

No TDS in case of Foreign Company receiving compensation for breach of contract since it did not have a PE in India

Summary – The Visakhapatnam ITAT in a recent case of 3F Industries Ltd., (the Assessee) held that No TDS is required to be made in case of Foreign Company receiving compensation for breach of contract since it did not have a PE in India

Facts

- Assessee made payment to a foreign company without deduction of tax at source.
- Assessing Officer held that assessee was required to deduct tax at source under section 195 and since assessee failed to deduct TDS, it made addition under section 40(a)(i).
- Assessee claimed that payment was contractual obligation to compensate inability of assessee to supply goods and since there was no PE of foreign company in India, business profits were not taxable in India, hence question of deduction of tax at source did not arise and consequently no addition was warranted under section 40(a)(i).
- On appeal:

Held

- No evidence was brought on record that sum paid to foreign buyer is income within meaning of Article VII of DTAA to be taxable in India. The department did not establish that foreign company has a permanent establishment in India, therefore, sum paid to foreign buyer does not attract TDS under section 195 and there is no case of making disallowance under section 40(a)(i). Accordingly addition made by Assessing Officer was to be deleted.