INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
(Through Video Conferencing)

BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 4377/Del/2016
Asstt. Year 2010-11

Mitsui & Co. Ltd. Plot No. D1, 4th Floor, Selcon Ras Vilas, District Centre, Saket, New Delhi PAN AAACM5469Q	Vs.	DDIT (International Taxation) Circle-3(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ved Jain Sr. Adv., Shri Ashish Goel, CA
Department by :	Shri Satpal Gulati, CIT
Date of Hearing	09/09/2020
Date of pronouncement	22/09/2020

O R D E R

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the order dated 29.5.2015 of the Ld. CIT(A) – 43, New Delhi relating to assessment year 2010-11

2. The facts of the case, in brief, are that the assessee is a company incorporated in Japan and is one of biggest trading houses of the

world. The assessee is involved in trading from needle to airplane engines. Assessee also undertakes several projects in connection with big industrial installations power projects.

3. It filed its return of income on 15th October, 2010 declaring income of Rs. 2,87,80,329/-. The AO during the course of assessment proceedings noted that the assessee has received consideration for executing two projects, namely, Teesta & Purulia Projects. The assessee has entered into contracts with National Hydroelectric Power Corporation Ltd. (NHPC) on 6.12.2001 for carrying out Electrical and mechanical Works of Teesta H.E. Project [3 X 1 70 MW (Stage-V) Sikkim, India]

These agreements are -

a) First Contract - For CIF/CIP Supply of all offshore equipments and materials including Mandatory Spares for Lot-6 Electrical & Mechanical works of Teesta HE Project (Stage-V).

b) Second Contract - For Ex-works supply of all equipments and materials of Indian origin for Lot-6 Electrical & Mechanical works of Teesta HE Project (Stage-V).

c) Third Contract - For providing all onshore services in

respect of all equipments supplied under First & Second Contract and other services for Lot- 6 Electrical & Mechanical works of Teesta HE Project (Stage-V).

4. The AO further noted that the assessee has also entered into contracts with West Bengal State Electricity Board, Calcutta (WBSEB) on 11.08.2000 in respect of Purulia Pumped Storage Project. These agreements are -

a) Contract for Erection, Testing and Commissioning of Equipment and Materials in respect of Electro Mechanical Equipment (Lot 6. 1) of Purulia Pumped Storage Project.

b) Contract for supply of equipment and materials in respect of Electro Mechanical Equipment (Lot 6.1) of Purulia Pumped Storage Project.

4. The AO asked the assessee to explain as to why the assessment should not be completed following assessment orders for earlier assessment years as the facts of the present case are similar to earlier years. Rejecting the various explanations given by the assessee, the AO held that 10% of income from offshore supplies in respect of Teesta & Purulla projects are to be subjected to tax for determination of income u/s 44BBB of the

Income Tax Act 1961 and accordingly made an addition of Rs. 3,17,277/- to the total income of the assssee. The AO further held that income from offshore supplies in respect of Teesta and Purulia projects were liable to be taxed in India under the provisions of Article 7 read with paragraph 6 of the Indo-Japan DTAA protocol. The AO rejected the income declared by the assessee on account of Teesta and Purulia project on receipt basis and adopted mercantile basis for determination of the income from the above two projects and thereby made an addition of Rs. 51,60,745/-, by characterizing it as addition on protective basis. Following his order for assessment year 2005-06 the AO held that MIPL is the DAPE of Mitsui Japan in India by recording following reasons :-

> "*a) The commission received by MIPL from the assessee is for the purpose of securing orders in India and also ensuring that the assessee is receiving payments against its exports in India. (Reliance placed on commission agreement between Mitsui & Co. and MIPL and service agreement for Instant Noodle Project in India.)*

b) MIPL has not received commission from any person outside India other than the assessee or its AEs. Further, the commission received from Indian parties is very negligible.

