

India; United States

Indian Court: No Withholding Tax Applicable to Reimbursement of Expenses to Foreign Sister Company

30 June 2023

Report from our correspondent Urvi Asher, Chartered Accountant, India

The Chennai Income Tax Appellate Tribunal (ITAT) has held that, in the case of *Deputy Commissioner of Income Tax v. M/s. Trusted Aerospace Engineering Pvt. Ltd. (ITA. No. 473/Chny/2019)*, payments made by the taxpayer to its non-resident sister company did not involve any income element. Accordingly, withholding tax (WHT) was not deductible under section 195 of the Income Tax Act, 1961, and the payment was an allowable expense for the taxpayer.

(a) Facts. The taxpayer, an Indian tax resident, concluded an agreement with a US entity for the manufacture of a product (as per designs provided by the US entity). Since its manufacturing facility was not fully established, the taxpayer approached its sister company in the United States (TASE US) to manufacture the products. The taxpayer made a payment to TASE US for the cost of products manufactured without WHT deduction under section 195 of the Act. Hence, Revenue disallowed the entire expense for non-deduction of WHT.

(b) Issue. The ITAT considered the issue of whether the payment made by the taxpayer to TASE US was of the nature of a reimbursement of expenses, whether or not WHT was deductible and, consequently, whether the payment was allowable as an expense.

(c) Decision. The ITAT ruled in favour of the taxpayer and observed that:

- TASE US was well equipped with the necessary facilities for carrying out the manufacturing work while the taxpayer's facility was not established in its full strength. Hence, the taxpayer approached TASE US and made payment for the products manufactured by TASE US;
- it is clear from the invoices issued by TASE US to the taxpayer that the payment was towards reimbursement of expenses; and
- upon termination of the contract with the US entity, the balance amount lying with TASE US was refunded to the taxpayer.

Considering the overall factual pattern, the ITAT held that there was no income element in the payment made by the taxpayer to TASE US, and that it was purely a reimbursement of expenses. The ITAT also relied on the Apex Court's decision in *GE India Technologies Pvt. Ltd.* where it was held that WHT does not apply in the absence of any income element. Accordingly, the ITAT held that WHT was not applicable and the payments were rightly allowed as a deduction.

The full text of the decision pronounced by the ITAT on 14 June 2023 is available [here](#).

India; United States - Indian Court: No Withholding Tax Applicable to Reimbursement of Expenses to Foreign Sister Company (30 June 2023), News IBFD.

Exported / Printed on 6 Mar. 2024 by hkermadi@deloitte.lu.