

No disallowance of expenditure in the absence of correct ascertainment of nature of payments to non-resident

Summary – The Mumbai ITAT in a recent case of Snowdrop Trading (P.) Ltd., (the Assessee) held that where nature of payments to non-resident was not correctly ascertained, disallowance for non-deduction of tax could not be made.

ORDER

- This appeal by the assessee arose out of the order passed by the CIT(A) in relation to the A.Y. 2008-09.
- The first ground of appeal was against the confirmation of the action of the Assessing Officer in making disallowance of Rs.4,99,736/- u/s 40(a)(i) of the Income-tax Act, 1961 (Act). Briefly stated the facts of this ground is that the assessee claimed deduction for foreign consultancy and commission charges amounting to Rs.46.92 lacs. On the perusal of the details in respect of tax deducted at source as required u/s 195 of the Act, the Assessing Officer observed that such expenses included payments made to four parties residing in different countries. The assessee submitted these payments were made to the persons residing in countries with whom India has entered into Double taxation avoidance agreement. On going through these details, the Assessing Officer noticed that it included a payment of Rs. 4,99,736 made to Mr. Jeffery Smith, China, which was made without deduction of tax source. The Assessing Officer made disallowance u/s 40(a)(i) which came to be confirmed in the first appeal.
- The ITAT after considering the submission and the relevant material on record observed that the authorities below have covered this amount u/s 9(1)(vii) as, 'fees of technical services' in the nature of 'inspection services' for purchase order. The Ld. AR contended that the authorities have gone by the nomenclature given in the Agreement without ascertaining correct nature of amount which was simply in the nature of commission.
- The ITAT found insufficient discussion during assessment stage as well as first appellate stage about the nature of the amount paid by the assessee. Both the sides are in agreement that the matter can be restored to the file of AO for afresh adjudication. The ITAT therefore set-aside the impugned order and remit the matter to the file of the AO for deciding this issue afresh as per law after allowing a reasonable opportunity of being heard to the assessee.
 - Accordingly, the appeal of the assessee is partly allowed for statistical purposes.