

## Payments to non-residents for procuring export orders not fee for technical services or royalty

**Summary – The Chennai ITAT in a recent case of Faizan Shoes (P.) Ltd., (the Assessee) held that where assessee engaged in business of manufacture and export of shoes made payments to non-residents for procuring export orders, the said payment not being in nature of fee for technical services or royalty, were not taxable in India and, thus, assessee was not required to deduct tax at source while making said payments.**

### Facts

- The assessee-company was engaged in the business of manufacture and export of shoe uppers and leather shoes.
- It paid certain commission to non-residents for procuring the export orders. The assessee claimed that non-residents did not provide any technical services to the assessee except procuring orders and following up of the payments and non-residents had no permanent establishment in India. All orders were procured from outside India and services were rendered outside India. In such circumstances, the commission payments made to non-residents were not taxable in India and, hence, no TDS was required to be deducted under section 195.
- The Assessing Officer rejected the assessee's explanation. He took a view that payments made by assessee were deemed income in hands of non-residents within meaning of section 9(1)(vii).
- According to Assessing Officer, since assessee did not deduct tax at source under section 195 while making payments of commission, said payments were to be disallowed under section 40(a)(i).
- The Commissioner (Appeals), however, set aside disallowance made by Assessing Officer.
- On revenue's appeal.

### Held

- It was noted from records that the non-residents were only procuring orders for the assessee and following up payments and apart from that no other services were being rendered.
- The non-residents were not providing any technical services to the assessee. The commission payment made to non-residents did not fall under the category of royalty or fee for technical services, therefore, the *Explanation* to sub-section (2) of section 9 has no application to the facts of the assessee's case.
- In order to invoke the provisions of section 195, the income should be chargeable to tax in India. Here the commission payments to non-residents were not chargeable to tax in India and therefore the provisions of section 195 were not applicable.
- In the circumstances, the order of the Commissioner (Appeals) deleting the disallowance made under section 40(a)(i) was justified.
- In the result, the appeal of the revenue was to be dismissed.