

Sum paid to NR without deduction of tax won't invite sec. 40(a)(i) disallowance if such sum was capitalized

Summary – The Cochin ITAT in a recent case of Muthoot Finance Ltd., (the Assessee) held that where assessee had not claimed payment made to non-resident for providing engineering site services as expenditure but capitalised same and claimed only depreciation thereon, no disallowance could be made under section 40(a)(i). Contribution to staff welfare account was to be allowed as expenditure

Facts

- The assessee was a non-banking financial company engaged itself in providing gold loan and other allied investment activities. It made payment to non-resident for providing engineering site services but did not deduct tax at the time of payment.
- The Assessing Officer disallowed the entire payment made by the assessee as provided in section 40(a)(ia).
- He disallowed it under section 40(a)(ia) on account of non-deduction of tax at source.
- The assessee submitted that it had not claimed said payment made to non-resident as expenditure but capitalized same and claimed only depreciation. He submitted that the disallowance could be considered only in case the assessee claimed deduction while computing the income chargeable to tax and it had not claimed any deduction. The disallowance was made by the lower authority under section 40(a)(ia) and section 40(a)(i) was not taken into consideration.
- On appeal, the Commissioner (Appeals) upheld order of the Assessing Officer.

Held

- The payment made to non-resident for technical services provided to the assessee is admittedly taxable in India, therefore, the assessee is bound to deduct tax. The assessee can claim the same as expenditure. However, such claim of expenditure could be allowed only in case the assessee deducts the tax at the time of payment. In this case, the assessee claims that deduction was not claimed as expenditure while computing the income chargeable to tax. The Commissioner (Appeals) observed that irrespective of the fact that whether the assessee has claimed as deduction or not disallowance has to be made since tax was not deducted. Both the authorities below have not examined whether the amount paid to the non-resident was deducted while computing the income chargeable to tax or not. In other words, even though the assessee claims that the payment to non-residents was not claimed as expenditure while computing taxable income, the same was not examined by any of the authorities below. The language of section 40 clearly says that the amount paid to non-resident on which tax was not deducted shall not be deducted while computing the income chargeable to tax. Therefore, if the assessee has not deducted the amount claiming as expenditure while computing the chargeable income, there is no necessity for further disallowance. In other words, if the assessee has not claimed the payment to non-resident as expenditure and not

deducted while computing the income chargeable to tax, there is no question of further disallowance by the authorities. However, the fact needs to be examined whether the assessee has claimed the payment as deduction or not? Since no material is available on record with regard to computation of income, this Tribunal could not record a finding whether the assessee claimed the same as deduction or not? as argued by the representative for the assessee. Accordingly, the orders of lower authorities are set aside and the issue is remitted back to the Assessing Officer. The Assessing Officer shall re-examine the issue and find out whether the assessee claimed expenditure of Rs.22,85,946 said to be paid to non-resident as deduction while computing the income chargeable to tax or not? Thereafter, the Assessing Officer shall decide the same in accordance with law after giving reasonable opportunity.