

IT : Where payment made to foreign buyer was not income within meaning of Article VII of DTAA to be taxable in India, question of deduction of tax at source did not arise and consequently no addition was warranted under section 40(a)(i)

Facts

- Assessee made payment to a foreign company without deduction of tax at source.
- Assessing Officer held that assessee was required to deduct tax at source under section 195 and since assessee failed to deduct TDS, it made addition under section 40(a)(i).
- Assessee claimed that payment was contractual obligation to compensate inability of assessee to supply goods and since there was no PE of foreign company in India, business profits were not taxable in India, hence question of deduction of tax at source did not arise and consequently no addition was warranted under section 40(a)(i).
- On appeal:

Held

- No evidence was brought on record that sum paid to foreign buyer is income within meaning of Article VII of DTAA to be taxable in India. The department did not establish that foreign company has a permanent establishment in India, therefore, sum paid to foreign buyer does not attract TDS under section 195 and there is no case of making disallowance under section 40(a)(i). Accordingly addition made by Assessing Officer was to be deleted.

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[2019] 108 taxmann.com 79 (Visakhapatnam - Trib.)

IN THE ITAT VISAKHAPATNAM BENCH

3F Industries Ltd.

v.

Assistant Commissioner of Income-tax, Circle-1, Eluru

**V. DURGA RAO, JUDICIAL MEMBER
AND D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

IT APPEAL (I.T.) NO. 01 (VIZ.) OF 2015

[ASSESSMENT YEAR: 2007-08]

JULY 17, 2019

C. Subrahmanyam *for the Appellant.* **D.K. Sonowal** *for the Respondent.*

ORDER