आयकर अपीलीय अधिकरण, 'ड बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.2117/Chny/2018**
(निर्धारण वर्ष / Assessment Year: 2013-14)

The Asst. Commissioner of Income Tax, Non Corporate Circle-2, Coimbatore.	Vs	M/s. Cotton Code Garments, No.238, Thiruvenkatasamy Road,R.S. Puram, Coimbatore – 641 002.
		PAN: AAEFC4114D
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Guru Bashyam, JCIT
प्रत्यर्थी की ओर से / Respondent by	:	Shri T. Vasudevan, Advocate

सुनवाई की तारीख/Date of hearing	:	01.01.2019
घोषणा की तारीख /Date of Pronouncement	:	02.01.2019

आदेश / O R D E R

Per A. Mohan Alankamony, AM:-

The appeal by the Revenue is directed against the order passed by the learned Commissioner of Income Tax(Appeals)-2, Coimbatore, dated 23.04.2018 in Appeal No.377/16-17 for the assessment year 2013-14 passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. The Revenue has raised five grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in deleting the addition made by the Ld.AO amounting to Rs.1,14,43,418/- invoking the provisions of Section 40(a)(ia) of the Act towards non-deduction of tax at source with respect to expenditure incurred on overseas commission.

3. The brief facts of the case are that the assessee is a firm engaged in the business of manufacturing and exporting of garments, filed its return of income for the assessment year 2013-14 on 29.09.2013 admitting total income of Rs.26,87,750/-. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS and notice U/s.143(2) of the Act was issued on 05.09.2014. Finally assessment order was passed U/s.143(3) of the Act on 23.03.2016 wherein the Ld.AO made additions amongst which addition of Rs.1,14,43,418/- was made by invoking the provisions of Section 40(a)(ia) of the Act for non-deduction of tax at source towards disallowance of expenditure incurred on overseas commission. On appeal the Ld.CIT(A) deleted the addition by relying in the decision

of the Jurisdictional Madras High Court in the case CIT vs. Faizan Shoes Pvt. Ltd., reported in 367 ITR 155.

4. At the outset the Ld.AR submitted before us that since the Ld.CIT(A) has decided the appeal of the assessee by following the decision of the Jurisdictional High Court, no interference is required in his order. He also submitted that the facts in the case of the assessee are identical to the facts of the case decided by the Hon'ble Jurisdictional Madras High Court cited supra. The Ld.DR though relied on the order of the Ld.AO could not controvert to the submission of the Ld.AR.

5. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is apparent that M/s. Anvil Corporation, USA a non-resident enterprise acts as an intermediary between the assessee's company and M/s. Billbang facilitating the business activity of the assessee. Towards such services rendered by M/s. Anvil Corporation, USA to the assessee Company, the assessee Company is liable to pay commission. Hence it is crystal clear that M/s. Anvil Corporation, USA has rendered service to the assessee Company abroad and

therefore the facts are identical to the decision rendered by the Hon'ble Jurisdictional Madras High Court in the case CIT vs. Faizan Shoes cited supra wherein it was held as follows:-

"9. The Explanation to Section 9(2) of the Act was substituted by the Finance Act, 2010 with retrospective effect from 1.6.1976. The above said explanation would come into play only if the said amount paid would fall under the headings:

(i) income by way of interest as set out in Section9(1)(v) of the Act; or
(ii) income by way of royalty as set out in Section9(1)(vi) of the Act; or
(iii) income by way of fees for technical services as set out in Section 9(1)(vii) of the Act.

10. While dealing with Section 9(1) of the Act, the Supreme Court in Commissioner of Income Tax v. Toshoku Limited, (1980) 125 ITR 525, on considering a transaction where tobacco was exported to Japan and France and sold through non-resident assessees who were paid commission, held as under:

"8. The second aspect of the same question is whether the commission amounts credited in the books of the statutory agent can be treated as incomes accrued, arisen, or deemed to have accrued or arisen in India to the non-resident assessees during the relevant year. This takes us to s. 9 of the Act. It is urged that the commission amounts should be treated as incomes deemed to have accrued or arisen in India as they, according to the department, had either accrued or arisen through and from the business connection in India that existed between the non-resident assessees and the statutory agent. This contention overlooks the effect of cl. (a) of the Explanation to cl. (i) of sub-s. (1) of s. 9 of the Act which provides that in the case of a business of which all the operations are not carried out in India, the income of the business deemed under that clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India. If all such operations are carried out in India, the entire income accruing there from shall be deemed to have accrued in India. If however, all the operations are not carried out in the taxable territories, the profits and gains of business deemed to accrue in India through and from business connection in India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in the taxable territories. If no operations of business are carried out in the taxable territories, it

follows that the income accruing or arising abroad through or from any business connection in India cannot be deemed to accrue or arise in India (See CIT v. R. D. Aggarwal and Co. [1965] 56 ITR 20 (SC) and Carborandum Co. v. CIT [1977] 108 ITR 335 (SC) which are decided on the basis of s. 42 of the Indian I.T. Act, 1922, which corresponds to s. 9(1)(i) of the Act).

9. In the instant case, the non-resident assessees did not carry on any business operations in the taxable territories. They acted as selling agents outside India. The receipt in India of the sale proceeds of tobacco remitted or caused to be remitted by the purchasers from abroad does not amount to an operation carried out by the assessees in India as contemplated by cl. (a) of the Explanation to s. 9(1)(i) of the Act. The commission amounts which were earned by the non-resident assessees for services rendered outside India cannot, therefore, be deemed to be incomes which have either accrued or arisen in India. The High Court was, therefore, right in answering the question against the department."

11. The facts of the present case are akin to the facts of the decision in Toshoku Limited case, referred supra. In the instant case also the assessee engaged the services of non-resident agent to procure export orders and paid commission. That apart, the Commissioner of Income (Appeals) as well as the Tribunal have correctly applied the principle laid down in GE India Technology Cen. (P) Ltd. case, referred supra, to hold that the assessee is not liable to deduct tax at source when the non-resident agent provides services outside India on payment of commission.

12. In the light of the above said decisions and the finding rendered by us on the earlier issue that the services rendered by the non-resident agent can at best be called as a service for completion of the export commitment and would not fall within the definition of "fees for technical services", we are the firm view that Section 9 of the Act is not applicable to the case on hand and consequently, Section 195 of the Act does not come into play. In view of the above finding, the decision of the Supreme Court in Transmission Corporation of A.P. Ltd. case, referred supra, relied upon by the learned Standing Counsel for the Revenue is not applicable to the facts of the present case. We find no infirmity in the order of the Tribunal in confirming the order of the Commissioner of Income Tax (Appeals)."

Since the Ld.CIT(A) has only followed the decision of the Hon'ble Jurisdictional Madras High Court while deciding the case of the assessee wherein the facts are identical we do not find it necessary to interfere in his order. It is ordered accordingly.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced on the 2nd January, 2019 at Chennai.

Sd/-	Sd/-
(जॉर्ज माथन)	(ए. मोहन अलंकामणी)
(George Mathan)	(A. Mohan Alankamony)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 2nd January, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF