show that M/s Tata Steel was to raise invoice on the assessee as per the list price to be published by Tata Steel. The Tribunal after reading the agreement reached the conclusion that the assessee – respondent had a responsibility of marketing the goods of M/s Tata Steel after purchasing the same from them. The sample copy of the price list has been placed on the paper book. The amount of freight was found to be shown separately in the invoices but the Assessing Officer considered for payment by the assessee in respect of which deduction of tax at source under Section 194(C) of the Act was required to be made. However, the Tribunal after reading the whole contract in its entirety reached the conclusion that the transaction between the parties was essentially governed by the Distribution Agreement which was transaction of goods per se and cannot be segregated for the purposes of payment of expenses by way of freight. In that regard, the Tribunal has placed reliance on a Division Bench judgment of this court rendered in the case of **CIT (TDS), Chandigarh versus The Assistant Manager (Accounts), FCI, Jagadhri, I.T.A. No.407 of 2008** decided on 21.08.2008. In that case also the Food Corporation of India had made payments to State agencies on the basis of invoices raised in respect of the food grain procured by them. The invoices reflected the cost of wheat apart from the cost of incidental expenses including VAT, transportation, interest or storage charges. This court negated the stand of the Revenue and held that if expenses incurred by a person on account of transportation and interest etc. were added to the cost of the goods then it would not lead to an inference that such a person had paid separately for services of transportation and interest etc. as it becomes part of the cost of the product purchase. Therefore such amount charge separately cannot be held liable of deduction of tax at source under Section 194(C) of the Act. The view of the Tribunal is discernible from Para 25 of the order which reads thus:-

“25. Putting the aforesaid logic to the instant case, it is evident that the expenses of freight incurred by M/s Tata Steel, which have been shown separately in the invoices raised on the assessee, cannot be construed to infer that the assessee has paid any amount for transportation of goods separately than the cost of the goods purchased by it. Ostensibly, in such circumstances, there would not arise any necessity of deduction of tax at source on the freight amount separately shown in the Invoices, in terms of section 194C of the Act. Therefore, following the parity of reasoning laid down by the Hon’ble Jurisdictional in the case of Food Corporation of India (supra) the amount raised by M/s Tata Steel in the invoices shown as freight did not create an obligation on the assessee to deduct tax on such

amounts as per section 194C of the Act. In our view, if the freight expenses incurred by M/s Tata Steel are added to the cost of goods in the invoice raised, it cannot be inferred that the assessee has paid any amount of freight separately because the same is part of the cost of product purchased. The assessee could not be said to be an assessee in default for non deduction of tax at source in terms of section 194C of the Act on the amount of freight billed separately by M/s Tata Steel. As a consequence, it follows that the provisions of section 40(a) (ia) of the Act cannot be applied to disallow the amount of such freight amounting to Rs. 2,01,81,428/-. Following the aforesaid discussion, we set-aside the order of the Commissioner of Income-tax (A) and direct the Assessing Officer to delete the impugned addition. The assessee accordingly, succeeds on this Ground."

We asked learned counsel for the Revenue as to whether any appeal has been filed against the judgment rendered by this court in the case of Food Corporation of India (Supra) no satisfactory answer has been given by her. Therefore, we feel bound by the aforesaid judgment and accordingly, the issue is covered against the Revenue and in favour of the assessee – respondent. Accordingly, no substantive question of law would arise for determination by this court.

As a sequel to the above discussion, this appeal fails and the same is accordingly dismissed.