

No TDS if sum paid to foreign co. was reimbursement of expenses with no income element: Mumbai ITAT

Summary – The Mumbai ITAT in a recent case of Pfizer Products India (P.) Ltd., (the Assessee) held that where assessee made reimbursement of expenses to foreign company since there was no element of income involved, payments in question did not require deduction of tax at source.

Where assessee made payments to foreign company for technical services towards copyrights and printable file without deducting tax at source, authorities below were justified in disallowing same under section 40(a)(i)

Facts

- During relevant year, the assessee made payments to a foreign company namely Pfizer Corporation Hongkong Ltd. The claim of the assessee had been that the payments in question were merely reimbursement of expenses to Pfizer Corporation Hongkong Ltd. towards inter-company invoices and there was no element of income so as to require the deduction of tax at source.
- The revenue authorities took a view that since assessee failed to provide necessary details to substantiate that payments in question were merely in the nature of reimbursement of actual expenditure, same deserved to be disallowed in absence of non-deduction of tax at source.
- On second appeal :

Held

- There was sufficient material before the lower authorities which justify the assertions of the assessee that the payments made to Pfizer Corporation Hongkong Ltd. to the extent of Rs.13,67,800/- was towards reimbursement of expenses incurred on behalf of the assessee. At the time of hearing, the papers placed on record were examined on a test check basis. For instance, in relation to an invoice raised by Pfizer Corporation Hongkong Ltd. for USD 948 for production and shipment cost of SEAGIG II Glaucoma Guideline and CDs, the same is based on overall invoices raised by one Scientific Communications International Ltd., Hongkong which is for a consolidated figure of USD 22625 and USD 9162.
- In terms of the said invoices, the amount relatable to the Indian entity is quantified at USD 948, which has been invoiced by Pfizer Corporation Hongkong Ltd. to the assessee-company. Similar is the situation with other invoices and, thus, the assertions being made by the assessee are borne out of record. Thus, where the payments are merely towards reimbursement of expenses incurred by Pfizer Corporation Hongkong Ltd. on behalf of the assessee, there is justifiably no reason to deduct tax at source.

- Moreover, insofar as the proposition that a mere reimbursement of expenses does not attract deduction of tax at source is concerned, the Commissioner (Appeals) has otherwise accepted the same while dealing with the disallowance out of cross charges paid, which was disallowed by the Assessing Officer for non-deduction of tax at source.
- Be that as it may, having regard to the objection of the Commissioner (Appeals) that there was non-substantiation of the payments to Pfizer Corporation Hongkong Ltd. being reimbursements, a plea which is not found tenable on the basis of the material on record, the impugned disallowance made under section 40(a)(i) is directed to be deleted.