

## Commission paid to NR for advising on product trend in USA isn't taxable as services were rendered outside India

**Summary – The Chennai ITAT in a recent case of Amarvathy Textiles., (the Assessee) held that Remuneration paid in foreign currency by assessee-company, for services rendered outside India to a US-resident for product designing services, was not liable to be taxed in India**

### Facts

- The assessee-company made payment to a U.S. resident as product design charges on account of export of products but it did not deduct TDS on said payment on the ground that payment made to non-resident for service rendered outside India was not liable for TDS under the provisions Act and, therefore, disallowance of the same invoking the provisions of section 40(a)(i) would not arise.
- However, the Assessing Officer held that by virtue of section 9(1)(vi) and article 12 of Double Taxation Avoidance Agreement entered into between India and USA, 'royalties' and 'fees for services rendered' would be taxable at the contracting State in which they arise and, accordingly, as per the law, TDS had to be deducted and made addition accordingly.
- The Commissioner (Appeals) deleted the addition by placing reliance on the decision of the Apex Court in the case of *CIT v. Toshoku Ltd.* [\[1980\] 125 ITR 525](#) and held that the assessee was not required to deduct tax at source on the payments made in foreign currency to said U.S. resident.
- On appeal:

### Held

- It is apparent that payment in foreign currency is made to non-resident outside India for services rendered outside India. The decision of the Apex Court in the case of *Toshoku Ltd. (supra)* is squarely applicable to the facts of the case of the assessee. The assessee had also explained that non-resident was only acting as selling agent and also advising the assessee on the product trend in USA based on which the assessee was manufacturing garments for marketing in USA. The assessee had paid in foreign currency as remuneration to him at the rate of 3 per cent on the value of the export sales proceeds. In such circumstances, the Apex Court has categorically held that the commission amount which was earned by a non-resident for services rendered outside India would not be deemed to be income which is either accrued or has arisen in India.
- Since the facts in the case of the assessee are identical with respect to the facts of the case decided by the Apex Court, no interference in the order of the Commissioner (Appeals) on this issue is required.