Therefore, all the conditions listed in Article 5(7) of the DTAA is fulfilled by the assessee.

c) MIPL is economically dependent on Mitsui Japan. Reliance is placed in the commentary of Klaus Vogel.

d) Reliance is further placed on the decision of the Hon'ble Mumbai Tribunal in the case of DHL Operations B.V. Netherlands. The Hon'ble ITAT has discussed the concept of agency PE in this order.

e) Assessee's contention that MIPL is legally and economically independent is not supported by the intentions of the parties in the actual sense. Reliance is placed on the decision of Apex Court in the cases of McDowell and Co. Ltd., and Raman & Co. (67 ITR 11).

f) The Hon'ble Supreme Court in the case of Morgan Stanley has very clearly stated that attribution of profits would depend on the functional and factual analysis to be carried out in each case.

The above findings are applicable for the present proceedings as well since the facts in both these years are same and this has not been disputed by the assessee with any documentary evidence.

In view of the above discussion, it is held that MIPL is DAPE of Mitsui & Co. Japan in India."

5. Accordingly, the AO computed the taxable profits attributable to Indian operation at 50% and made addition of Rs. 1,86,548,468/- to the total income of the assessee.

6. The submission of the assesee that even if it is onstrued that MIPL constitutes DAPE of the assesse in India, the transactions between them being at arms length no further profit is attributable in view of the decision of the Hon'ble Supreme Court in the case of DIT vs. Morgan Stanley & Co. Inc. 292 ITR 416 (SC) and in the case of DCIT vs SET Satelite 218 CTR 452 (M) was rejected by the AO.

7. In appeal, Ld. CIT(A) upheld the view of the AO that M/s. Mitsui & CO. Ltd. has been constituted as a Dependent Agency Permanent Establishment (DAPE) of the assessee company in India. He however restricted the profit attributable to the Indian

operation to 20% as against 50% attributed by the AO. He also allowed the commission to the extent of Rs. 43,04,46,449/- as claimed by the assessee and thereby reverting the order of the AO in restricting such commission to Rs. 20,13,71,858/-.

8. Aggrieved with such order of the Ld. CIT(A) the assesse is an appeal before the Tribunal by raising the following grounds of appeal :-

1. "On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eyes of law as well as on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in upholding the view of the AO that Mitsui India Pvt. Ltd. has been constituted as a Dependent Agency Permanent Establishment of the assessee company in India.

3. Without prejudice to the above and in the alternative, the learned CIT(A) has erred in not accepting the fact that the transaction between the assessee and Mitsui India Pvt. Ltd. being at arm's length only, no further profit could be attributable to the assessee.

4. On the facts and circumstances of the case, the learned CIT(A) has erred in holding 20% of the gross trading profits to be attributable to the operations of assessee in India without there being any basis for the same.

5. That the appellant craves leave to add, amend or alter any of the grounds of appeal."

9. We have heard both the sides and perused the record. Grounds of appeal No. 1 and 5 being general in nature are dismissed.

10. So far as ground of appeal No. 2 is concerned i.e the order of the Ld. CIT(A) in holding that M/s. Mitsui India Pvt. Ltd. has been constituted as a Dependent Agency Permanent Establishment of the assessee company in India, we find the issue stands squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for asstt. Year 2005-06 vide ITA No. 2335/Del/2011 order dated 14.09.2017 wherein it was held that MIPL is not a Dependent Agency PE of the assesse. The relevant observations of the Tribunal from para 4 onwards read as under :-

4. The Second ground is regarding finding of the learned CIT (Appeals) holding that no income is liable to be attributed in India even if MIPL is considered to be Dependent Agent PE in India. On this issue the learned CIT-DR though stated that though in view of the TPO order under Section 92CA(3) holding the transactions between the assessee and the MIPL at arm's length, addition may not be sustainable, yet argued that MIPL be considered as/Dependent Agent PE in India in terms of Article 5(7) of DTAA between India and Japan. It was contended by the learned CIT-DR on the basis of the allegation levied by the Assessing Officer in the assessment order that MIPL habitually secures order for the assessee in India and MIPL is economically dependent on the assessee as major revenue of MIPL is from the

assessee company. Accordingly, it has to be examined whether MIPL can be considered to be a Dependent Agent of the assessee company. In this regard it may be relevant to refer to Article 5(7) of DTAA between India and Japan, which reads as under :-

"7. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 8 applies—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, if:

(a) he has and habitually exercises in that Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;

(b) he has no such authority, but habitually maintains in the firstmentioned Contracting State a stock of goods or merchandise from. which he regularly delivers goods or merchandise on behalf of the enterprise; or (c) he habitually secures orders in the first-mentioned Contracting State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control as that enterprise.

