

## Sum paid to NR for support services utilized in overseas contract isn't liable to TDS

**Summary – The Chennai ITAT in a recent case of Hofincons Infotech & Industrial Services (P.) Ltd., (the Assessee) held that where fees was paid to non-resident abroad for their support services which was utilized in business carried outside India, same was not liable for any deduction of tax at source**

### Facts

- The assessee, a company, used to provide consultancy services. It made payment for support services rendered in Qatar for its Nigerian projects per assessee, it had not carried out any operation in India in relation to the support services availed in question which would create any obligation to deduct TDS.
- The Assessing Officer referred to section 9(1) *Explanation* to clause (i) to contend that it was a business, of which all operations are not carried out in India its entire income or a part thereof accrues or arises in India only as is reasonably attributable to the operations carried out in India. The Assessing Officer disallowed said payment by invoking section 40(a)(i) on account of non-deduction of TDS.
- On appeal, the Commissioner (Appeals) reversed the said decision finding that these payments were in the nature of service charges exclusively paid towards execution of projects in Qatar and covered by exclusion clause under section 9(1)(vii)(b). He concludes that these payments pertained to the assessee/consultancy firm's overseas Nigerian contracts. So, the fees paid to such consultants abroad had been held to be for services utilized in the business carried outside India not liable for any TDS deduction.
- On appeal by the Revenue to the Tribunal.

### Held

- The assessee consultancy firm's payments had been made in respect of services utilized outside India. The source of income happens to be the Nigerian Projects situated outside India.
- The revenue contends that in view of *Explanation* inserted by the Finance Act, 2010 with retrospective effect from 1-6-1976, it is immaterial as to whether the services have been rendered outside India or the payee does not have a permanent establishment in India. There cannot be any issue about the insertion of this explanation. However, the assessment year in this case is 2003-04 and this explanation came only in the year 2010. In these circumstances only, once the assessee had made all these payments, finalized accounts well before insertion of the explanation, it is not supposed to take the clock back and deduct TDS. So, this decision stands distinguished. The Revenue's grounds fail.