

## **TDS not deductible on Commission paid to Overseas Agents: ITAT**

### **Fact of the Case**

1. The assessee company is engaged in the business of manufacturing and sale of engineering tools.
2. During the relevant assessment year, the Assessing Officer made an addition against the assessee holding that TDS shall be payable on the commission to the non-resident agents considering the fact that though the payment has been made for work done outside India the profit is actually earned in India.

### **Decision of the Case**

1. A two-judge bench of the Tribunal comprising Judicial Member Sudhansu Srivasthava and Accountant Member R K Panda held that these non-residents have rendered the services outside India and have been paid in foreign currency.
2. Therefore, no income accrues or arises in India. These non-residents do not have any PE or business connection in India which is not doubted by the AO. Further, the Assessing Officer has not made any efforts to establish any “business connection” for invoking section 9(1)(i) of the Act. Thus, in the absence of the same, the AO is wrong in invoking the provisions of section 9(1)(i), and accordingly, export commission paid by the assessee is not chargeable to tax in India.
3. It was further noted that these non-resident agents have provided services of securing the orders in overseas market for the assessee company and are entitled to commission on the business procured by them as is evident from agreements placed in the Paper Book.
4. The commission payment made to them does not fall into the category of “fees of technical services” and therefore, explanation (2) to Section 9(1)(vii) of the Act, as invoked by the Assessing Officer, has no application to the facts of the assessee’s case,” the Tribunal said.
5. The bench further noted that the issue is also squarely covered by the judgment of Hon’ble Delhi High Court in the case of Commissioner of Income Tax, Delhi vs. Maruti Suzuki India Ltd. 2017 912) and The Commissioner of Income Tax, Delhi-IV, New Delhi vs. Eon Technology P. Ltd. wherein it has been held that no TDS is required to be deducted on the commission paid to the overseas agent.