

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.5552/Del/2016  
(Assessment Year: 2013-14)**

DCIT (International  
Taxation)  
Circle -2(2)(2), New  
Delhi.

Appellant

Vs M/s National Petroleum  
Construction Co.,  
C/o Nangia & Co., Suite-4A,  
Plaza, M-6, Jasola,  
New Delhi.  
PAN; AAACN7799J  
Respondent

Revenue by : Shri G.K. Dhall, CIT- DR

Assessee by: Shri Amit Arora, CA

Date of Hearing: 05.11.2019

Date of pronouncement: 18.11.2019

**ORDER**

**PER K. NARASIMHA CHARY, JM**

The present appeal is filed by the assessee against the order dated 26.8.2016 passed by the learned Commissioner of Income-tax (Appeals)-43, New Delhi ("CIT(A)") for the Asstt. Year 2013-14.

2. The assessee is a company incorporated under the laws of UAE and is a tax resident thereof. The principal activities of the assessee include fabrication and installation of onshore and offshore platforms, submarine pipelines and pipeline coating. For the Asstt. Year 2013-14, return of income was filed by the assessee on 30.9.2013 declaring nil income stating that the assessee does not have any permanent establishment (PE) in India and accordingly, the receipts from the contracts during financial year 2012-13 both towards inside India and outside India activities are not taxable in India.

3. Ld. AO, however, by order dated 14.3.2016, while following his own orders for the Asstt. Years 2009-10 and 2010-11 held that in terms of Article 5 of the DTAA between India and UAE, the assessee has fixed place PE in India in the form of Project Office (PO); installation PE in India due to installation activities carried out in India and Dependant Agent PE (DAPE) in India in the form of Arcadia Shipping Ltd. (Arcadia) and while applying the principles of Rule 10 of the Income-tax Rules, 1962, made an addition of Rs.11,17,72,307/- on account of offshore supply segment and Rs.34,53,78,302/- on account of onshore service segment.

4. According to the assessee, during the FY 2012-13 they earned revenue from C-series contract, RS-12 project, B-22 project, B series contract and out of the contracts mentioned above, first four contracts were signed and executed in earlier years. However, the assessee earned revenue from WO-16 and SB-14 contract with ONGC for the first time during relevant financial year. All these contracts with ONGC involved fabrication and installation of platforms for extraction of oil in previous financial years relevant to the Asstt. Year under consideration.

5. Assessee preferred appeal before the learned CIT(A) and argued that the learned AO mechanically relied upon certain selective portions of order for the AY 2009-10 and 2010-11 ignoring the fact that while passing the assessment order for Ay 2009-10 and 2010-11, reliance was placed on the assessment orders for the AYs 2007-08 and 2008-09 which were turned down at the level of the Hon'ble Delhi High Court in assessee's own case in ITA No.143 of 2013. It was further argued by the assessee that taxability of receipts from C series contracts has already been examined by the Hon'ble High Court while passing the order for AYs 2007-08 and 2008-09 but the Id. AO failed to appreciate the scope and obligations of the assessee under contracts with ONGC, which are under consideration during the year are identical to the scope and obligations of the assessee under the contract whose taxability was examined by the Hon'ble High Court for the AY 2007-08 and 2008-09.

6. Learned CIT(A) considered the material before him in the light of the orders of the Hon'ble High Court and also the order of a coordinate bench of this Tribunal in ITA N.2004/Del/2014 in assessee's own case for the AY 2009-10 and answered the issue whether the assessee had permanent establishment in India during the FY 2012-13 in terms of Article 5 of the DTAA between India and UAE, in negative.

7. Challenging the same, Revenue preferred this appeal stating that in reaching such a conclusion that the Project Office of the assessee in India is not a fixed place of business and permanent establishment as defined u/s 5(2)(c) of the DTAA between India and UAE or that the activities of the PO of the assessee was preparatory and auxiliary in nature in terms of Article 5(3)(e) of the DTAA, learned CIT(A) committed

an error in proper appreciation of the facts and application of law. According to the learned DR, M/s Arcadia Shipping Ltd. was a Dependent Agent Permanent Establishment under Article 5(4) of the DTAA and on all counts of Article 5(2)(c), 5(2)(e), 5(2)(h) and 5(4) of the DTAA, the assessee should have held to have PE in India and the profits attributable to the assessee's PE at 1.92% of its offshore supply segment and 14.79% of its onshore service segment was taxable in India.

8. At the outset, learned AR brought it to our notice that as is evidenced by the assessment order, Id. AO placed heavy reliance on assessment orders in assessee's own case for the AYs 2009-10 and 2010-11 which in turn were passed while following the assessment orders for the AYs 2007-08 and 2008-09. He submitted that the scope and obligations of the assessee in ONGC was considered at length and the Hon'ble jurisdictional High Court in assessee's own case for the AYs 2007-08 and 2008-09 reached a conclusion that the assessee had no PE in India and the revenue from contracts are not taxable in India. He filed the copies of the orders dated 29.1.2016 of the Hon'ble High Court for the Asstt. Years 2007-08 and 2008-09 in ITA No.143 of 2013 and batch. He further filed a copy of the order dated 21.6.2016 in ITA No.2004/Del/2014 passed by a coordinate bench of this Tribunal in assessee's own case for the AYs 2007-08 and 2008-09 wherein the Bench followed the orders of the Hon'ble High Court. He further filed the order dated 30.5.2018 in ITA No.1468/Del/2015 which case was disposed of by a coordinate bench of this Tribunal while following the decision of the Hon'ble High Court as well as the Tribunal in ITA No.2004/Del/2014.

9. We have gone through the record in the light of the submissions made on either side. It is not in dispute that in assessee's own case for the AYs 2007-08 and 2008-09 reported in (2016) 383 ITR 648 (Del), the Hon'ble High Court held the issue in favour of the assessee. It could be seen from the record that the orders passed by a coordinate bench of this Tribunal for the AYs 2009-10 and 2010-11 were upheld by the Hon'ble jurisdictional High Court in ITA No.882 of 2016 by order dated 3.2.2017 and ITA No.204 of 2019 by order dated 22.7.2019 respectively. The issue is no longer res integra and covered by the orders of the Hon'ble High Court in assessee's own case for the AYs 2007-08 to 2010-11. We, therefore, do not find any illegality or irregularity in the finding reached by the learned CIT(A) and consequently, find the grounds of appeal of the revenue as devoid of merits. Appeal of the revenue is accordingly dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 18<sup>th</sup> November, 2019.

Sd/-  
**(G.S. PANNU)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

**Dated: 18<sup>th</sup> November, 2019.**

**VJ**

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

**ASSISTANT REGISTRAR**  
**ITAT, New Delhi**

Date of dictation	05.11.2019
Date on which the typed draft is placed before the dictating member	05.11.2019
Date on which the typed draft is placed before the other member	06.11.2019
Date on which the approved draft comes to the Sr. PS/ PS	20.11.2019
Date on which the fair order is placed before the dictating member for pronouncement	20.11.2019
Date on which the fair order comes back to the Sr. PS/ PS	20.11.2019
Date on which the final order is uploaded on the website of ITAT	20.11.2019
date on which the file goes to the Bench Clerk	20.11.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	