

Commission received by Non Resident agents for export is not liable to tax in India

Summary – The Ahmedabad ITAT in a recent case of Jay Chemical Industries Ltd., (the Assessee) held that commission received by Non Resident agents for export is not liable to tax in India

Facts

- The assessee had made commission payments to non-residents for export sales made during the year.
- The Assessing Officer observed that commission payment had been made for utilization of their services for procuring order from the overseas companies and that the agents must have rendered services abroad and had solicited orders therefrom, but the rights to receive the commission arose in India when the order was executed by the assessee in India and, therefore, the income accrued was sourced in India. Therefore, he was of the view that income was arising in India and was taxable under the Act in view of the specific provision of section 5(2)(b) read with section 9(1)(ii) and that since TDS had not been deducted on said payment, it was disallowed and added to the total income of the assessee under section 40(a)(i).
- The Commissioner (Appeals) had allowed the appeal of the assessee stating that commission paid to non-resident agent was not liable to tax under the provisions of the Act when the services were rendered outside India, payments were made outside and there was no permanent establishment or business connection in India.
- On appeal:

Held

- The non-resident agents have rendered their services outside India. All the agents have overseas offices and they were not having any permanent establishment in India. As per *Explanation* below section 9(2), income of non-resident shall be deemed to accrue or arise in India under clause (v) or (vi) or (vii) of sub-section (1) and included in the total income of the non-resident whether or not the non-resident has a residence or place of business or business connection in India or the non-resident has rendered services in India. It is clear from the provision that income of the nature of interest or royalty or fees for technical services shall be deemed to accrue or arise in India in the case of non-resident. After considering the above facts, in the case of the assessee, the commission paid to non-resident agent was not liable to tax under the provisions of the Act as the services were rendered outside India, payments were made outside India and there was no permanent establishment or business connection in India. Accordingly, this ground of appeal of the revenue is dismissed.