

## Factoring charges couldn't be treated as interest to attract TDS under sec. 194A: HC

**Summary – The High Court of Delhi in a recent case of M Sons Gems N Jewellery (P.) Ltd., (the Assessee) held that Factoring charges could not be treated as interest to attract TDS under section 194A**

### Facts

- The assessee had availed factoring facility from one 'G'.
- In the profit and loss account for the year 2009-10, it had debited a certain amount under the head factoring/discounting charges and claimed deduction of the same.
- The Assessing Officer disbelieved the assessee's contention that the above amount constituted factoring charges and treated the same as interest payable by the assessee to 'G'. He further having noticed that the assessee had not deducted tax at source under section 194A from the said amount disallowed the same in terms of section 40(a)(ia).
- The Commissioner (Appeals) upheld the order of the Assessing Officer.
- The Tribunal relying on the judgment of the Calcutta High Court rendered in the case of *CIT v. MKJ Enterprises Ltd.* [\[2015\] 228 Taxman 61/\[2014\] 50 taxmann.com 441 \(Mag.\)](#) held that the aforesaid amount debited to the profit and loss account towards factoring/discounting charges ought not have been disallowed by the Assessing Officer under section 40(a)(ia).
- On appeal to High Court by revenue:

### Held

- Under section 194A the obligation to deduct tax at source is on the 'payer' of interest. In the instant case, the assessee has permitted factoring and discounting charges to be deducted upfront by 'G'.
- Further the Court finds that the term sheet issued by 'G' showed that the interest at 13 per cent per annum will be charged in the event of repayment of any borrowings. This is different from the factoring charges at the rate of 0.10 per cent payable to 'G'. As a matter of fact, the assessee has debited the above sum to its profit and loss account towards factoring/discounting charges. In the light of the above factors, there was no factual basis for the Assessing Officer to have disbelieved the assessee's explanation and simply treat the amount as interest for purpose of section 194A. The question of disallowing the above amount under section 40(a)(ia) on the ground that the TDS was not deducted in terms of section 194A did not arise.
- In view of the aforesaid, the order of the Tribunal deserved to be upheld.