

**INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "E": NEW DELHI ]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA No. 133/Del/2016  
(Assessment Year: 2009-10)

ACIT, Circle-47(1), New Delhi.  (Appellant)	Vs.	Shri Gurcharan Singh, 646, 1 <sup>st</sup> Floor, Gali Ganteshwar, Katra Neel, Chandni Chowk, Delhi – 110 006. <b>PAN: ATBPS9241F</b>  (Respondent)
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Department by :	Shri S. S. Negi, Sr. DR
Assessee by :	Shri Mayank Patwari, CA
Date of Hearing	08/04/2021
Date of pronouncement	10/06/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is filed by the Assistant Commissioner of Income Tax, Circle 47 (1), New Delhi, for assessment year 2009-10 against the order passed by the CIT (Appeals)-16, New Delhi, dated 30.10.2015.
2. The revenue has raised the following grounds of appeal:-
  - “1. Whether the commission payment of Rs.3,41,57,558/- can be allowed even when these payments were made without obtaining no-deduction certificate u/s 197 of the I.T. Act?
  2. Whether the commission payments of Rs.3,41,57,558/- made without TDS being deducted can be allowed to the agents who have business connection in India and are subject to tax deduction at source u/s 195 of the Act.?
  3. Whether the commission payment of Rs. 1,31,995/- on which TDS is deducted can be allowed when the assessee has failed to prove genuineness of the transaction? Reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT vs. Durga Dass More 82 ITR 540 and in the case of Sumati Dayal vs. CIT 214 ITR 801 (SC).

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4. *Whether the Ld.CIT(A) was correct in deleting the addition of Rs.3,47,232/- made on a/c of interest on investment made, when the assessee had not sufficient interest free funds available?*
  5. *Whether the Ld.CIT(A) was correct in facts and circumstances of the case and in law in deleting the addition on above accounts. ? ”*
3. Brief facts of the case show that assessee is an Individual carrying on business as proprietor of M/s. Guru Nanak Exports , filed its return of income on 31.03.2011 declaring income of Rs.17,54,510/-. The return was processed under Section 143(3) of the Income Tax Act, 1961 (the Act). Subsequently it was found that assessee has paid commission of Rs.3,42,89,553/- to foreign agents on which no tax is deducted at source and, therefore, commission expenses claimed were not allowable as deduction under Section 40(a)(ia) of the Act. Therefore, after recording the above reason notice under Section 148 of the Act was issued on 21.05.2012. Subsequently assessment proceedings took place. The assessee was asked that as no TDS has been deducted at source on the commission paid to foreign agents of Rs.3,41,57,558/- to Mr. Atequallah and Mr. Amanullah Khan, same is disallowable.
  4. Assessee submitted that the commission paid to foreign agents who are outside India, provided services outside India and, therefore, no part of income accrues to the foreign agents in India and, therefore, as per provisions of Section 195 of the Act no tax is required to be deducted. Assessee also relied on Circular No. 23 dated 23.07.1969, Circular No. 786 dated 7.02.2000 and further the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Eon Technologies P. Ltd. (2012) 343 ITR 366 (Del). It was also stated that there is no permanent establishment of the foreign agents in India and, therefore, no tax is required to be deducted.
  5. The Id. Assessing Officer rejected the contention of the assessee and relying on the ruling of Authority of Advance Rulings (AAR) dated 22.02.2012 in the case of S.K.F. Boilers and Driers Pvt. Ltd. (AAR No. 983-984 of 2010) as well as order of the Hon'ble Delhi High Court in the case of Van Oord ACZ India (P) Ltd. Vs. CIT 189 Taxman 232 held that the payment to the non-resident foreign agents is subject to tax deduction at source under Section 195 of the Act and, therefore, the above sum of Rs.3,41,57,558/- is disallowable under Section 40(a)(ia) of the Act. The Assessing Officer further relied upon the case of the relative of the assessee Mr. Attar Singh for assessment year 2010-11 wherein the above payment has been disallowed. He further noted that in the case of the relative also the payment of the commission has been made to same two persons. Assessing Officer further held