8. As enterprise, shall not be deemed to have a permanent establishment in a contracting State merely because it curries or business in that Contracting State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business.

9. The fact that a company which is resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other."

4.1 As per above clause (7) a person other than an independent agent is treated as PE if he fulfills any of the three conditions, (a), (b) or (c). It is not the case of the Assessing Officer that MIPL habitually exercised authority to conclude contracts. It is also not the case of the Assessing Officer that MIPL habitually maintains a stock of goods or merchandise. Thus, the condition of (a) and (b) are not fulfilled. The third condition in (c) is habitually securing orders for the assessee. In this regard we note that the Assessing Officer has made this allegation on the basis that commission has been paid by the assessee company to the MIPL. On this basis it has been assumed that MIPL is securing orders. This contention of the Assessing Officer does not appear to be correct. As per the agreement which has been quoted by the Assessing Officer in the assessment order, MIPL is supposed to put best effort to collect information with regard to Instant Noodle project etc. to make the best effort to find the best candidate, to attend/take care of the visitor from Japan, to make the best effort to analyze the feasibility report. None of these clauses can be interpreted to mean that MIPL is securing orders. On the basis of this clause the Assessing Officer was wrong in assuming that MIPL is securing orders. The Assessing Officer has not brought any other material to substantiate his allegation that may demonstrate that MIPL has secured orders for the assessee. It is to be noted that this clause (c) uses the word 'habitually secures orders'.

Thus, there has to be procurement of orders habitually. As against this the assessee's contention has been that MIPL is only providing support services and it is not securing order on behalf of assessee company. It may be relevant to further mention that the expression 'has' shall mean a legal existence. Whereas 'habitually secures orders' shall mean a systematic conduct on the part of the agent. Thus it is not only a legal right to secure order but also it is to be found, as a matter of fact that agent has habitually secured order.

4.2 Further, in this case the TP study of MIPL was subject matter of examination by the TPO. The FAR (Function performed, Assets deployed and Risk assumed) analysis has been accepted by the TPO. These agreement on the basis of which Assessing Officer has levied

the allegation were also before the TPO. Thus, there cannot be any allegation that MIPL has performed any function beyond what has been stated. Functional and economic analysis of the transactions entered into having been examined nothing further can be imputed. The services of MIPL to assessee company were support services similar to the activities of a Liaison offices. This fact gets also supported from the finding recorded by the Assessing Officer himself in the assessment order on page 26 whereby it has been stated by the Assessing Officer that MIPL is functioning in the same manner as the LOs of the assessee are functioning in India. It has already been held that LOs do not constitutes PE in India. Thus, the functioning of MIPL though a subsidiary and a company incorporated in India but its activities vis-à-vis assessee company were akin to liaison office. It does not have authority to conclude contract, it was not maintaining any stocks of goods and merchandise nor it was securing order for the assessee company. In view of the above facts we reject the contention of the learned CITDR that MIPL habitually secures order for the assessee company. And accordingly, none of the condition prescribed in Article 5(7) are fulfilled.

4.3 The second contention of the learned DR was that MIPL is economically dependent on assessee company as major revenue of MIPL is from assessee company. We are of the view that this per se cannot be ground to hold that MIPL is a Dependent Agent.

For invoking this clause, first one of the three conditions needs to be fulfilled. As we have held hereinabove that MIPL does not get covered as PE under Article 5(7), it cannot be considered to be a Dependent Agent. The learned DR also made a reference to Conventions on Double Taxation by Klaus Vogel to support its contention that where a person works only for one principle such person is economically dependent on the principal, in "these circumstances the agent though not legally but will be bound to obey his principal's instructions and be regarded as being Dependent Agent. This contention of the learned CIT-DR again ignores the basic requirement i.e. fulfilling one of the three conditions. It is also important to note that the DTAA provide for treating a person as Dependent Agent. The DTAA has to be strictly interpreted. The DTAA having prescribed the conditions, no further

conditions can be read. What learned CIT-DR is canvassing will mean adding new condition in the DTAA. Further, it may be relevant to note that as per Para 9 of this Article 5 in DTAA, it has been specifically provided that if a company in the contracting state is controlled by a company in the other contracting state that itself shall not itself constitute either of company a permanent establishment of the other. Thus, the fact that MIPL is controlled by the assessee company shall not mean that MIPL is a PK of the assessee company.

