

**SATURDAY INTERNATIONAL TAX GYAN !!!****#taxmadeeasy**

Deputy Commissioner of Income-tax, Puducherry v. Integra Software Services (P.) Ltd.<sup>1</sup>

**Payment made to non-resident for doing copy editing, indexing and proof reading cannot be considered as fees for technical service.**

**Facts:**

- The assessee was engaged in the business of e-publishing. It undertook editorial services, multilingual typesetting and data conversion.
- During relevant year assessee outsourced its work to various companies located abroad. The assessee did not deduct tax at source while making payment of outsourcing charges.
- Further, the assessee has not filed certificates in Forms 15CA and 15CB as required under Section 195(6).

**Assessee's contention:**

- The payment made by assessee for various services such as copy editing, indexing does not require any technical knowledge and same is a clerical work or there is no flow of technology and hence no tax is required to be withheld in India in relation to such transaction.
- Assessing officer had himself mentioned in Para 6 of Assessment order that such services are not covered under Technical service.
- Referring to the decision of this Bench of the Tribunal in *Cosmic Global Ltd. v. Asstt. CIT* [2014] 48 taxmann.com 365/66 SOT 13 (Chennai - Trib.), the Ld. counsel for the assessee submitted that translation work was held to be not a technical service.

**Revenue's contention:**

- AO contended that assessee has not filed Form 15CB and 15CA in relation to such payment which is required under section 195(6) and hence TDS needs to be deducted under the act.
- CIT(A) in his order mentioned that the services received by assessee were technical in nature however in case of service provider from US and UK same would not be taxable in India as no knowledge was made available but since in Germany and Spain no make available clause is present, hence amount paid to resident of such countries is liable to be taxed in India.

<sup>1</sup> [2020] 113 taxmann.com 9 (Che-Trib)

## Ruling:


- This Tribunal found that translation of language is not technical service. The translation of a text from one language to another cannot be considered to be technical service as held by this Bench of the Tribunal.
- The copy editing, indexing and doing proof reading required only knowledge in the language and it does not require to have necessary expertise in the subject matter of text. This Tribunal is of the considered opinion that the payment received by the non residents from the assessee is not taxable in India
- Further, Section 195(6) of the Act says that the person responsible for paying to a non-resident any sum whether or not chargeable under the provisions of Income-tax Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed. The violation of Section 195(6) of the Act and failure to file certificates in Form 15CA and 15CB is punishable separately under Section 271 of the Act.
- However, there cannot be any disallowance under Section 40(a)(ia) of the Act.

## Our comments:

- In the current day and age where majority of the work are done online and various such online businesses outsource their work to may be a resident or non-resident and forget to deduct TDS then this could be a welcome judgement wherein it has been clarified that all online services will not be considered as technical or managerial service and hence assessee needs to check nature of each and every service before making payment.
- Further, another mistake which majority people do is not filing of Form 15CB and 15CA while making payment to non-resident. It is important to understand that deducting TDS on payment made and filing of Form 15CB or 15CA are separate requirement. Form 15CB and/ or 15CA as applicable needs to be filed for each and every payment being made to non-resident except for the transactions mentioned in rule 37BB.
- However, Non-filing of such Form could lead to a heavy penalty of Rs. 1 lakh under section 271-I of the Income Tax Act, 1961. It is not clear whether the penalty is with respect to one transaction or as a whole.

<b>Section</b>	<b>Section 9(1)(i), 9(1)(vii), 40(a)(ia), 195(6), Article 12</b>
<b>DTAA/Country</b>	<b>India-USA, UK, Germany, Spain</b>
<b>Court</b>	<b>Chennai Tribunal</b>
<b>Date of Decision</b>	<b>11.10.2019</b>

**Note:** Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.



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**Thank you**

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