- that the payment made to the above foreign agents is bogus and non-genuine and assessee has made payment of commission to other parties.
6. The Id. Assessing Officer on the details of the commission paid to other party noted that assessee has paid Rs.1,31,995/- to Mr. Rohit Anand, HUF. The Assessing Officer disallowed the above commission in absence of written agreement between the parties.
  7. He further disallowed interest of Rs 347242/- as assessee has used interest-bearing funds for investment in non-interest bearing investments.
  8. Certain other additions were also made which are not part of the dispute before us and does not require any mention. The assessment order under Section 143(3) read with Section 147 of the Act on 31.03.2014 determining the total income of the assessee at Rs.3,73,52,680/- against the returned income of Rs.17,54,510/-.
  9. The assessee preferred an appeal before the Id. CIT (Appeals) who deleted the disallowance of Rs.3,41,57,558/- of commission paid to foreign agents and also deleted the disallowance of commission payment of Rs.1,31,995/- to the Indian party vide order dated 30<sup>th</sup> October, 2015 and, therefore, the Revenue is in appeal before us on this issue.
  10. On both the above grounds the Id. DR relied upon the order of the Assessing Officer.
  11. The Id. AR relied upon the order of the Id. CIT (Appeals). The Id. AR further referred to Circular No. 23 of 1969; 786 of 2000 and 7 of 2009 and submitted that Circular No. 7 of 2009 dated 22.10.2009 wherein Circular No. 23 dated 23.07.1969 is withdrawn, he submitted it does not apply retrospectively. He further relied on the decision of Hon'ble Delhi High Court in the case of Angelique International Limited in ITA. No. 2018 of 2013 and 454 of 2013. He further relied on several decisions of coordinate benches. He also cited the decision of the Hon'ble Delhi High Court in the case of Panalfa Autoelektrik Ltd. in ITA. 292 OF 2014. He, therefore, submitted that the Id. CIT (Appeals) has correctly deleted the disallowance of Rs.3,41,57,558/- being commission paid to foreign agents holding that no tax is required to be deducted thereon. For other two disallowances he relied upon the order of the Id. CIT (Appeals).
  12. Ground Nos. 1 and 2 is against the disallowance of commission expenditure paid to foreign agents for non-deduction of tax. The Id. Assessing Officer has not challenged the disallowance deleted by the Id. CIT (Appeals) on the issue of genuineness of the commission expenditure. Therefore, the only issue in this appeal is whether on the commission paid to foreign agent tax is required to be deducted under Section 195

of the Act or not? We find that now based on the facts stated above the issue is squarely covered by the decision of the Hon'ble Delhi High Court in the case of Panalfa Autoelektrik Ltd. (supra) and Angelique International Limited (supra) cited by the Id. AR. Both the above decisions of the Hon'ble Delhi High Court in the case of CIT Vs. Eon Technologies P. Ltd. (supra). Further it is not the case of the revenue that export commission income of foreign agent for soliciting orders from outside India was earlier chargeable to tax and CBDT circulars exempted it. Thus, withdrawal of those circulars does not have any impact on taxability of export commission and TDS there on. In the present case It is an established fact that agents are nonresidents, operating their business activity outside India, commission payments is related to their service rendered outside India and Revenue could not show that those commission agents have any permanent establishment in India. Assessee has consistently denied that they do not have any permanent establishments in India. Further the commission was remitted to them directly outside India.

13. In view of this the issue is squarely covered in favor of the assessee that foreign commission paid to foreign agents no tax is required to be deducted under Section 195 of the Act and, therefore, disallowance under Section 40(a)(ia) has correctly been deleted. Thus, we confirm the order of the Id. CIT (Appeals) and dismiss ground Nos. 1 and 2 of the appeal of Assessing Officer.
14. Ground No. 3 of the appeal is with respect to disallowance of commission of Rs.1,31,995/-. The allegation of the Assessing Officer was that commission paid to Rohit Anand (HUF) is for rendering services, but the commission is paid to HUF. The Assessing Officer was also cryptic that whether the alleged services rendered in Individual capacity or not? In the present case the rendition of the service is not in dispute. The taxability of commission income in the hands of the recipient in the status of Individual or HUF cannot be of relevant consideration to make any disallowance in the hands of the assessee. Thus, when the rendition of service is not in doubt, amount of commission paid is also not questioned, the tax deduction at source on commission is verified and when the payment is made by account payee cheque, in all these combined circumstances we do not find any merit in ground No. 3 of the appeal. Thus, we confirm the order of the Id. CIT (Appeals) and dismiss ground No. 3.
15. Ground No. 4 is with respect to the deletion of the addition of Rs.3,47,232/- on account of interest on investment when the assessee had not sufficient interest free

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funds available. We find that assessee has shown capital of Rs.28,00,000/- and also interest free loan from family members of Rs.1,05,90,000/- against which the investment in property is merely Rs.28,93,600/-, Thus there was enough interest free funds available with the assessee. Thus the action of the Id. Assessing Officer to disallow the interest on the above sum @ 12% out of above interest paid by the assessee of Rs.13,91,000/- is not correct and hence, correctly been deleted by the Id. CIT (Appeals). The Id. DR could not show any error in the order of the Id. CIT (Appeals). Thus, ground No. 4 of the appeal is dismissed.

16. In the result appeal of the Id. Assessing Officer is dismissed.

Order pronounced in the open court on: 10/06/2021.

  
(AMIT SHUKLA)  
JUDICIAL MEMBER

  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 10/06/2021.

\*MEHTA\*

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	10.6.2021
Date on which the typed draft is placed before the dictating member	10.6.
Date on which the typed draft is placed before the other member	10.6.
Date on which the approved draft comes to the Sr. PS/ PS	10.6.
Date on which the fair order is placed before the dictating member for pronouncement	10.6.
Date on which the fair order comes back to the Sr. PS/ PS	10.6.
Date on which the final order is uploaded on the website of ITAT	10.06.2021
date on which the file goes to the Bench Clerk	10.6.
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	