4.4 Our view gets supported by the judgment of Hon'ble Delhi High Court in the case of Director of Income Tax And Others Versus M/s. E Funds IT Solution and Others 364 ITR 256 Delhi, where the Hon'ble court has held as under:-

" 31. Paragraphs 4 and 5 of Article 5 relate to creation of agency PE in the second contracting country. Agency replaces fixed place with personal connection. Arvid K. Skaar in his work "Permanent Establishment" has opined that primacy of 'location test" of the basic rule is consistent with the conceptual structure of the PE clause itself. An agency will constitute a PE only when a PE cannot be found according to those conditions in the basic rule which are altered or replaced by the agency clause. OECD and UN Model Treaties recognize agency PE. The principle being, that a foreign enterprise may choose to perform business activities itself or through a third, person in the other States. An agent is a representative who acts on behalf of another with third persons. International taxation laws recognize and accept two distinct types of agency PE, dependent and independent Every agent by very nature of principle of agency is to follow principal's instructions. But this principle is not squarely applicable to DTAAs, as third parties may not be strictly an agent under the domestic law. Further, the aforesaid dependency cannot be the distinguishing factor which determines whether the agency is dependent or an independent agency for the purpose of Article 5 paragraphs 4 and 5 respectively. A dependent agency is one which is bound to follow instructions and is personally dependent on the enterprise he represents. Such dependency must not be isolated or once in a while transaction but should be of comprehensive nature."

32. The "dependency test" as per Arvid A. Skaar requires examination and answer whether the business interest of the principal and the agency have merged. When there is evidence of merging of interest, then power to instruct the agent exceeds a certain level. In such cases the Principal regularly participates in the process of settling current business problems or exercises discretionary power in the said respects. OECD Commentary does not accept dependency based on financial support, supply of patents etc. as itself creating agency PE. Klaus Vogel on Double Taxation Conventions, Third Edition at page 345 in paragraph 170 states that interdependence must exist in both legal and. economic respects but the independence is the main criteria. The expression "independent agent" is used with the words "brokers and general commission 7 agents" in paragraph 5 of Article 5 will, therefore, normally not include agents who have power to conclude contracts. Paragraph 38.1 of the OECD Commentary has been quoted above (see paragraph 15). The commentary elucidates and gives illustrations and tests.

33. Earlier U.N. commentary had deviated in some respect from the OECD commentary and had observed that an agent who was wholly or almost wholly engaged by one principal shall be considered to be a dependent agent. This initial position stated in UN commentary has, however, not been accept in subsequent commentaries. The essential criteria being arms length relationship though engagement with one or a group might serve as an indicator of absence of independence of an agent.

34. Subsidiary by itself cannot be considered to be a dependent agent PE of the Principal, otherwise it would negate the overriding effect of paragraph 6 to Article 5, a provision which precedes and seeks to give recognition to separate legal entity principle associated with juristic incorporated enterprises. However, a subsidiary may become dependent or an independent PE agent provided the tests as specified in paragraphs 4 and 5 are satisfied. A dependent agent is deemed to be PE of the principal establishment under paragraph 4, if

one of the three conditions specified in sub-clause (a) to (c) are satisfied. Under sub-clause (a), a dependent agent should have authority and should habitually exercise the said authority to conclude contracts on behalf of the foreign enterprise. What is meant by the term "authority to conclude contract" has been subject matter of controversy on whether participation in negotiations by the agent is sufficient or not. However, this is not relevant for the decision of the present appeals in view of the factual matrix of the present case. Subclause (b) refers to an agent who habitually maintains stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the Principal enterprise.
8 *In such cases, the agent should also perform some additional activities in its country on behalf of the foreign enterprise which has contributed to the sale of goods or merchandise. Sub-clause (c) applies when the agent habitually secures orders in the said country i.e. where he is located, almost wholly or wholly for the foreign enterprise.*

