

Sum paid to Foreign Co. towards supervision & installation of pipes and fittings couldn't be held as FTS

Summary – The Mumbai ITAT in a recent case of Chemical Process Piping (P.) Ltd., (the Assessee) held that where assessee engaged in business of export of special pipes, made payments to foreign party towards supervision of installation of pipes and fittings, since same was in respect of assembly of project, said payments would squarely fall within sweep of exceptions carved out in Explanation 2 to section 9(1)(vii) and thus could not be held as FTS

Where disallowance under section 40(a)(i) was in context of amounts paid by assessee towards 'fees for technical services' to foreign company, and not towards 'other sum' chargeable under Act, Circular dated 12-2-2015 would not apply to its case

Facts

- The assessee-company was engaged in the business of export of special pipes. During relevant year, the Assessing Officer made payment to 'T', Slovenia towards supervision charges. The assessee's case was since 'T' was a non-resident concern having no PE in India and, moreover, services were rendered outside India, there was no requirement to deduct tax at source while making payment of supervision charges.
- The Assessing Officer opined that payment to the foreign party was made by the assessee towards consultancy charges, viz., excel programme for calculation of the pipe thickness in base of TUV report, excel programme for underground pipe verification according to the relevant AWWA standard, and fabrication trading for steel moulds for construction of the bell and for coupling. The Assessing Officer thus characterising the services rendered by the said party as technical consultancy charges/testing charges, opined that as the assessee had failed to deduct tax at source from the above payments as per the provisions of section 195, therefore, the said amount was liable to be disallowed under section 40(a)(i).
- The Commissioner (Appeals) confirmed said disallowance.
- On second appeal:

Held

- It is found from material on record that the payment was made by the assessee to the foreign party towards supervision charges for installation of GRP pipes manufactured by the assessee. It is opined that such consideration paid by the assessee to 'T', Slovenia towards supervisions of the installation of the GRP pipes and fittings can safely be characterised as having been made in context of assembly project undertaken by the latter. As the payment made by the assessee to 'T' was in respect of an assembly project, the same would squarely fall within the sweep of the exceptions carved out in *Explanation 2* to section 9(1)(vii), and thus could not be held as FTS.

- Thus, the assessee being under no obligation of deducting tax at source under section 195 on the aforesaid payment made to 'T', Solvania, the same could not have been disallowed under section 40(a)(i) in the hands of the assessee. Thus, the order of the Commissioner (Appeals) in context of the aforesaid issue is set aside and the disallowance under section 40(a)(i) is deleted.