

## **Export commission paid to NR outside India for services rendered outside India out of the ambit of TDS**

**Summary – The Bangalore ITAT in a recent case of Exotic Fruits (P) Ltd., (the Assessee) held that Where assessee had paid export commission to its non-resident agent, in view of fact that services of non-resident agents were rendered outside India and commission was also paid outside India, income of such agent by way of commission could not be considered as accrued or arisen or deemed to be accrued or arisen in India.**

### **Facts**

- The assessee was engaged in the business of processing of fruit products and exporting the same to the various non-resident customers in Saudi Arabia, Bahrain, Dubai, etc., through its non-resident agents. It had paid commission to its non-resident agents as per terms and conditions of agency agreement.
- The Assessing Officer concluded that since the source of income being situated in India, the non-residents were liable to income-tax in India. Accordingly, he held that the assessee was in default under section 201(1) for its failure to deduct/withhold the tax from the payments made to the non-residents as required under section 195.
- On appeal, the Commissioner (Appeals) held that payment made to the non-resident agents comes under the meaning of managerial services as mentioned under section 9(1)(vii) and that assessee was required to deduct TDS under section 195.
- On Second Appeal.

### **Held**

- It was noticed that none of the assessee's agents based abroad have rendered any services in India. Admittedly, none of the assessee's agents have their offices or business establishments in India for rendering such services to the assessee. The commissions to such agents have been paid not in India but overseas.
- Since no part of the services were rendered by such agents in India, no income arose on the payment of commissions to such agents and, consequently, as rightly argued by the assessee, the question of deduction of tax at source under section 195 doesn't arise.
- The Commissioner (Appeals) has merely stated that payments to non-resident agents come with meaning of managerial service mentioned under section 9(1)(vii). On perusal of agreement it is evident that the remittances to non-residents are mere commission payment based on turnover of sales and there is no managerial service rendered by non-resident to the assessee.
- The income of the non-resident(s) by way of commission in the present case cannot be considered as accrued or arisen or deemed to accrue or arise in India as the services of such agents, as asserted by the assessee, were rendered/utilised outside India and the commission was also paid outside

India. Further, in the absence of permanent establishment(s) of such agents in India, the incomes of the said agents were not liable to be taxed in India and, as such, the assessee was not obliged to effect any deduction of tax on the commission payments made to the agents who were positioned overseas.

- In substance, the assessee was not liable to deduct tax at source while making payments of commissions to non-resident agents.