

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4142/DEL/2015 (A.Y 2010-11)

ACIT Circle-52 (1), Room NO. 1405, 14 th Floor, E-2, Block, Dr. S. P. Mukherjee Civic Centre New Delhi (APPELLANT)	Vs	Rajinder Kumar Aggarwal(HUF) 40, Prithvi Raj Market New Delhi AAEHR026B (RESPONDENT)
---	----	--

Appellant by	Ms. Ashima Neb, Sr. DR
Respondent by	Sh. Anil Kumar Chopra, FCA & Sh. Vinod Garg, Adv

Date of Hearing	27.02.2019
Date of Pronouncement	27.03.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 27/03/2015 passed by CIT(A)-XVIII, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

“The CIT(A) has erred in deleting the addition of Rs.88,15,790/- by not treating the commission paid on export sales as fee for technical services u/s 9 (1)(vii).”

3. The assessee is a Hindu Undivided Family (‘HUF’) and is engaged in the business of export of leather footwear mainly in France under the name and style of M/s. Regency Impex. The assessee appointed M/s Ace Trading Company, France (ACE Trading), a non-resident of India as its agent in France

for assistance in procuring export orders for the assessee in France. For such services to be provided by ACE Trading to the assessee, vide Agreement dated 01.4.2009, the assessee agreed to give 8% commission FOB Mumbai on sales to parties introduced by ACE in France for the period 01.4.2009 to 31.3.2010. In terms of the said Agreement, the assessee paid commission of Rs.88,15,790/- for the export to parties introduced by ACE Trading in FY 2009-10 by submitting following documents which were produced before the Assessing Officer during the Assessment Proceedings:

- ❖ Ledger account of Commission paid on Export Sales
- ❖ Ledger account of M/s ACE Trading Co
- ❖ Sample invoices issued by M/s ACE Trading Company and corresponding shipping bills

The commission was paid to ACE Trading, a non-resident agent (payee) who is a tax resident of France. The payee was simply assisting in procuring export orders for the Assessee in his ordinary course of business in France. The commission was paid for activities of the payee outside India and the amount is received by the payee outside India through normal banking channels. Section 5(2) states that total income of a person, who is a non-resident, includes income from all sources which (a) is received or deemed to be received in India; (b) accrues or arises in India; or (c) is deemed to accrue or arise in India. In the present case, the commission income paid to the foreign agent neither accrued in India nor deemed to be accrued in India as per deeming provisions of section 9 and nor the same was received nor deemed to be received in India. The Assessing Officer disallowed the said commission paid to ACE Trading on the ground that the services of ACE in relation to procurement of export orders are in the nature of Fee for Technical Services (FTS) both under the provisions of the Act and DTAA with France. Accordingly, it was held that the said amount of commission of Rs.88,15,790/- is liable to TDS u/s 195 and disallowed the same by invoking provisions of section 40(a)(i) as no TDS was deducted thereon.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) after considering the submissions of the assessee supported by documents filed and settled legal position based on judicial precedents, held that the said commission paid to foreign agent for procurement of export orders is in the nature of business income of the foreign agent and not FTS, thus not liable to TDS and deleted the addition, thereby allowing the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) has not at all given any independent finding of its own but reproduce the contentions raised during the appellate proceedings by the assessee. The CIT(A) should have at least given the distinguishing factors for the observations of Assessing Officer in the assessment order of CIT(A). Thus, the Ld. DR submitted that on this ground itself, the order of the CIT(A) will not sustain.

6. The Ld. AR submitted that the CIT(A) has rightly accepted the contentions of the assessee as the issue is squarely covered in favour of the assessee by various decisions of the Jurisdictional High Court as well as Tribunal. Therefore, the Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The issues involved in this appeal relates to applicability of TDS u/s 195 on payments abroad of export commission to non-resident the foreign agent for the procurement of export orders for the assessee and consequently disallowance u/s 40(a)(i) of the Income Tax Act, 1961. As pointed out by the Ld. AR the issue is covered in favour of the assessee in case of DIT Vs. Panalfa Autoelektrik Ltd. 378 ITR 205 wherein it is held that commission paid by the assessee to its foreign agent for arranging of export sales and recovery of payments could not be regarded as Fee for Technical Services u/s 9(1)(vii). In the present case, the commission was paid to ACE Trading, a non-resident agent (payee) who is a tax resident of France. The payee was simply assisting in

procuring export orders for the Assessee in his ordinary course of business in France. The commission was paid for activities of the payee outside India and the amount is received by the payee outside India through normal banking channels. Section 5(2) states that total income of a person, who is a non-resident, includes income from all sources which (a) is received or deemed to be received in India; (b) accrues or arises in India; or (c) is deemed to accrue or arise in India. In the present case, the commission income paid to the foreign agent neither accrued in India nor deemed to be accrued in India as per deeming provisions of section 9 and nor the same was received nor deemed to be received in India. Thus, there is no need to interfere with the findings of the CIT(A). The Appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on 27th March, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 27 /03/2019
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	27.02.2019
Date on which the typed draft is placed before the dictating Member	27.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	27 .03.2019
Date on which the final order is uploaded on the website of ITAT	27 .03.2019
Date on which the file goes to the Bench Clerk	27 .03.2019
Date on which the file goes to the Head Clerk	