

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member  
And Shri Waseem Ahmed, Accountant Member**

**ITA No. 2035/Ahd/2018  
Assessment Year 2012-13**

ACIT, Circle-3(2) Ahmedabad (Appellant)	Vs	Apex Dye Stuff Industries, C-1/258/2 Phase-II, GIDC Vatva, Ahmedabad PAN: AABFA6430B (Respondent)
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**Assessee by: Shri S.N. Divatia, A.R.  
Revenue by: Shri Santosh Kumar, Sr. D.R.**

Date of hearing : 31-01-2024  
Date of pronouncement : 07-02-2024

**आदेश/ORDER**

**PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-**

This is an appeal filed against the order dated 24-07-2018 passed by Id. CIT(A)-3 for assessment year 2012-13.

2. The grounds of appeal are as under:-

*“a) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 6,55,717/- made by Assessing Officer on account of disallowance made u/s 40(a)(ia) of the act.*

*b) On the facts and circumstances of the case, Ld CIT(A) ought to have upheld the order of the Assessing Officer.*

*c) It is, therefore, prayed that the order of ld. CIT(A) may be set aside and that of the Assessing Officer be restored.”*

3. The assessee is a partnership firm engaged in the business of manufacturing and trading of fertilizers, chemical and paints during the year under consideration. The return of income was filed by the assessee for assessment year 2012-13 on 26-07-2012 declaring total income of Rs. 65,14,590/-. While passing the assessment order u/s. 143(3) of the Income Tax Act on 03-11-2024, the total income was determined at Rs. 67,46,150/- after making the disallowances of expenditure u/s. 40(a)(ia) of Rs. 1,19,341/- and disallowances of personal expenses of Rs. 1,10,290/-. The CIT(A) vide order dated 23-09-2015 dismissed the appeal of the assessee as against the issue of disallowance of expenditure u/s. 40(a)(ia) of the Act. Subsequently, it was observed from Schedule L of the Profit and Loss Account by the Assessing Officer that the assessee had deposited an amount of Rs. 21,22,061/- in profit and loss account on account of foreign commissions expenses for the year under consideration. The said commission was paid to four parties without deducting the TDS and failure to deduct TDS attracts the provisions of section 40(a)(ia) under which any sum payable to a foreign company on which tax is deductible at source under which chapter XVII-B and such tax has not been deducted was required to be disallowed. After obtaining the approval the assessee's case

was reopened and notice u/s. 148 of the Act was issued on 29-11-2016 which was duly served. In response to the said notice, the assessee did not file revised return of income. During the assessment proceedings, the Authorized Representative of the assessee attended the proceedings and submitted the details. After taking cognizance of the said details and the submissions, the Assessing Officer made an addition of Rs. 21,22,061/- and disallowed the commissions expenses u/s. 40(a)(ia) on the ground that as per clarification made by CBDT vide Circular dated 22-10-2009 for applicability of the provisions of section 195(2) regarding commission payments to foreign party, the assessee is liable to deduct tax at source on the payment credited in the foreign parties account.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Id. Departmental Representative submitted that the CIT(A) erred in deleting the addition of Rs. 6,55,717/- made by the Assessing Officer on account of disallowance made u/s. 40(a)(ia) of the Act. The Id. Departmental Representative further submitted that the CIT(A) has not appreciated the clarification made by CBDT vide Instruction No. 7/2009 dated 22-12-2009 as the assessee has paid commission to the foreign parties and he is required to deduct tax at source. Thus, Id. Departmental Representative submitted that the order of the CIT(A) is not justified.

6. The Authorized Representative relied upon the order of the CIT(A) and further submitted that the assessee's statutory liability on the part of the

assessee to deduct tax at source u/s. 195 of the Act as payment of commission was made to foreign nationals operating from foreign territories and the recipients do not have any office, branch or another other establishment in India. There was no liability on the part of the assessee to deduct income tax at source u/s. 195 and the Id. Authorized Representative relied upon the decision of Hon'ble Apex Court in case of G. E. India Technology Centre Pvt. Ltd. 327 ITR 456.

7. We have heard both the parties and perused all the relevant materials available on record. The contention of the Id. Departmental Representative that the assessee is liable to pay/deduct tax at source as per section 195 appears to be not correct as the CBDT has withdrawn, the circular No. 7 of 2009 dated 22-11-2009. The CIT(A) has rightly taken the consistent view of the Hon'ble Supreme Court in the light of decision of G. E. India Technology Centre Pvt. Ltd. (supra) as the assessee is not liable to deduct tax at source as the payments are not taxable in India. As in the present case, the payment of foreign commission is not taxable in India and therefore section 195 is not applicable. There is no need to interfere with the findings of the CIT(A).

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

Order pronounced in the open court on 07-02-2024

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 07/02/2024**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद