

No tax withholding required on reimbursement of expenses claimed through separate bills

August 1, 2017

In brief

In a recent decision¹ of the Income-tax Appellate Tribunal (Tribunal) of Cochin, it has been held that no tax withholding was required in respect of reimbursement of expenses paid to a Clearing and Forwarding (C&F) agent, where such reimbursements were claimed through separate bills.

In detail

Facts

- The taxpayer was engaged in manufacturing and selling of centrifuged latex. During the course of reassessment proceedings, it was noticed that the taxpayer had paid C&F charges without withholding tax.
- The taxpayer claimed that such C&F charges were in the nature of reimbursement of expenses incurred by the C&F agent on behalf of the taxpayer, and therefore, it was not liable to withholding tax on such payments. The claim of the taxpayer was rejected and the payment was disallowed under the provisions of section 40(a)(ia)² of the Income-tax Act, 1961 (the Act).

- On appeal before the Commissioner of Income-tax (Appeals) [CIT(A)], the taxpayer submitted a statement regarding the amounts given by the taxpayer to the C&F agent as reimbursement of expenses and not C&F charges. Based on the above, the CIT(A) accepted the contentions of the taxpayer and deleted the disallowance, which was contested before the Tribunal by the revenue authorities.

Issue before the Tribunal

Whether the CIT(A) was correct in deleting the disallowance on the ground that the payment constituted reimbursement of expenditure, and hence, not liable to withhold tax?

Revenue's contentions

- The taxpayer had made payment for services

received from the C&F agent, which were contractual in nature.

- Such payments were not in the nature of reimbursements of expenses and even if it were so, the profits of the C&F agent would have been in-built in his billings.

Taxpayer's contentions

The payment was in the nature of reimbursement of expenses, for which separate bills were raised, would not be liable to withholding tax.

Tribunal's ruling

- The documents furnished by the taxpayer clearly showed that the payment made was in the nature of reimbursement of expenses incurred by the C&F agent on behalf of the taxpayer, for which a separate bill was raised.

¹ I.T.A Nos 224/ Coch/ 2016

² Section 40(a)(ia) of the Act provides that in the event of default in deduction or payment of taxes required to be deducted at source under Chapter XVII-B of the Act, the expenditure will not be allowed as deduction while computing income under the head "Profits and Gains from Business or Profession."

- CBDT Circular No. 715 dated 8 August, 1995, which provides clarification on the applicability of withholding tax provisions, was applicable only where consolidated bills were raised inclusive of contractual payments and reimbursement of actual expenditure.
- No withholding tax was required where separate bills were raised by the C&F agent

for claiming of reimbursement of expenses.

The takeaways

- This decision reaffirms the position that payments in the nature of reimbursement of expenses will not attract withholding tax under the provisions of the Act.
- Further, it should also be borne in mind that

reimbursement of expenses is generally understood as expenses incurred on behalf of the taxpayer by the service provider. Such expenses should not have any income element for the service provider.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034,
Telangana
+91-40 44246000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata – 700 091,
West Bengal
+91-033 2357 9101/
4400 1111

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greaves Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road (Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

For more information

Contact us at
pwctrs.knowledgemanagement@in.pwc.com

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