



Global Business Tax Alert

Sharp Insights

In the case of ¹Palam Gas Service, the Apex Court of India has held that expense disallowance on account of non-withholding or non-deposit of tax withheld, would be triggered even if the payment has already been made.

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Background/ Facts

- The taxpayer was engaged in the business of purchase and sale of LPG cylinders.
- It sub- contracted the work for transportation of LPG to three persons for which total payment of INR 20,97,689 was made without withholding any tax on the same.
- The assessing officer ('AO') disallowed the corresponding expenditure claimed by the taxpayer in its tax return under Section 40(a)(ia) of the Income-tax Act, 1961 ('Act'), on the ground that the taxpayer has not withheld any tax on the same under Section 194C of the Act.
- The taxpayer preferred an appeal before Commissioner of Income Tax (Appeals) ('CIT(A)') who confirmed the order of the AO. The Income Tax Appellate Tribunal ('ITAT') also concurred with the view taken by the CIT (A).
- The High Court dismissed the appeal of the taxpayer affirming the order of the ITAT.

Issue for consideration before Apex Court

Since the word used under Section 40(a)(ia) is 'payable', whether the provisions of Section 40(a)(ia) shall be attracted when the amount is not 'payable' but has actually been paid.

Ruling of the Apex Court

- It is the statutory duty of the taxpayer to withhold tax and deposit it to the account of the government within the time specified under the law.
- The provisions which cast an obligation on the taxpayer to withhold tax also begin with the phrase 'shall' making it mandatory to withhold tax.
- Grammatically, it may be accepted that the two words, i.e. 'payable' and 'paid', denote different meanings. When the entire scheme of obligation to withhold tax 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 paid².
- The intention behind introduction of Section 40(a)(ia) is to recover tax from the taxpayer. Therefore 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.

¹Supreme Court approved Punjab & Haryana High Court decision in 'P.M.S. Diesels & Ors. v. Commissioner of Income Tax – 2, Jalandhar & Ors.' [2015] 374 ITR 562 and Calcutta High Court decision in 'Commissioner of Income Tax v. Crescent Export Syndicate' [2013] 216 Taxman 258 (Calcutta). Decision of Allahabad High Court in 'CIT v. Vector Shipping Services (P.) Ltd.' [2013] 38 taxmann.com 77 overruled.

Conclusion

The Apex Court has settled the controversy arising from differing High Court decisions and has given a purposive interpretation to the provisions of Section 40(a)(ia) of the Act.

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