

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F', NEW DELHI**

**BEFORE SH. N.K. SAINI, ACCOUNTANT MEMBER
AND
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No. 5880/Del/2014
Assessment Year : 2010-11

ACIT, Circle-20(1), New Delhi	Vs.	Sh. Rajesh Kumar Saroj, Cottage No. 1, Oberoi Apartments, 2, Sham Nath Marg, New Delhi
PAN : ACOPS5597C		
(Appellant)		(Respondent)

Appellant by	Sh. Deepak Garg, Sr.DR
Respondent by	Sh. S.N. Nanda, CA

Date of hearing	25.09.2017
Date of pronouncement	28.09.2017

ORDER

PER KULDIP SINGH, JM.:

The appellant (hereinafter referred to as "the Revenue") by filing the present appeal sought to set aside the impugned order dated 20.05.2014 passed by learned Commissioner of Income Tax (Appeals)-XXII, New Delhi, on the grounds, inter alia, that:

- (i) *whether on the facts or circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs.1,28,32,580/- made by the Assessing Officer on account of non-deduction of TDS on payments to non-resident foreign agent M/s. Partner Agency by the assessee.*
- (ii) *the CIT(A) did not appreciate the facts of the case that export commission paid to the various parties situated in different foreign countries, by the assessee is deemed to accrue or arise in India and attracted provisions of Section 195 of I.T. Act, 1961.*

2. Briefly stated facts necessary for adjudication of the controversy at hand are that the Assessing Officer assessed the income of the assessee under Section 143(3) of the Income-tax Act, 1961 (for short the Act) at Rs. 5,69,87,650/- by making addition of Rs.1,28,32,580/- under Section 40(a)(ia) read with section 195 of the Act by relying upon Board Circular No. 7/2009 and by following the ruling in **Rajiv Malhotra, Inre AAR 671 of 2005, reported in [2006] 284 ITR 564 (AAR)**.

2.1. The assessee carried the matter before the learned CIT(A) who has deleted the addition by partly allowing the appeal.

4. We have heard the learned Authorized Representatives of the parties to the appeal, gone through the documents relied upon and order passed by the revenue authorities below.

5. Learned Authorized Representative of the assessee, challenging the impugned order, contended that the issue in controversy has already been set at rest by the Honøble Delhi High Court in the case of **CIT Vs. EON Technology Pvt. Ltd., [2012] 343 ITR 366 (Delhi)**, however, on the other hand, learned Sr. DR relied upon the order passed by the Assessing Officer.

6. The Honøble Delhi High Court in the case **EON Technology Pvt.** (supra) has decided the issue in favour of the assessee. Undisputedly, the assessee is exporter of readymade garments having no domestic sales whose export orders were procured by M/s. Partner Agency to whom the assessee has paid commission from 3% to 7%. It is also not in dispute that

M/s. Partner Agency is a foreign agent operating from outside India and the commission is being declared on sharing bills, which were filed with the custom authorities at the time of export. It is also not in dispute that M/s. Partner Agency did not have any permanent establishment (PE) in India.

7. When we examine aforesaid undisputed facts of this case in the light of the decisions rendered by the Honøble Delhi High Court in the case of **EON Technology Pvt.** (supra), we find no illegality or perversity in the findings given by the learned CIT(A) because the agent has rendered services abroad and commission is also remitted to them abroad and the agency has no PE in India, and as such, the provisions contained under Section 195 of the Act are not attracted.

8. In view of what has been discussed above, we find no illegality or perversity in the impugned order, hence the present appeal filed by the Revenue is hereby dismissed.

The decision is pronounced in the open court on 28th Sept., 2017.

Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 28th September, 2017.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi