

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 1211/HYD/2018

Assessment Year: 2014-15

Virupaksha Organics Limited, HYDERABAD [PAN: AABCD0026F]	Vs	Dy.Commissioner of Income Tax, Circle-17(2), HYDERABAD
(Appellant)		(Respondent)

For Assessee : Shri V.Siva Kumar, AR
For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 12-05-2021
Date of Pronouncement : 23-06-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2014-15 arises from the CIT(A)-5, Hyderabad's order dated 08-05-2018 passed in case No.0223/2017-18/CIT(A)-5, in proceedings u/s.143(3) r.w.s.92CA(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance canvassed in the instant appeal challenges correctness of both the learned lower authorities' action making Section 40(a)(i) disallowance of Rs.16,61,611/- claimed towards foreign sales commission without deducting TDS thereupon.

3. We noted that the Assessing Officer's assessment order dt.29-12-2017 taken into consideration the assessee's alleged agreement to the impugned disallowance as upheld in the CIT(A)'s order. The very factual position continues before us as well as per the department's contentions that the assessee is estopped from challenging the impugned foreign sales commissions disallowance once conceded throughout in both the lower proceedings.

4. We find no merit to sustain the Revenue's instant technical arguments as well those supporting the impugned disallowance on merits. We make it clear that the question as to whether the principles of estoppel applies in income tax proceedings or not is no more *res integra* as per CIT Vs. C.Parakh & Co (India) Ltd., [291 ITR 661] (SC) that a deduction has to be decided on the basis of statutory provisions than estoppel only.

Coupled with this, it has already come on record that the assessee's payee(s) had not rendered any services in India since it has claimed foreign sales commission only. Case law CIT Vs. M/s.Faizan Shoes Pvt. Ltd., [367 ITR 155] and Welspun Corporation Ltd., Vs. DCIT ITA No.249/AHD/2015, Dt.03-01-2017 hold that such foreign sales commission expenses are not exigible to TDS deduction once the concerned recipients have not rendered any services in India. Hon'ble apex court's landmark decision in GE India Technology Centre P. Ltd. v. CIT (2010) [327 ITR 456] also holds that chapter-XVII of the Act requiring TDS deduction applies only in case the corresponding income is assessable in the payees' hands and not otherwise. We follow the very reasoning *mutatis mutandis*

to decline Revenue's argument seeking to invoke Section 40(a)(ia) *qua* assessee's overseas commission payments disallowance payments. Both the learned lower authorities' impugned action invoking the same to this effect stands reversed therefore.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 23rd June, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Hyderabad,
Dated: 23-06-2021

Copy to :

1. Virupaksha Organics Limited, Flat No.301, Preetham Residency, Siddhartha Nagar, SR Nagar, Hyderabad.

2. The Dy. Commissioner of Income Tax, Circle-17(2), Hyderabad.

3. CIT(Appeals)-5, Hyderabad.

4. Pr. CIT-5, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.