

Payment received by Foreign Company for installation and supervision of pipes and fittings is not FTS

Summary – The Mumbai ITAT in a recent case of Chemical Process Piping (P.) Ltd., (the Assessee) held that Payment received by Foreign Company for installation and supervision of pipes and fittings is not FTS

Facts

- The assessee-company made payment to a foreign company towards supervision charges. The assessee's case was since the recipient was a foreign company/ 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 towards consultancy charges and characterised the services as technical consultancy charges/testing charges. He thus held that 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

- The ITAT on examination of facts stated that the payment was made by the assessee to the foreign party towards supervision charges for installation of pipes manufactured by the assessee having been made in context of assembly project undertaken by the latter. Since the payment made 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 was under no obligation of deducting tax at source under section 195 on the aforesaid payment and 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.