

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1006/DEL/2020 [A.Y 2012-13)

The Dy. C.I.T
Circle - 74(1)
New Delhi

Vs. M/s Expeditors International [I] Pvt. Ltd
6, Ground Floor, Sector - C, Pocket - 8
CSC, Vasant Kunj, New Delhi

PAN: AAACE 1795 K

(Applicant)

(Respondent)

Assessee By : Shri Rohan Khare, Adv
Shri Priyam Bhatnagar, Adv

Department By : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 14.09.2022

Date of Pronouncement : 16.09.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 30, New Delhi dated 12.12.2019 pertaining to Assessment
Year 2012-13.

2. The grievances of the Revenue read as under:

"1. The Ld. CIT (A) erred in holding that the agents of Foreign Shipping Companies to whom payments are made by the Assessee are covered by the provisions of section 172 rw Clause 5 of Circular No. 723 and therefore Assessee is not liable to deduct tax on the same. However, the agents/companies in reference are registered in India therefore they are resident tax entities, even if they are subsidiaries. Hence, their income is taxable in India under Income-tax Act, 1961.

2. Most of the shipping companies claim DTA benefit as per the standard procedure, herein the right of taxation is given to state of residence of shipping and airlines companies. Since, 194C is quite clear wherever a contractor makes payment for work to a resident than section 194C will get attracted. As the subsidiaries of foreign shipping and airlines companies are resident of India, TDS should have been deducted on payments made to these residents.

3. Ld. CIT (A) has erred in holding that the Assessee *was* not liable to deduct tax for payments made to the subsidiaries/agents of the Foreign Shipping Companies, where LTDC u/s. 197 *was* issued in the name of main/principal company and not in the name of subsidiary/agent company registered/resident in India.

4. The appellant craves leave to add, alter or amend any of the grounds of the appeal at the time of hearing"

3. The representatives of both the sides were heard at length, the case records carefully perused.

4. Briefly stated, the facts of the case are that the assessee company is engaged in supply chain management, logistics and freight forwarding, which is related to movement of goods and cargo within India or outside by road, rail, air or ship. The activities of the assessee involves packing, loading/unloading, trucking, containerization, custom clearance and other handling functions at both ends, besides moving the goods by air or sea, where goods cross the international borders. The assessee is an Indian arm of a multinational company Expeditors International.

5. During the course of assessment proceedings u/s 201/201(1A) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'], the Assessing Officer came to know that the assessee is making payments to Indian subsidiaries of foreign shipping companies and on such payments, no TDS u/s 194C of the Act has been deducted.

6. The assessee was asked to explain as to why the assessee should not be deemed to be an assessee in default u/s 201/201(1A) of the Act.

7. The assessee claimed that provisions of section 194C of the Act do not apply to it, but furnished details of payments without TDS.

8. The contention of the assessee did not find any favour with the Assessing Officer who, taking a leaf out of the proceedings of F.Y. 2009-10 and 2010-11, treated the assessee to be an assessee in default and quantified the total default as under:

Party Name	Amount Paid	TDS deductible	Interest u/s 201(1 A)	Total Default
As per Annexure	74,77,17,577/-	1.49,54/352	45,84,289	1,9538,640/-

9. The assessee strongly agitated the matter before the Id. CIT(A) and reiterated its contention that it has made payments to agents of foreign shipping companies, therefore, these payments are covered u/s 172 of the Act, and are fully exempt from TDS deduction.

10. The Id. CIT(A) was convinced with the contention of the assessee, when read with CBDT Circular No. 723 dated 19.09.1995, and allowed the appeal.

11. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

12. On the other hand, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

13. It would be pertinent to refer to the CBDT Circular No. 723 dated 19.09.1995, which is as under:

"913 Tax deduction at source from payment made to foreign shipping companies

1. Representations have been received regarding the scope of sections 172, 194C and 195 of the Income-tax Act, 1961, in connection with tax merits made to the foreign shipping companies or their agents.

2. Section 172 deals with shipping business of non-residents. Section 172(1) provides the mode of the levy and recovery of tax in the case of any ship belonging to or chartered by a non-resident, which carries passengers, livestock, mail or goods shipped at a port in India. An analysis of the provisions of section 172 would show that these provisions have to be applied to every journey a ship, belonging to or chartered by a non-resident, undertakes from any port in India. Section 172 is a

self-contained code for the levy and recovery of the tax, ship-wise, and journey-wise, and the return within a maximum time of thirty days from the date of departure of the ship.

3. The provisions of section 172 are to apply, notwithstanding anything contained in other provisions of the Act. Therefore, in such cases, the provisions of section 194C and 195 relating to tax deduction at source are not applicable. The recovery of tax is to be regulated, for a voyage port in India by a ship under the provisions of section 172.

4. Section 194C deals with work contracts including carriage of goods and passengers by any mode of transport other than railways. This section applies to payments made by a person referred to in clauses (a) to (j) of sub-section (1) to any "resident" (termed as contractor). It is clear from the section that the area of operation of TDS is confined to payments made to any "resident". On the other hand, section 172 operates in the area of computation of profits from shipping business of non-residents. Thus, there is no overlapping the areas of operation of these sections.

5. There would, however, be cases where payments are made to shipping agents of non-resident ship-owners or charters for carriage of passengers, etc. shipped at a port in India. Since the agent acts on behalf of the non-resident ship owner or charterer he steps into the shoes of the

principal. Accordingly, provisions of section 172 shall apply and those of sections 194C will not apply."

14. The aforementioned Circular clearly states that provisions of section 172 applies to payments made to agents of foreign shipping companies and therefore, provisions of section 194C of the Act do not apply. Since the aforementioned Circular has been followed by the Id. CIT(A), we do not find any reason to interfere with the findings of the Id. CIT(A).

15. In the result, the appeal of the Revenue in ITA No. 1006/DEL/2020 is dismissed.

The order is pronounced in the open court on 16.09.2022.

Sd/-

**[SAKTIJIT DEY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 16th September, 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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