

## **Export commission paid to foreign agent won't attract TDS if such agent didn't have PE in India**

**Summary – The Jaipur ITAT in a recent case of Sumit Gupta, (the Assessee) held that section 195 could not be invoked in respect of payment by assessee of commission on export sale made to a US company which had no permanent establishment in India**

### **Facts**

- The assessee exported granite to USA and paid commission on export sales made to a US company and but it did deduct TDS under section 195.
- The Assessing Officer concluded that the remittances made by the assessee on account of sales commission covered under the expression fee for technical services' as defined in section 9(1)(vii)(b) and the same were to be deemed income of the payee accrued or arising in India and, consequently liable for withholding tax plus surcharge and education cess as per rates of tax prescribed. Thus, the assessee was liable to deduct TDS under section 195 and he was in default under section 201(1) for tax and interest.
- On appeal, the Commissioner (Appeals) held that the payment towards commission or advertisement charges did not fall under managerial, technical or consultation services and therefore, no income could be deemed to have accrued or arisen to the non-resident so as to attract provision of withholding tax under section 195.
- On appeal:

### **Held**

- The recipients of commission rendered services outside the India and claimed it as business income. The recipient of commission is non-resident and had no permanent establishment in India and, thus, no income had accrued or arisen to non-resident under section 9 in India. Therefore, order of the CIT(A) was to be upheld.