

Khaitan and Co. Vs. Cit (A)

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-25-2007

Judge : V Gandhi, R Sharma

Appellant : Khaitan and Co.

Respondent : Cit (A)

Judgement :

1. These are the appeals filed by the assessee against the order of learned Commissioner (Appeals)-XXX, New Delhi dated 19-12-2002 for the financial years 1998-99, 1999-2000 and 2000-01, in the matter of order passed under Section 201(l) and 201(1A) of the Income Tax Act.

2. Following common grounds of appeal have been raised by the assessee in all the years under consideration: (1) For that the learned Commissioner (Appeals) erred in confirming the order passed by the assessing officer raising demand under Section 201 (1) of the Income Tax Act, 1961 (hereinafter Referred 'the Act') and erred in confirming the levy of interest charged by the assessing officer under Section 201(l A) of the Act.

(2) For that the learned Commissioner (Appeals) passed the order by ignoring the relevant material and evidences available on record and by relying on erroneous facts and irrelevant and extraneous consideration.

(3) For the finding of learned Commissioner (Appeals) that Khaitan Services Ltd. carried out any work on behalf of the appellant which attracted the provisions of Section 194C of the Act is without any basis and/or material and is based on surmises and conjectures.

(4) For that admittedly no work was carried out by Khaitan Services Ltd. on behalf of the appellant and no payment was made by the appellant to Khaitan Services Ltd. for carrying out any work for them which would attract the provisions of Section 194C of the Act and as such the learned Commissioner (Appeals) should have held that the demand made under Section 201(1) and levy of interest under Section 201(1A) of the Act was not justified.

(5) For that the order passed by the learned Commissioner (Appeals) is otherwise erroneous on facts as well as in law and is liable to be cancelled.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a partnership firm carrying on the professions of advocates, notary and provide allied incidental and other professional and advisory services to its clients. While examining the Form No. 26-C being annual return of TDS filed under the provisions of Section 206 of the Income Tax Act, 1961, the assessing officer found that assessee has paid certain amounts to M/s. Khaitan Services Ltd. towards services availed from them on which no tax was deducted under Section 194C. The assessing officer asked reasons for not deducting tax thereon. It was explained that M/s. Khaitan Services Ltd. (hereinafter referred to as 'KSL') had not been carrying out any work, nor supplying any labour for carrying out any work and the services so provided by them were not also covered by the Explanation III to Section 194C(2) of the Income Tax Act, 1961, but KSL was only extending certain services and facilities in the nature of bureau and office services like office space, computers, fax, vehicles etc. which did not involve carrying out of any work by them. However, the assessing officer did not agree with the arguments given by the assessee, after referring to the decision of the Hon'ble Supreme Court in case of Associated Cement Co. Ltd. v. CIT , he held that the term "any work" in the provisions of Section 194C meant any and not only a work contract. Accordingly, he treated these service as falling within the purview of work contract liable to

deduction of tax at source under Section 194C. The assessing officer accordingly determined the short deduction of tax and charged interest thereon.

4. By the impugned order, Commissioner (Appeals) confirmed the action of the assessing officer by observing that there is no obligation imposed by the provisions of Section 194C that before applying this section, supply of labour must be an important input of the contract.

As per Commissioner (Appeals), the word "carrying out any work" would definitely include the type of work being carried out by M/s. Khaitan Services, which comprises of providing of office space, making available several fixed assets, machinery and equipment like furniture and fixtures, air-conditioners computers, vehicle etc. for use of advocates and for other purposes. He further observed that these works indicate that some works are required to be carried out by some persons.

5. Aggrieved by the above order of the Commissioner (Appeals), the assessee is in further appeal before us. It was contended by the learned AR Shri Ajay Vohra that the services rendered by M/s. Khaitan Services Ltd. did not involve any work or supply of any labour, nor were the said services covered by the specific services referred to in Section 194C of the Act. He further drawn our attention to the fact that M/s. Khaitan Services Ltd. did not have any employees nor did they engaged any contractor to do any work for the assessee, but they only provided bureau and office services and related facilities as a passive services provider and not an active work performer doing any specific work for the assessee. Our attention was drawn to the audited Balance Sheet and Profit & Loss Account placed in the record, in which no expenses on account of wages or salary for manpower was debited. He also relied on the decision of SRF Finance Ltd. v. C.B.D.T and V.M. Salgaocar & Bros. Ltd. v. ITO nature of services rendered, the amount paid by the assessee does not attract the provisions of Section 194C and accordingly lower authorities were not justified in invoking the provisions of Section 201 and 201A of the Income Tax Act, 1961.

