

Payments to non-resident for his translation services shall not be deemed as 'fees for technical services'

Summary – The Chennai ITAT in a recent case of Cosmic Global Ltd., (the Assessee) held that translation services involving translation of text from one language to another were not technical services and, therefore, payment made by assessee to non-resident translators would not fall within scope of 'fees for technical, managerial or consultancy services' as mentioned in Explanation 2 to section 9(1)(vii).

ORDER

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)(C)-II, Chennai, dated 21.1.2014, for the assessment year 2009-10. In appeal, the assessee has assailed the findings of the First Appellate Authority confirming addition of Rs. 2,63,82,202/- under Section 40(a)(i) and invoking of the provisions of Section 115JB of Income-tax Act, 1961.

2. The appeal has been filed with delay of 5 days. The Id. AR submitted that the delay in filing of the appeal was unintentional. The delay occurred on account of miscalculation of the period of limitation in filing of the appeal. We are satisfied that the delay in filing of the appeal is not wilful. The delay occurred due to bonafide mistake as stated above. In the interest of justice, delay of 5 days in filing of the appeal is condoned and the appeal is admitted to be heard on merits.

3. The assessee-company is engaged in the business of providing translation services through Web. For the assessment year under consideration, the assessee filed its return of income on 29.9.2009 declaring total income of Rs. 52,76,148/-. The gross total income of the assessee was Rs. 2,52,54,656/-. The assessee claimed deduction under Section 10A of Rs. 1,99,78,508/-. The case of the assessee was selected for scrutiny and notice under Section 143(2) was issued to the assessee on 24.8.2010. The Assessing Officer, vide order dated 19.12.2011, held that instead of normal provisions, the tax liability of the assessee has to be calculated under the provisions of Section 115JB. The A.O. further held that the assessee is providing translation services to its clients. The assessee is engaging service of translators from overseas, as well as within India. In respect of fees for translation services paid to the residents, the assessee is complying with the provisions of Section 194J. In respect of translations from overseas translators, the assessee is not deducting tax at source on the payments made to them. The A.O. held translation services are technical in nature and the assessee was liable to deduct tax at source on such payments. The A.O. accordingly disallowed the amount of Rs. 2,63,82,202/-, that is the payment made to non-resident translators without deduction of tax at source.

Aggrieved by this assessment order, the assessee preferred an appeal before the CIT(Appeals). The CIT(Appeals), vide his impugned order, upheld the findings of the assessing authority and confirmed the disallowance made under Section 40(a)(i) of the Act.

4. Now the assessee has come in second appeal assailing the order of the CIT(Appeals). Shri B. Ramakrishnan, CA, appearing on behalf of the assessee, submitted that the authorities below have erred in coming to the conclusion that payments made for translation services are in the nature of fees for technical service. The Id. AR contended that the services rendered by the assessee to its clients are neither technical nor managerial in nature. The assessee is receiving work order from its clients around the world for translation of scripts from one language to an other. The assessee is getting the translations done from translators in India and overseas. The disallowance made under Section 40(a)(i) is with respect to payments made to foreign freelance translators. The non-resident translators are engaged through internet on first-cum-first basis, as well as competitive rates. They do not have permanent establishment in India and there is no contract or agreement between the assessee and the translators. There is no binding condition that the assessee would get the work done from them in future as well. The services provided by the translators do not fall within the ambit of "managerial, technical or consultancy services". The translators are not contributing anything from their own side in the script to be translated. They simply have to translate the text from one language to the other. The Id. A.R. prayed for setting aside the impugned order.

5. On the other hand, Shri Guru Bhashyam, JCIT, representing the Department, vehemently supported the order of the CIT(Appeals). The Id. DR contended that the services provided by the assessee are highly specialized and technical in nature. The assessee has been providing translation services in various streams including legal, marketing, technical, medical, etc. Therefore the services provided by the assessee has been rightly held to be technical services and the remuneration paid to the translators for rendering such services clearly fall within the meaning of "fees for technical services". The assessee ought to have deducted tax at source on such payments in accordance with law. The Id. D.R. prayed for dismissal of the appeal of the assessee.

6. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below. The Assessing Officer has made disallowance of Rs. 2.63 Crores under Section 40(a)(i) on account of non-deduction of tax at source on the payments made to nonresident translators. The authorities below have held translation services to be technical in nature. On the other hand, the contention of the assessee is that the payment for translation services to non-residents does not fall within the ambit of "fees for technical, managerial or consultancy services".

7. Let us first understand the scope of the term "technical services". The expression "technical services" has not been defined anywhere in the Act. However, "fees for technical services" has been defined in Explanation 2 to Section 9(1)(vii) of the Act, which reads as under:-

"Explanation (2) - for the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries""

8. The dictionary meaning of the word "technical" as given in Oxford English Dictionary is -

- "(1) relating to a particular subject, art, or craft, or its techniques requiring special knowledge to be understood;
- (2) involving or concerned with applied and industrial sciences relating to the operation of machines;
- (3) according to a strict application or interpretation of the law or rules".

The Chambers English Dictionary explains the term "technical" as –

- "(1) relating to practical skill or applied science, especially those sciences useful to industry;
- (2) relating to a particular subject or requiring knowledge of particular subject to be understood;
- (3) according to a strict interpretation of the law or rules;
- (4) belonging or relating to or showing a quality of technique".

In the present case, the assessee is getting the translation of the text from one language to another. The only requirement for translation from one language to other is, the proficiency of the translators in both the languages, i.e. the language from which the text is to be translated, to the language in which it is to be translated. The translator is not contribution anything more to the text which is to be translated. He is not supposed to explain or elaborate the meaning of the text. Apart from the knowledge of the language, the translator is not expected to have the knowledge of applied science or the craft or the techniques in respect of the text which is to be translated. A bare perusal of Explanation 2 to Section 9(1)(vii), which explains "fees for technical service" and the dictionary meaning of the word "technical" makes it unambiguously clear that translation services rendered by the assessee are not technical services. Therefore, the payment made by the assessee to the non-resident translators would not fall within the scope of "fees for technical, managerial or consultancy service" as detailed in Explanation 2. In our considered view, the CIT(Appeals) has travelled beyond the definition of "fees for technical service" to bring the translation services within the compass of the term "fees for technical services".

9. In our considered opinion, the payments made by the assessee to non-residents on account of translation services do not attract the provisions of Section 194J. The disallowance made under Section 40(a)(i) is thus deleted. This ground of appeal of the assessee is allowed.

10. The second issue raised by the assessee in the appeal is with respect to invoking of the provisions of Section 115JB. The Id. A.R. has not been able to substantiate as to how the authorities below have erred in applying the provisions of Section 115JB. Therefore this ground of appeal of the assessee is dismissed.

11. In the result, the appeal of the assessee is partly allowed in the above said terms.