

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.5934/Del/2014  
Assessment Year : 2010-11

ACIT,  
Circle 26(1),  
New Delhi.

Vs. Mukesh Bhasin,  
E-21, 1<sup>st</sup> Floor, Rajouri Garden,  
New Delhi.

PAN: AAMPB8009J

(Appellant)

(Respondent)

Assessee By : Shri G.N. Gupta, AR  
Department By : Shri Arun Kumar Yadav, Sr. DR

Date of Hearing : 23.10.2017  
Date of Pronouncement : 24.10.2017

ORDER

PER R.S. SYAL, VP:

This appeal by the Revenue is directed against the order passed by the ld. CIT(A) on 29.08.2014 in relation to the assessment year 2010-11.

2. The only issue raised in this appeal is against the deletion of disallowance of Rs.55,97,200/-, being, the amount paid as commission to non-resident without deduction of tax at source.

3. Briefly stated, the facts of the case are that the assessee paid commission of Rs.55,97,200/- to a foreign agent, namely, Ms Asma Malik Dohan. Such commission was paid in respect of export of black packed tea to State company for foodstuff Trading, Ministry of Trade, Baghdad, Iraq. Export to this party was effected through Ms Asma Malik Dohan. The Assessing Officer made disallowance u/s 40(a)(i) on the ground that the assessee failed to deduct tax at source before making payment to this party. The ld. CIT(A) deleted the disallowance.

4. We have heard the rival submissions and perused the relevant material on record. It is an admitted position that the amount of commission was paid to a non-resident for rendering services outside India. Disallowance u/s 40(a)(i) pre-supposes the otherwise genuineness of the transaction, but, the making of disallowance for non-deduction of tax at source. Section 195 provides that any person responsible for

paying to a non-resident, not being a company or to a foreign company, any sum chargeable under the provisions of this Act, shall, at the time of credit of such income to the account of payee or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rates in force. The pre-requisite for invoking section 195 is that the amount should be 'chargeable under the provisions of this Act.' If an amount is not chargeable to tax in the hands of recipient under the provisions of the Act, there can be no question of applicability of section 195 and, in turn, disallowance u/s 40(a)(i). The Hon'ble Supreme Court in *GE India Technology Centre P. Ltd. vs. CIT & Anr. (2010) 327 ITR 456 (SC)* has held that if the remittance to non-resident is not taxable, there is no question of tax at source being deducted. We are confronted with a situation in which the assessee paid commission to a non-resident agent for rendering services abroad. Such a commission is obviously not chargeable to tax in the hands of the recipient as has been held by the Hon'ble Allahabad High Court in *CIT vs. Allied Exim (2014) 363 ITR 62 (All)*. This decision has been rendered after considering the withdrawal of Circular No.786. Similar view has been taken by the Hon'ble

Bombay High Court in *DIT vs. Wizcraft International Entertainment P. Ltd. (Bom) (2014) 89 CCH 84 MumHC*. In our considered opinion, the ld. CIT(A) has taken an unimpeachable view in deleting the disallowance. We, therefore, uphold the same.

5. In the result, the appeal filed by the Revenue is dismissed.

The order pronounced in the open court on 24.10.2017.

Sd/-

[KULDIP SINGH]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 24<sup>th</sup> October, 2017.

dk

Copy forwarded to:

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

AR, ITAT, NEW DELHI.