

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA No. 214 of 2014 (O & M)
Date of Decision:- 29.07.2015

The Commissioner of Income Tax, Faridabad

.....Petitioner(s)

VS.

M/s. Ram Gopal and sons

.....Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present:- Mr. Tajender K. Joshi, Advocate,
for the appellant.

Mr. Jagmohan Bansal, Advocate,
for the respondent.

S.J. VAZIFDAR, A.C.J. (Oral)

1. This is an appeal against the order of the Income Tax Appellate Tribunal upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition made by the Assessing Officer on the ground that the respondent/assessee had failed to deduct tax at source as required under Section 195 of the Income tax Act, 1961 (in short 'the Act'). This appeal pertains to the assessment year 2007-08.

2. The appellant contends that the following substantial questions of law arise in this appeal:-

“I Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the addition of Rs. 47,91,979/- made on account of payment of commission made to agents viz. of Turkey at Rs. 35,34,232/- and of Mauritius at Rs. 12,57,747/- disregarding the fact that the assessee had

made the alleged payments without deducting tax at source.

II Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the addition of Rs. 4,84,197/- made on account of shortage in production even when the assessee has not been able to justify the shortage in furnished product.”

3. The assessee admittedly made payments to two agents, one in Turkey and the other in Mauritius, who were non-residents. The payments were remitted abroad directly. The CIT and the Tribunal set aside the order of the Assessing Officer in view of the circular No. 786 dated 07.02.2000 issued by the Central Board of Direct Taxes. The circular *inter alia* states that no tax is deductible under Section 195 of the Act in respect of expenditure on export commission and other related charges payable to a non-resident for services rendered outside India. The relevant part of the circular reads thus:-

“2. The deduction of tax at source under section 195 would arise if the payment of commission to the non-resident agent is chargeable to tax in India. In this regard attention to C.B.D.T. Circular No. 23, dated 23rd July, 1969, is drawn, where the taxability of “Foreign Agents of Indian Exporters” was considered alongwith certain other specific situations. It had been clarified then that where the non-resident agent operates outside the country, no part of his income arises in India. Further, since the payment is usually remitted directly abroad it cannot be held to have been received by or on behalf of the agent in India. Such payments were therefore held to be not taxable in India. The relevant sections, namely, section 5(2) and section 9 of the Income-tax Act, 1961, not having undergone

any change in this regard, the clarification in Circular No. 23 still prevails. No tax is therefore deductible under Section 195 and consequently, the expenditure on export commission and other related charges payable to a non-resident for services rendered outside India becomes allowable expenditure. On being appraised for this position, the Comptroller and Auditor-General have agreed to drop the objection referred to above.”

4. The facts in this case are admitted. In view thereof, the first question does not raise a substantial question of law. The question is answered against the appellant and in favour of the assessee.

5. The second question raised by the appellant does not raise a question of law at all. It is only a question of fact. The Assessing Officer made an addition to the assessee's income having rejected the assessee's case that there was a shortage in production. The CIT found, as a matter of fact, that the assessee had been maintaining the complete details/particulars of opening stock, purchase, consumption, production and sales, which were in fact verified and accepted by the Assessing Officer. The finding is that the addition was made purely on imagination and assumptions without bringing any documentary material on record. The finding is neither absurd nor perverse.

6. The second question is also answered against the appellant and in favour of the assessee.

7. In the circumstances, the appeal is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

29.07.2015

(G.S. SANDHAWALIA)
JUDGE