35. Transactions between a foreign enterprise and an independent agent, do not result in establishment of a permanent establishment under paragraph 5 to Article 5 if the independent agent is acting in ordinary course of their business. The expression "ordinary course of their business has reference to activity of the agent tested by reference to normal customs in the case in issue. It has. reference to normal practice in the line of business in question. However as per paragraph b of Article 5, an agent is not considered to be an independent agent if his activities are wholly or mostly wholly on behalf of foreign, enterprise and the transactions between the two are not made under arrays' length conditions. The twin conditions have to be satisfied to deny cm agent character of an independent agent. In case the transactions between an agent and the foreign principal are under arm's length conditions the second stipulation in paragraph 5 of Article 5 would not be satisfied, even if the so.id agent is devoted wholly or almost wholly to the foreign enterprise.

36. In Morgan Stanley (supra) Supreme Court rejected the contention of the Revenue that dependent agency was created after recording that Indian subsidiary had no authority to

enter into or conclude contracts on behalf of the foreign establishment / agency.The contracts were entered.- into in America arid, were concluded there. Only implementation of those contracts to the extent of back office operations were carried out in India. This legal position is relevant in the present case.

37. In TVM Ltd. vs. Commissioner of Income Tax (1999)237 ITR 230, Authority of Advance Ruling has interpreted the two expression "has" and "habitually exercises" in the case of dependent agent. It has been observed that the expression "has" may have reference to the legal existence of such authority on terms of the contract between the Principal and the Agent, the expression "habitually exercises" has certainly reference to systematic course of conduct on the part of the agent. Reference to OECD Commentary and Klaus Vogel was made and. it has been observed :-

> *" Para. 4 uses two expressions :"has and "habitually exercises an authority to conclude contracts on behalf of the enterprise in question. While the expression "has\\ may have reference to the legal existence of such authority on the terms of the contract between the principal and agent, the expression "habitually exercises\\ has certainly reference to a systematic course of conduct on the part of the agent.If despite the specific provision of the soliciting agreement, it is found,as a matter of fact, that TVI is habitually concluding contracts on behalf of TVM without any protest or dissent, perhaps it could be presumed either that the relevant provisions of the agency contract are a dead letter ignored by the parties or that the principal has agreed implicitly to TVI exercising such powers notwithstanding the terms of the contract. If such a situation is found to exist, then perhaps it could be said that TVI constitutes a permanent establishment for TVM despite the clauses of the contract relied upon.*

38. Judgment of the Delhi High Court in the case of Rolls Royce PLC versus Director of Income Tax (International Taxation) (2011) 339 ITR (Del) is a good authority for the

proposition that subsidiary can constitute and become a PE of the controlling company. The said decision proceeds on its own peculiar facts and we do not find that any legal principle and the elucidation in the present-decision is contrary to the legal ratio propounded in the case of Rolls Royce(supra). "

4.5 In view of the above, we hold that MIPL is not a Dependent Agent PE of the assessee.

11. We find following the above decision the Tribunal in assessee's own case for asstt. Year 2006-07 to 2008-09 in a batch of appeals vide consolidated order dated 7.1.2020 has held that MIPL is not a Dependent Agent PE of the assessee. Accordingly the appeal of the assessee was allowed and the grounds raised by the revenue were dismissed. The relevant observation of the Tribunal at para 53 reads as under :-

> "*53. After hearing both the sides, we find the ground of appeal No.1 by the assessee relates to the order of the CIT(A) holding the assessee a Dependent Agent Permanent Establishment. After hearing both the sides, we find the above-ground raised by the assessee is identical to ground of appeal No.4 raised by the revenue in ITA No.2801/Del/2011. We have already decided the issue and following the decision of the Tribunal in assessee's own case for A.Y. 2005-06 have dismissed the ground raised by the Revenue."*

11.1 Since the lower authorities following the orders of the preceding years have held that M/s. Mitsui & Co. Ltd. has been constituted as Dependent Agent PE of the assessee company in India , therefore, following the consistent decisions of the Tribunal in assessee's own case in the preceding assessment years and in absence of any contrary material brought to our notice against the decision of the Tribunal we hold that MIPL is not a Dependent Agency Permanent Establishment of the assessee. Ground No. 2 of the assessee's appeal accordingly is allowed.

