

Matter remanded to decide whether sum paid to Singaporean Co. for providing advice & guidelines was taxable in India

Summary – The Mumbai ITAT in a recent case of Rhodia Specialty Chemicals India Ltd., (the Assessee) held that where assessee made payments to a Singapore based company for providing services such as advice and guidelines in security practices, operations management on IT infrastructure, etc., since nature of those services and place where they were rendered, were not examined, matter was to be remanded back to redetermine as to whether payments in question were taxable in India under section 9(1)(vii)

Facts

- During relevant year, assessee made payments to a Singapore based company namely RAP for providing services such as advice and guidelines in security practices, operations management on IT infrastructure, compliance to corporate policies on usage of IT services etc.
- Assessee's case was that no income had accrued or arisen in India to RAP and hence income was not liable to tax in India. Consequently, no tax was required to be deducted at source.
- The Assessing Officer took a view that payment in question being in the nature of technical fees paid to non-resident, income deemed to accrue or arise in India under section 9(1)(vii) attracting TDS under section 195.
- The Commissioner (Appeals) confirmed the order passed by Assessing Officer.
- On second appeal:

Held

- On a perusal of the assessment order as well as the Commissioner (Appeals) order, it is found that the lower authorities have not thoroughly examined the nature of services rendered by RAP and also whether they were rendered outside India or rendered in India. No such finding is given by the lower authorities. It is found from the orders of the authorities below that the services were rendered by RAP to the assessee and RAP is a resident of Singapore but it is not clear as to the detailed services rendered by RAP *vis a vis* the agreement and where such services were rendered to assessee whether in abroad or in India and how they were rendered.
- These findings of fact are necessary to examine as to whether RAP has rendered technical services to the assessee within the meaning of the provisions of section 9(1)(vii) read with section 195 of the Act. In such circumstances, it is held that the Assessing Officer should examine thoroughly this issue with reference to the nature of services rendered by RAP, by calling complete details from the assessee and ascertaining whether these services were rendered outside India or in India to the assessee and how they were rendered.

- Hence, this issue is restored to the file of the Assessing Officer for *de novo* consideration.