6. On the other hand, learned Sr. DR Shri RA Gupta contended that under the provisions of Section 194C, any person responsible for paying any sum for

carrying out work including supply of labour for carrying out any work, is liable to deduct tax at source on the payments so made for such work. He further submitted that the services so provided to the assessee-firm as mentioned by the assessing officer in his order clearly come within the purview of Section 194C, therefore, no fault can be found in the order of the lower authorities for applying the provisions of Section 201 and 201A of the Income Tax Act, 1961.

7. We have considered the rival contentions, carefully gone through the orders of the authorities below and entire material placed on record.

We have also deliberated on the case laws referred by lower authorities in their respective orders as well as cited by the learned AR and DR during the course of proceedings before us, in the context of factual matrix of the case. From the record, we found that during the course of verification of TDS return filed by the assessee for the years 1998-99, 1999-2000 and 2000-01, it was noticed by the assessing officer that the assessee-company had debited the amounts as service charges paid to M/s. Khaitan Services Ltd. Rs. 46,20,000 for assessment year 1998-99, Rs. 24,84,000 for assessment year 1999-2000 and Rs. 21,60,000 for assessment year 2000-01. The assessing officer further noted that no tax was being deducted from the sum paid to M/s. Khaitan Services Ltd. The assessee-company explained before the assessing officer that they were availing services from M/s. Khaitan Services Ltd. which are neither technical nor professional services nor in the nature of job work or contract type of services and, therefore, such payments did not attract the provisions of Section 194C. According to the assessee, M/s.

Khaitan Services Ltd. was providing only office and bureau related services and such services were comprised of, office space, fixed assets and machineries and other facilities such as furniture, fixtures, air-conditioning, Xerox machines, computer, printers, internet connections, vehicles etc. The stand of the assessee was that M/s. Khaitan Services Ltd. was providing a total package of office and bureau related services which cannot be split up into individual or independent or item-wise activity and, therefore, this was not covered under any provisions regulating TDS. The assessing officer did not agree with the arguments given by

the assessee. After referring the judgment of Supreme Court of India in the case of Associated Cement Co.

Ltd. v. CIT in which it was held that the term 'any work' in the provisions of Section 194C meant 'any and not only a work contract', he determined short deduction of tax and charged interest thereon.

8. As per our considered view, the provisions of Section 194C are attracted only where any sum is paid for carrying out any work including supply of labour for carrying out any work. Thus, "Carrying out any work" is the substance for making the payment relating to such work, liable for deduction of tax at source under Section 194C of the Act. For carrying out any work, manpower is sine quo non and without man power it cannot be said that work has been carried out. Under Section 194C each and every work/service is not covered, hence the nature of work done or service performed is required to be seen. In the instant case, the package of facilities so provided, included the office space computers, fax machine etc., which by any stretch of imagination, cannot be said to be performing any 'work' by KSL.

It is an undisputed fact that no manpower was deployed by the KSL so as to put these equipments and machinery or the vehicles in use, for the purpose of the assessee-firm. No expenditure on manpower was found to be debited in the audited Profit & Loss Account. These equipments were put to use by the personnel of assessee-firm. Mere providing of such equipments without any manpower, cannot be termed as carrying out of any work by KSL, when these equipments were undisputedly put to use by the assessee-firm by employing their own manpower. KSL was merely supplying these equipments as it is, and it was the assessee-firm which by employing their own personnel, putting to use these equipments for the purpose of its business and profession as per its specific requirements. Without any manpower being employed for putting to use machinery, equipment and vehicles for the purpose of the assessee's business, it cannot be said that M/s. Khaitan Services Ltd. had carried out any work for the assessee-firm. The packages of facilities so provided to the assessee-firm did not involve any work or supply of any labour, nor were these facilities covered by the specific services as referred to in Section 194C of the Act. It is also not the case of

