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Newsflash: Supreme Court Judgement - For disallowance purpose, section 40(a)(ia) of Income-tax Act 1961 covers not only those cases where the amount is payable but also when it is paid during the year

Case: M/s. Palam Gas Service vs. CIT [Civil Appeal No. 5512 of 2017]

Date of judgment: 03 May 2017

Brief Facts

The taxpayer-company was engaged in the business of purchase and sale of LPG cylinders. The taxpayer paid freight expenses for transportation of LPG to three persons but failed to deduct TDS under section 194C of the Income-tax Act, 1961 ('the Act'). The Assessing Officer ('the AO') disallowed the freight expense under section 40(a) (ia) of the Act. The order of the AO was later affirmed by the CIT (A), the Tribunal, and the High Court.

Issue

The issue before the Hon'ble Supreme Court was whether Section 40(a)(ia), which uses the words 'payable', would cover only those cases where the amount is due and still payable or it would also cover the situations where the amount is already paid.

Decision of the Honourable Supreme Court

The Supreme Court held as under:

- a. When the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word 'payable' occurring in Section 40(a) (ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid.
- b. Accordingly, it was held that Section 40(a)(ia) covers not only those cases where the amount is payable but also when it is paid.
- c. To arrive at the above conclusion, the Court relied on the Judgment of Punjab & Haryana¹, the Madras and Calcutta High Courts which have taken an identical view on the same issue.
- d. With respect to the contrary decision of the Allahabad High Court in the case of CIT Vs. Vector Shipping Services (P) Ltd.², the Court opined that the said decision did not decide the question of law correctly. Accordingly, the said Allahabad High Court decision was overruled.
- e. Further, the Court opined that if the provision is interpreted in the manner suggested by the appellant herein, then even when it is found that a person, like the appellant, has violated the provisions of Chapter XVIIIB (or specifically Sections 194C and 200 in the instant case), he would still go scot free, without suffering the consequences of such monetary default in spite of specific provisions laying down these consequences.
- f. Regarding the status of decision of Allahabad High Court against which SLP was dismissed by the Supreme Court earlier, the Supreme Court clarified that dismissal of SLP would not amount to confirming the view of the Allahabad High Court³.

1. P.M.S. Diesels & Ors. Vs. CIT (2015) 374 ITR 562

2. (2013) 357 ITR 642

3. For this purpose, the SC relied on decision of V.M. Salgaocar & Bros. (P) Ltd. v. CIT, (2000) 243 ITR 383 and Supreme Court in Employees Welfare Association v. Union of India, (1989) 4 SCC 187

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This newsflash is general in nature. In this newsflash, we have summarized the recent decision of Supreme Court in the case of M/s. Palam Gas Service vs. CIT [Civil Appeal No. 5512 of 2017], dated 3 May 2017 (which has resolved this uncertainty by holding that Section 40(a)(ia) for the purpose of disallowance covers within its ambit not only those cases where the amount is payable but also when it is paid.)

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