12. So far as ground of appeal No. 3 and 4 are concerned these relate to attribution of profits to DAPE. We find this issue also stands squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for asstt. Year 2005-06 vide ITA No. 2335 /Del/ 2011order dated 14th September, 2017 wherein the Tribunal held as under :-

"This issue is squarely covered by the assessee's own case for the AY 2005-06 by the order of Hon'ble ITAT Delhi dated 14.09.2017 bearing ITA No. 2335/Del/2011. Copy of ITAT order is enclosed at PB Pg. 31-58.The relevant findings of the court are as under (PB Pg. 48)

The ground 2 raised in Revenue appeal is regarding attribution of the income if MIPL is taken as Dependent Agent PE. Though, this ground becomes academic in nature in view of

our finding holding that MIPL is not Dependent Agent PE of the assessee company but since this issue forms part of the ground No. 2 in Revenue's appeal the same is being decided on merit as well.

5.1 The Assessing Officer has made the addition holding that MIPL is a Dependent Agent PE and has computed 50 per cent of the profit in respect of the turnover in India. The learned CIT (Appeals) has deleted the addition holding that Transfer Pricing Officer has specifically stated in his order that Transfer Pricing documentation which contains the functional and economic analysis of comparable and of the assessee, has been examined. The learned CIT-DR was fair enough to point out that the Assessing Officer made the addition since at the time of passing of the assessment order he was not having benefit of the order passed under Section 92CA(3) by the TPO in the case of MIPL and the learned CIT (Appeals) has deleted the addition after taking into consideration the order passed by the TPO which was available to him by that time.

5.2 It is a fact on record that the TPO has carried out functional and economic analysis of the activities performed by MIPL towards the assessee company. No adverse inference has been drawn in respect of the same. All these facts were before the TPO. This issue is also covered by the judgment of the1Supreme Court in the case of DIT International Taxation Vs. Morgan Stanley and Co. 292 ITR416 (SC), where the court has approved the ruling delivered by the authority for advance holding that once a Transfer Pricing analysis is undertaken, there is no further need to attribute profit to a PE."

13. We find following the above decision of the Tribunal in assessee's own case for asstt. Year 2005-06 the Tribunal in assessee's own case for asstt. Years 2006-07 to 2008-09 vide order dated 7.1.2020 has held that the assessee is not a

Dependent Agent Permanent Establishment and no income is attributable.

14. The relevant para of the order of the Tribunal reads as under :-

54. In ground of appeal No.2 and 3, the assessee has challenged the order of the CIT(A) in upholding the action of the AO regarding attribution of profit @ 20% of the gross trading profit determined by the CIT(A).

55. After hearing both the sides, we find this issue stands decided in favour of the assessee by the decision of the Tribunal in assessee's own case for A.Y. 2005- 06 where it has been held that the assessee is not a Dependent Agent Permanent Establishment and no income is attributable. Respectfully following the decision of the Tribunal in assessee's own case for the preceding assessment year, grounds of appeal No.2 and 3 raised by the assessee are allowed.

Thus, in view of the above, issue is squarely covered by the assessee;s own case and no income is attributable."

15. Respectfully following the consistent decisions of the Tribunal in assessee's own case for the preceding assessment years and in absence of any contrary material brought to our notice we hold that no further profit could be attributed since assessee is not a Dependent Agency Permanent Establishment. Grounds of appeal No. 3 and 4 of the assessee are accordingly allowed.

16. In the result the appeal filed by the assessee are partly allowed.

Order pronounced on 22nd September, 2020.

Sd/- sd/-

(SUCHITRA KAMBLE)	**(R.K. PANDA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 22/09/2020

Veena

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi