



**INCOME TAX ALERT**

# N. A. SHAH **BULLETIN**

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### Executive Summary

Provision of 40(a)(ia) of the Income-tax Act, 1961 shall be attracted not only on the amounts remaining payable but also on the amounts which are paid during the year.

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## **M/s. Palam Gas Service v. Commissioner of Income-tax**

### **Supreme Court of India - Civil Appeal No. 5512 of 2017**

#### **Facts**

- i. The assessee is in the business of purchase and sale of LPG cylinders. During the year under consideration, the assessee had got transportation of LPG cylinders done on a sub-contract basis and did not withhold taxes at source on the freight charges paid.
- ii. During the course of assessment proceedings, the Assessing Officer ('AO') disallowed the said expenses u/s 40(a)(ia) of the Income-tax Act, 1961 ('the Act').
- iii. Against the adjustments made in the assessment order, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), wherein the AO's order was upheld. In subsequent appeals also, the Income Tax Appellate Tribunal and the High Court dismissed the assessee's appeal.
- iv. Before the Hon'ble Supreme court, the assessee re-contended that section 40(a)(ia) of the Act provides for disallowance only if any sum is 'payable' and hence, in the instant case, the said provisions were not applicable as the alleged sum was already paid during the year.

#### **Issue**

- i. Owing to the word 'payable' used in Section 40(a)(ia) of the Act, does the said section also cover amounts which are 'paid' during the year?

#### **Held**

- i. The Hon'ble Supreme Court observed that Section 194C of the Act imply that a person who is responsible for paying to a contractor, is required to deduct tax on the said payment at the earliest point of its credit or payment. Such deducted tax is also required to be deposited within stipulated timeline in the government treasury as per Section 200 of the Act.
- ii. The Hon'ble Supreme Court relied on the following judgment wherein it was held the tax deducted at source ('TDS') provisions are mandatory provisions:

- P&H High court in the case of PMS Diesels & Ors vs CIT (2015) (374 ITR 562) & Calcutta High Court in the case of Crescent Export Syndicate (2013) (216 Taxman 258) held that use of the word 'shall' in TDS provisions, before requirement of tax deduction and provision for deduction of tax at earliest point in time denote that the provisions are mandatory.
- iii. Further, the Hon'ble Supreme Court analyzed the provision of section 40(a)(ia) of the Act as under:
- The Section uses the word 'payable' and the words 'payable' and 'paid' grammatically may denote different meanings. The P&H High Court in PMS Diesels & Ors (Supra) rightly remarked that the word 'payable' is in fact an antonym of the word 'paid' and at the same time High Court took the view that this is not significant for interpretation of section 40(a)(ia) of the Act.
  - The P&H High Court rejected the assessee's contention that section 40(a)(ia) of the Act is applicable only when the assessee follows mercantile system of accounting and does not cover cases where cash system is followed.
  - The TDS provisions mandate for tax deduction not only on the amounts payable but also on those which are actually paid (deduction prescribed at earliest point of credit or payment).
  - When the entire scheme of obligation to deduct tax at source is read holistically, it cannot be held that word 'payable' in section 40(a)(ia) of the Act refers only to those cases where the amount is yet to be paid and does not cover amounts which are actually paid.
  - The Supreme court reiterated the findings of P&H High Court that the method of accounting followed by the assessee (i.e. cash or mercantile system) is not relevant for applicability of provision of section 40(a)(ia) of the Act.
- iv. The Hon'ble Supreme Court distinguished the judgment of Allahabad High Court in the case of Vector Shipping Services (P) Ltd ('VSS') wherein Allahabad High Court straightaway concluded that section 40(a)(ia) of the Act would not apply to amounts which are already paid, without any discussion.

- v. Though the special leave petition filed by the department against the Allahabad High Court in the case of VSS was dismissed by the Hon'ble Supreme court, the Supreme court in the case of the assessee distinguished the said judgment and held that the provisions of section 40(a)(ia) of the Act shall apply not only to amounts which are payable but also those which are paid during the year.

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