

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4012/M/2015  
Assessment Year: 2011-12**

M/s. Hanumesh Realtors Pvt. Ltd., Raaj Chamber, Plot No.115 115/IT-03, R.K. Paramhans Marg, Andheri East, Mumbai - 400 069 PAN: AABCH 5774L	Vs.	Tax Recovery Officer (TDS) Range -1, Charni Road, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Pradeep Sharma, A.R.  
Revenue by : Shri V. Vidhyadhar, D.R.

Date of Hearing : 09.07.2018  
Date of Pronouncement : 23.07.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 06.04.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The only issue raised by the assessee is against the confirmation of order of the AO by Ld. CIT(A) on the issue that the training expenses of Rs.35,25,356/- are subject to the provision of section 195(1) of the Act by ignoring the fact that the said payment was made for training of employees in the

foreign universities outside India and the payments were made to the said universities.

3. The facts in brief are that a survey was conducted under section 133A of the Act on 30.10.2012 on the assessee and it was observed by the survey team that no TDS has been deducted on the training expenses and also on other expenses incurred by the assessee. Accordingly, a show cause notice was issued to the assessee as to why the assessee should not be treated as assessee in default for not deducting tax at source under section 195 of the Act on the payment of Rs.35,25,356/- which was replied by the authorised representative of the assessee by submitting that these expenses represent the payments made to universities abroad and the services were rendered by the recipient i.e. foreign universities in foreign country and the said payments are not liable to be taxed in India. However, the AO brushed aside the submissions of the assessee and invoked the provision of section 195 of the Act and raised a demand of Rs.9,58,896/- comprising Rs.7,05,071/- towards non deduction of TDS @ 20% and Rs.2,53,825/- under section 201(1A) for 36 months.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal by holding that the assessee has sent his employees for training abroad and paid fees to the foreign universities withholding tax under section 195 and thereafter by discussing the provisions of the Act and various laws, finally reached a conclusion that the services rendered by the foreign university constituted fee for technical services shall

be deemed to accrue and arise in India under section 9(1)(vii) of the Act and therefore, the assessee was liable to hold tax under section 195 on the amount remitted to foreign universities and finally dismissed the appeal by upholding the order of AO.

5. The Ld. A.R. vehemently submitted before us that the assessee has made the payments to the foreign universities for training of its employees who were sent abroad for such training and thus the services were rendered by the foreign universities in the foreign country. The Ld. A.R. further submitted that such payments made to the foreign universities were not liable to tax in India at all. The Ld. A.R. submitted that since the assessee availed the services outside India for which payments were also made out of India to the foreign universities and therefore the said payments are not liable to be covered under section 195(1) of the Act. The Ld. A.R. also submitted that the first appellate authority has grossly erred in coming to the conclusion that the said payments were covered by the provision of section 5(2) of the Act on the ground that the fee paid to the foreign universities is deemed to accrue and arise in India under section 9(1)(vii) of the Act. The Ld. A.R. relied on a series of decisions in support of his contentions. The copy of which are filed in the paper book namely;

1. GE India Technology Centre (P) Ltd. vs. CIT & Anr. 327 ITR 0456 SC,
2. CIT vs. Cooper Engineering Ltd. 68 ITR 0457 (Bom.-HC)

The Ld. A.R. finally prayed before the Bench that in view of the above facts and the ratio laid down, the order of the Ld. CIT(A) be set aside and the AO should be directed to delete the demand raised.

6. The Ld. D.R., on the other hand, relied on the order of authorities below.

7. We have heard the rival submissions of both the parties and perused the material on record. We find that the assessee has made a payment of Rs.35,25,356/- to foreign universities for training of its employees in the foreign country. The assessee has not deducted any TDS under section 195(1) of the Act whereas according to the AO tax should be levied according to the provisions of the said section. Ld. CIT(A) also upheld the order of AO on the ground that the payment by the assessee shall be deemed to accrue and arise in India under section 9(1)(vii) of the Act and therefore chargeable to tax in terms of provision of section 5(2) of the Act and thus the assessee is required to withhold the tax under section 195 of the Act. In the present case, the services were admittedly rendered outside India and payments were also made outside India. Besides the foreign universities were not having any establishments in India or any agency which is working on behalf of the foreign universities. Therefore, once it is established that the payment is made outside India for the services rendered outside India then the same is not liable to tax at source. The case of the assessee is also supported by the various decisions relied upon by the

assessee as has been referred to above namely; GE India Technology Centre (P) Ltd. vs. CIT & Anr (supra) and CIT vs. Cooper Engineering Ltd. (supra). Considering the facts of the case in the light of the ratio laid down by the Hon'ble Supreme Court, we are of the view that order of Ld. CIT(A) is not sustainable and accordingly we set aside the same and direct the AO to delete the demand raised under section 201(1) and 201(1A) of the Act.

8. In the result, appeal of the assessee is allowed.

**Order pronounced in the open court on 23.07.2018.**

Sd/-  
**(Mahavir Singh)**  
**JUDICIAL MEMBER**

Sd/-  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 23.07.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.