

ITAT directs AO to examine agreement with NR agents and ascertain whether services rendered by them were FTS

Summary – The Chennai ITAT in a recent case of Rane (Madras) Ltd., (the Assessee) held that w here agreement entered into by assessee with foreign agents was not available to determine type of services, matter had to be considered afresh to decide applicability of section 9(1)(vii).

Facts

- The assessee entered into agreement with agents outside India for procurement of export orders and marketing purposes.
- The assessing authority noted that the Tribunal in earlier year in assessee's own case held that services rendered by overseas agents were in nature of fees for technical services and come under the purview of Explanation 2 to section 9(1)(vii). On basis of said decision, sum paid by assessee to said agents was treated as fees for technical services and disallowance was made under section 40(a)(i).
- On appeal:

Held

- The Tribunal in assessee's own case for the assessment year 2004-05 came to the conclusion that overseas agents are providing managerial/technical services to the assessee so as to attract the provisions of section 195.
- From the scope of services of the agreement produced it was not found any managerial/technical services are to be provided to the assessee by the overseas agent so as to attract the provisions of section 195. However, this agreement is relevant to the assessment year 2009-10 and the assessment year under appeal is 2007-08. Neither the assessee nor the revenue placed an agreement relevant for the assessment year under consideration. In such circumstances, this matter has to be re-examined by the Assessing Officer with reference to the agreement prevailing for the assessment year 2007-08 and the conditions mentioned thereon for the relevant assessment year, i.e. 2007-08.