

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.736/M/2012  
Assessment Year: 2008-09**

M/s. Agra Engineering Co., C/5, Laxmi Towers, 6 <sup>th</sup> Floor, BKC, Bandra (East), Mumbai - 400 051 <b>PAN: AAFA2297H</b>	Vs.	Dy. Commissioner of Income Tax 12(3), Aayakar Bhavan, 1 <sup>st</sup> Floor, R.No.137, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Anoop Hiwase, D.R.

Date of Hearing : 23.08.2018  
Date of Pronouncement : 04.09.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 02.11.2011 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09.

2. The concise grounds raised by the assessee are as under:

"1. The Learned Commissioner of Income-tax (Appeals)-23, Mumbai [hereafter referred to as the CIT(A)] erred in confirming the disallowance made by the Assessing Officer (AO) of the claim for deduction of overseas commission of Rs. 18,59,299/- paid to the non-resident foreign sales agents u/s. 40(a)(i) of the Income-tax Act, 1961.

2. The CIT(A) erred in confirming that the payment of overseas commission to the non-resident agents on the sales is fees for technical services within the

meaning of section 9(1)(vii) of the Income-tax Act and accordingly the appellant was obliged to deduct tax at source u/s. 195 of the Act on the commission paid.

3. The CIT(A) erred in confirming that the AO was correct in treating the services rendered by the foreign (non-resident) selling agents as falling within the meaning of "fees for technical services" by giving it a colour of "managerial services".

4. Your appellant submits that the commission paid to foreign agents is on the sales effected outside India through the commission agents on a principal to principal basis and does not amount to fees for technical services and is therefore not chargeable to tax in India.

5. Your appellant further submits that on the facts and circumstances of the case and in law and in any view of the matter, tax is not deductible at source on payment of commission made to foreign (nonresident) selling agents and the DCIT may be directed to delete the disallowance of Rs. 18,59,299/- made u/s. 40(a)(i) of the Act.

6. The CIT(A) erred in confirming the disallowance made by the DCIT in respect of payment of freight charges for the shipment of goods from the Ports in India to the destinations outside India to the non-resident shipping companies and I or their agents in India to the extent of Rs. 7,35,614/- u/s. 40(a)(ia) of the Act on the ground that tax was not deducted at source in respect of these payments.

Your appellant submits that no tax was deductible at source on the basis of the declaration given by these companies relying on circular no. 723 dt. 19.09.1995 issued by CBDT and applicable to these companies who are assessed to tax u/s. 172 of the Income tax Act.

Your appellant therefore submits that the DCIT may be directed to allowed the deduction of Rs. 7,35,614/- as claimed.

Your appellant craves leave to add to, alter or amend any of the aforesated grounds of appeal."

3. The issue raised in the ground No.1 is against the confirmation of disallowance of Rs.18,59,299/- by Ld. CIT(A) as made by the AO towards the overseas commission paid to non-resident foreign sales agents under section 40(a)(ia) of the Act.

4. At the outset, we would like to mention that at the time of hearing neither assessee nor its authorized representative

appeared to attend the hearing. Therefore we are proceedings to dispose off the appeal after considering the merits of the case and after hearing the Id DR.

5. Having heard the rival parties and perusing the material on record, we find that the co-ordinate bench of the Tribunal has decided an identical issue in ITA No.1264/M/2011 A.Y. 2007-08 & others vide order dated 23.09.2016 in favour of the assessee by holding that that no TDS is required to be deducted on the commission payments made to foreign sales agents whose income is not taxable in India. We, therefore, respectfully following the same direct the AO to delete the disallowance.

6. The second ground raised by the assessee is against the confirmation of disallowance by Ld. CIT(A) of Rs.7,35,614/- as made by the AO towards the payment of freight charges for shipment of goods from the ports in India to the destinations outside India to the non-resident shipping companies and/or their agents in India for non deduction of tax at source.

7. After hearing the Id DR and perusing the materials as placed before us we observe that issue is covered in favour of the assessee by the order of co-ordinate bench of the Tribunal in ITA No.1264/M/2011 A.Y. 2007-08 & others vide order dated 23.09.2016 . After perusing the order of co-ordinate bench of the Tribunal, we observe that the payment has been made to the foreign shipping companies for their agents whose income is not taxable in India and therefore following the decision of co-ordinate bench of the Tribunal, we direct the

AO to allow the deduction.

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

**Order pronounced in the open court on 04.09.2018.**

**Sd/-  
(C.N. Prasad)  
JUDICIAL MEMBER**

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

Mumbai, Dated: 04.09.2018.

\* 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.