the department that KSL has engaged any outside contractor to do any work for the assessee-firm. Whereas the KSL had merely provided bureau and office facilities to the assessee-firm, as a passive service provider and not as an active work performer doing any specific work. Even though the word "work contract" as used in Section 194C is an inclusive definition, but it does not include each and every work/service, just like professional and technical services are not covered under Section 194C, similarly other services where no work is performed by the service provider nor any labour was supplied or engaged to do any work as part of the services so provided or the work so performed, these services cannot be said to be covered under Section 194C of the Act. In case of S.R.F Finance Ltd. v. CBDT (in respect of which special leave petition was dismissed by the Hon'ble Supreme Court in 212 ITR (Statute) 375), it was held that it is most inappropriate to equate the rendering of services with carrying out work that is why the Parliament thought it expedient to expand the meaning of the word "work" by including in it the supply of labour. Thus, it is obvious that because word "work" would not include within its amplitude the supply of labour, the Parliament added the same by including the latter in the former thereby giving the word "work" an extended meaning. The extended meaning cannot travel beyond the extended area; Parliament has stressed the scope of word to some extent only. Hon'ble Karnataka High Court in case of V.M. Salgaocar & Bros. Ltd. v. ITO , have referred to the decision of Hon'ble Supreme Court in case of Associated Cement Co. Ltd v. CIT and after analyzing the same, it was held that judgment of the Hon'ble Supreme Court, does not apply in respect of cases where no work is performed and no labour is supplied, and even after the amendment made in the year 1995 in the Income Tax Act, 1961, only the specified services have been covered but it did not expand the area to cover all the work/services where no work is performed. The word "work" in Section 194C referred to and comprehends only the activities of workman. It was categorically observed that "perusal of definition of word 'work' given in various dictionaries it is evident that the word 'work' has relation with the word 'labour' which has to be put by a person for occupation, employment, business, task or function. The word 'work' refers and comprehends the activities of the workman and not the operation in the factory or on machine. It is physical force which has comprehended in the word 'work'. In the instant case also M/s.

Khaitan Services Ltd. had undisputedly no employee nor any contractor was engaged to do the work nor it has provided any labour. The package of facilities so provided to the assessee-firm was devoid of any work or labour, therefore, not covered by the provisions of Section 194C of the Act.

ITAT, Lucknow Bench in the case of UP State Industrial Development Corpn. Ltd. v. ITO (2002) 81 ITD 173 while holding the Circular No.681, dated 8-3-1994 issued by C.B.D.T. as invalid observed that the department stand in treating NIDC as a contractor was not sustainable as they had rendered professional services which are not covered by Section 194C of the Act. After referring to the decision of Hon'ble Supreme Court in case of Associated Cement Co. Ltd. (supra), it further held that not all types of services are covered by Section 194C while referring to the case of S.R.F Finance Ltd. (supra) and also to the Associated Cement Co. Ltd. case (supra), in the above order of ITAT, the observation of the Hon'ble Supreme Court in case of Associated Cement Co. Ltd. (supra) has been reproduced as under: The term 'any work' in Section 194C is aimed at the type of work resulting in tangible material and by virtue of the special inclusion supply of labour to carry out any work also is brought into the net of tax deduction at the source. This inclusive clause ropes in the consideration for the supply of labour. The word 'supply' connotes the meaning of 'procuring', 'securing or bringing in and not rendering of one's own professional or technical services.' To the extent that the circular govern payments to commission agents or brokers for the services rendered by them, they travel beyond the provisions of Section 194C and have no legal force and the authorities functioning under the Act are not bound by them.

9. In view of the above discussion, peculiar facts and circumstances of the instant case, we can reasonably conclude that while providing package of facilities to the assessee-firm, M/s. Khaitan Services Ltd. did not carry out any work nor provided any labour nor engaged any contractor etc. for carrying out any work, therefore, not covered in any way under the provisions of Section 194C and also not covered within the meaning of word 'work' as explained by the Hon'ble Supreme Court in the case of Associated Cement Co. Ltd. (supra). Thus Section 194C does not have any obligation in respect of the payment made by assessee-firm to M/s. Khaitan Services Ltd.

