

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 4771/DEL/2016
A.Y. 2012-13**

ACIT (International Taxation) Circle- 2(2)(2), E- 2 Block, Dr. S.P.M. Civic Centre, Minto Road, New Delhi	Vs	National Petroleum Construction Company C/o. M/s. Nangia & Co., Suite 4A, Plaza, M6, Jasola New Delhi, Pin: 110025 PAN: AAACN7799J
(Appellant)		(Respondent)

Appellant by	Ms. Pramita M. Biswas, CIT, DR.
Respondent by	Amit Arora, CA

Date of Hearing	10.06.2019
Date of Pronouncement	14.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 28.06.2016 passed by the CIT(Appeals)-43, New Delhi for AY 2012-13.

2. Grounds of appeal read as under:

"1. Whether on the facts and in the circumstances of the case, the CIT(A) erred in holding that National Petroleum Construction Company ("the assessee") did not have a Permanent Establishment (PE) in India under Article 5 of the Double Taxation Avoidance Agreement between India and UAE (DTAA).

2. Whether on the facts and in the circumstances of the case, the CIT(A) erred in holding that the profits attributable to the assessee's PE at 3.56% of its offshore supply segment and 14.69% of its onshore service segment, were not taxable in India.

3. Whether on the facts and in the circumstances of the case, the CIT(A) erred in holding that on the given facts, interest u/s 234B could not be levied.

4. The appellant craves to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal."

3. The assessee company is a company incorporated under the laws of United Arab Emirates ("UAE") and is tax resident thereof. The principal activities of the assessee company include fabrication and installation of onshore and offshore platforms, submarine pipelines and pipeline coating. The return of income for AY 2012-13 was filed by the assessee on 27.09.2012 declaring an income of Rs. 44,94,94,943/-. The basis of filing return of income is as under:

- a) The revenue from contractual receipts from work done inside India were computed at 10% of gross receipts after deducting the directly attributable expenses; and
- b) Revenue from contractual receipts from work done outside India was computed at 1% of the gross receipts. In accordance with the principles laid down in the CBDT Instruction No. 1767.

The return of income was subsequently revised by the assessee on 16.12.2013 by declaring nil income. The case of the assessee was selected for scrutiny and notice was issued u/s 143(2) of the Income Tax Act, 1961. The assessment was completed u/s 143(3) of the Act read with section 144C(1) of the Act, vide order dated 22.05.2015 assessing the total income of the assessee at Rs. 102,08,60,371/-. While concluding the assessment, the Assessing Officer held that the assessee in terms of Article V of the Double Taxation Avoidance Agreement (DTAA) between India and UAE held:-

- a) Fixed placed permanent establishment (PE) in India in the form of Project Office (PO);
- b) Installation PE in India due to installation activities carried out in India;
- c) Dependent Agent PE (DAPE) in India.

While completing the assessment, the Assessing Officer applied the principles of Rule 10 of the Income Tax Rules, 1962. Consequent to the same, the AO in its assessment order passed u/s 143(3) read with section 144C(3) of the Act and made following additions to the year disclosed by the assessee in its revised return of income:

- 1) Addition in respect of offshore supply segment at Rs. 45,76,93,763/-;
- 2) Additions in respect of onshore service segment at Rs. 56,31,66,608/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. At the time of hearing, the Ld.AR submitted that the issue contested herein by the Revenue is already decided by the Tribunal in assessee's own case for AY 2007-08 and 2008-09 as well as 2009-10 and 2010-11. The Ld.AR further submitted that for AY 2007-08 and 2008-09 the Hon'ble Delhi High Court has confirmed the decision of the Tribunal.

6. The Ld. DR relied upon the Assessment Order but could not distinguish the decision of the Tribunal and the Hon'ble High Court in assessee's own case for earlier assessment years.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that for assessment years 2007-09 and 2008-09 the Tribunal held that there is no PE in India during the relevant assessment year which was confirmed by the Hon'ble High Court. In the present assessment year as well the issues are common and the facts remain identical to that of the earlier assessment year. The CIT(A) while deciding this issue, relied upon the decision of the Hon'ble High Court as well as the Tribunal and after taking cognizance of the decisions of judicial forums decided the appeal in favour of the assessee. There is no need to interfere with the findings of the CIT(A) as the matter is covered in favour of the assessee in assessee's own case for earlier assessment years. Hence, appeal of

the Revenue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 14th June, 2019.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 14/06/2019

**Kavita Arora*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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