

## **Sum paid to NR to identify potential customers and to conduct market survey abroad held taxable as FTS**

**Summary – The Cochin ITAT in a recent case of English Indian Clays Ltd., (the Assessee) held that payment to a foreign company for marketing survey and identifying potential foreign customers for assessee's product were in the nature of consultancy services and therefore taxable in India.**

### **Facts**

- The assessee engaged a company SR as marketing agent for South East Asian countries.
- Company SR had to study the market situation in South East Asia for the product manufactured by the assessee and they had to market the product of the assessee in those countries.
- The Commissioner (Appeals) found that payment made to Company SR was consultancy charges, therefore, tax had to be deducted. Accordingly, the Commissioner (Appeals) confirmed the disallowance made by the Assessing Officer.
- On further appeal:

### **Held**

- The work of company SR was to identify the potential customer and file a report regarding the market strategy and developmental studies. Agreement did not enable company SR to market the product of the assessee in South East Asian countries.
- The company SR only had to do survey and file a report so that the assessee could market their product after considering the report filed by the foreign party. Therefore, the payment made to SR was only consultancy charges as found by the Commissioner (Appeals).
- It was not a case of marketing the product in the foreign country. Therefore, the Commissioner (Appeals) had rightly confirmed the order of the Assessing Officer.
- Accordingly, the ITAT confirmed the order of the lower authority holding assessee liable for TDS.