

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1050/Ahd/2014
Assessment Year: 2009-10**

&

**ITA No. 2053/Mum/2015
Assessment Year: 2010-11**

&

**ITA No. 1052/Mum/2016
Assessment Year: 2011-12**

&

**ITA No. 1053/Mum/2016
Assessment Year: 2012-13**

Shenzhen Shandong Nuclear
Power Construction
Company Ltd. Add: C/o 2nd
floor, 772, Shriram Bhuvan,
Tilak Road, Opp. BEST Office
Dadar TT, Mumbai-400014.

Vs. Dy. Commissioner of
Income Tax
(International Taxation)-
Range 4(2)(1). Add:
Room No. 120, 1st floor,
Scindia House N.M.
Road, Ballard Estate,
Mumbai-400038.

**PAN No. AAMCS1163P
Appellant**

Respondent

**ITA No. 956/Ahd/2014
Assessment Year: 2009-10**

&

**ITA No. 1613/Mum/2015
Assessment Year: 2010-11**

&

**ITA No. 1483/Mum/2016
Assessment Year: 2011-12**

&

**ITA No. 978/Mum/2016
Assessment Year: 2012-13**

Dy. Commissioner of Income
Tax (International
Taxation)-Range 4(2)(1).
Add: Room No. 120, 1st floor,
Scindia House N.M. Road,
Ballard Estate, Mumbai-
400038.

Appellant

Vs. Shenzhen Shandong
Nuclear Power
Construction Company
Ltd. Add: C/o 2nd floor,
772, Shriram Bhuvan,
Tilak Road, Opp. BEST
Office Dadar TT,
Mumbai-400014.
PAN No. AAMCS1163P
Respondent

Assessee by : Mr. Girish Dave, AR
Revenue by : Mr. Anand Mohan, CIT-DR

Date of Hearing : 29/03/2019
Date of pronouncement: 29/03/2019

ORDER

PER BENCH

The dispute here is the taxability of offshore service and supply contract as well as taxability of onshore contract.

2. Before us, the Ld. counsel of the assessee files a written submission requesting for withdrawal of grounds of appeal on taxability of offshore service and supply contract, stating the following:

Re.: Shenzhen Shandong Nuclear Power Construction Co. Ltd. ('SSNP')

Sub.: Regarding withdrawn of grounds of taxability of offshore service and offshore supply contract in relation to appeal filed before your goodself bearing ITA No. 1050/Ahd/2014 for AY 2009-10, 2053/Mum/2015 for AY 2010-11 & 1052/Mum/2016 for AY 2011-12.

This is in connection to the above captioned subject, wherein appeal has been filed by SSNP for AY 2009-10, AY 2010-11 & 2011-12 in relation to taxability of offshore service and offshore supply contract before the Income Tax Appellate Tribunal.

SSNP had filed application under Mutual Agreement Procedure ('MAP') for offshore service and offshore supply contract before the competent authority of China in accordance with article 25 of China India Double Taxation Agreement (DTA).

The Competent Authority of India and China after having examined the facts of the case and issues involved therein have arrived at the following resolution in terms of Article 25 of India-China Double Taxation Avoidance Agreement read with section 90 of Income Tax Act, 1961 and Rule 44H of Income-tax Rules, 1962:

- (i) Income from Off-shore Supply Contract is taxable only in China; and
- (ii) Receipts from Off-shore Service Contract is taxable in India on gross basis at the tax rate of 10%

We have enclosed copy of MAP Resolution arrived at by both the competent authorities for your kind reference.

In view of the same, we would like to inform your goodself that SSNP accepts the MAP resolution passed by the Competent Authorities of India and China in terms of Article 25 of the India China Double Taxation Avoidance Agreement read with Section 90 of the Income Tax Act, 1961 and Rule 44H of the Income Tax Rule, 1962.

In connection to the above, we would like to inform the Hon'ble Members that SSNP withdraws the grounds pertaining to taxability of offshore services and offshore supply contract in view of acceptance of the MAP resolution."

2.1 In similar vein, the Ld. counsel requests for withdrawal of grounds of appeal on taxability on onshore contract, which is produced below:

"Re: Shenzhen Shandong Nuclear Power Construction Co. Ltd. ('SSNP')

Sub: Regarding withdrawn of grounds of taxability of onshore contract in relation to appeal filed before your goodself bearing ITA No. 1050/Ahd/2014 for AY 2009-10, 2053/Mum/2015 for AY 2010-11 & 1052/Mum/2016 for AY 2011-12 & ITA No. 1053/Mum/2016 for AY 2012-13.

This is in connection to the above captioned subject, wherein appeal has been filed by SSNP for AY 2009-10, AY 2010-11, 2011-12 & 2012-13 in relation to taxability of onshore contract before the Tribunal.

SSNP had filed application under Mutual Agreement Procedure ('MAP') for onshore contract before the competent authority of China in accordance with article 25 of China India Double Taxation Agreement (DTA).

The Competent Authorities of India and China after having examined the facts of the case and issues involved therein have arrived at the following resolution in terms of Article 25 of India-China Double Taxation Avoidance Agreement read with section 90 of Income Tax Act, 1961 and Rule 44H of Income-tax Rules, 1962.

The profits/Net Income of project office/PE taxable in India from Onshore Contracts is as under:

Assessment Years	Profits/Net Income Taxable in India from Onshore Contracts (Rs.)
2009-10	2,34,07,926/-
2010-11	7,06,68,203/-
2011-12	2,31,42,599/-
2012-13	67,82,568/-

In view of the same, we would like to inform your goodself that SSNP accepts the MAP resolution passed by the Competent Authorities of India and China in terms of Article 25 of the India China Double Taxation Avoidance Agreement read with Section 90 of the Income Tax Act, 1961 and Rule 44H of the Income Tax Rules 1962.

We have enclosed copy of the MAP Resolution arrived at by both the competent authorities for your kind reference.

In connection to the above, we would like to inform the Hon'ble members that SSNP withdraws the grounds pertaining to taxability of onshore contract in view of acceptance of the MAP resolution."

3. The Ld. DR fairly agrees with the above request of the assessee in view of MAP Resolution arrived at by both the competent authorities of India and China.

4. We have heard the rival submissions and perused the relevant materials on record. In view of the MAP Resolution arrived at by both the competent authorities of India and China as evident from F. No. 480/01/2015-SO/FT&TR-II(1)/374 and F. No. 500/10/2013-SO/FT&TR-II(1)/237 signed by the Joint Secretary (FT&TR-II), Competent Authority of India, we dismiss the above appeals as withdrawn.

Order pronounced in the open Court on 29/03/2019.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/03/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai