आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "डी", नई दिल्ली में
IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & DR. B.R.R. KUMAR, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA Nos.1845 to 1847/Del/2014
निर्धारण वर्ष /Assessment Years 2004-05 to 2006-07

PT.LP Display Indonesia,
C/o-PDS Legal, Advocates & Solicitors,
Office No.-7, 1st Floor, Atmaram Mansion Scindia House,
Connaught Place, New Delhi-110001.
PAN-AACCL2631H .....अपीलार्थी/Appellant

vs

The DDIT [International Transaction]
Sector-24, Noida. ..... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1887 & 1888/Del/2014
निर्धारण वर्ष /Assessment Years 2004-05 & 2005-06

The DDIT [International Transaction]
Aayakar Bhawan, 5th Floor,
Plot No.A-2D, Sector-24, Noida. .....अपीलार्थी/Appellant

vs

PT.LP Display Indonesia,
C/o-PDS Legal, Advocates & Solicitors,
Office No.-7, 1st Floor, Atmaram Mansion Scindia House,
Connaught Place, New Delhi-110001.
PAN-AACCL2631H ..... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1885 & 1886/Del/2014
निर्धारण वर्ष /Assessment Years 2005-06 & 2006-07

The DDIT [International Transaction]
Room No.506, Aayakar Bhawan,
Plot No.A-2D, Sector-24, Noida. .....अपीलार्थी/Appellant

vs

M/s. LG Philips Display Korea C.Ltd.,
LG Twin Tower, 50 Yoid Dong,
Youngdungpo, GU, Seol-150-606, South Korea.
PAN-N.A. ..... प्रत्यर्थी / Respondent

प्रत्याक्षेप अपील सं. /CROSS OBJECTION Nos.40 & 41/Del/2017
[आयकर अपील सं. / In ITA Nos.1885 & 1886/Del/2014]
निर्धारण वर्ष /Assessment Years 2005-06 & 2006-07

M/s. LG Philips Display Korea Co.Ltd.,
LG Twin Tower, 50 Yoid Dong,
Youngdungpo, GU, Seol-150-606, South Korea.
PAN-N.A. .....अपीलार्थी/Appellant

vs

The DDIT [International Transaction]
Room No.506, Aayakar Bhawan,
Plot No.A-2D, Sector-24, Noida. ..... प्रत्यर्थी / Respondent

[आयकर अपील सं. / ITA Nos.1584 & 1585/Del/2019
निर्धारण वर्ष /Assessment Years 2007-08 & 2009-10

M/s. LG Philips Display Korea Co.Ltd.,
C/o-AZB & Partners,
AZB HHouse, A-8, Sector-4,
Noida-201304.
PAN-AZUPP5353N .....अपीलार्थी/Appellant

vs

The DCIT [International Transaction]
Room No.312, 3rd Floor, Aayakar Bhawan,
Plot No.A-2D, Sector-24, Noida. ..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by: Sh. Deepak Chopda, Adv.
प्रत्यर्थी की ओर से / Respondent by: Sh. Satpal Gulati, CIT DR

सुनवाई की तारीख / **Date of Hearing : 25.08.2020**	घोषणा की तारीख / **Date of Pronouncement: 20.10.2020**

आदेश / ORDER

PER SUSHMA CHOWLA, VP

Out of this bunch of appeals in the case of PT LP. Display Indonesia (in short "PT LP Indonesia") , cross-appeals are filed by assessee and Revenue for Assessment Years 2004-05 to 2005-06 and assessee is in appeal relating to Assessment Year 2006-07 against respective orders passed by Assessing Officer dated 30.01.2014. Further, in the case of the second assessee, L.G. Philips Display Korea Co.Ltd. (in short "LG Philips Korea"), Revenue is in appeal against order of Dispute Resolution Panel (in short "DRP") dated 02.12.2013 relating to Assessment Years 2005-06 & 2006-07 and the assessee has filed cross-objections against the same; assessee has also filed appeals against order of CIT(A), dated 30.11.2018 relating to Assessment Years 2007-08 & 2009-10 respectively.

2. This bunch of appeals relating to connected assessee on similar issue were heard together and are being disposed off by this consolidated order for the sake of convenience. In order to adjudicate the issue, we take up the appeal of the assessee, PT LP Indonesia relating to Assessment Year 2004-05 first.

ITA No.1845/Del/2014 [Assessee's appeal]
Assessment Year 2004-05

3. The preliminary issue which is raised is against the re-opening of assessment u/s 147 of the Act and whether the non-resident entities had Permanent Establishment (in short "PE") in India and if the PE existed what would be the income attributable to such alleged PE.

4. Briefly in the facts of the case, TDS survey u/s 133A of the Act was conducted at the premises of L.G. Electronics India Pvt. Ltd. (in short "LGEIL") on 24.06.2010. L.G.Korea, the parent company transacted with the Indian subsidiary i.e. LGEIL and both assessees before us are group entities of L.G. Group. The purpose of the survey on LGEIL was to ascertain whether TDS compliances were being made on payments made by LGEIL to non-resident associated companies for purchase of raw-material, capital goods etc. During the course of survey, statement of employees, both Indian and expatriates were recorded and on the basis of the said statement, Revenue concluded that the non-resident companies including the parent company i.e. L.G.Korea had a PE in the form of LGEIL. Consequent thereto, re-assessment notices under section 148 of the Act were issued to non-resident group company for various Assessment Years. The allegation of the Assessing Officer was that L.G. Korea and its Associated Enterprises (in short "AEs") including PT LP Indonesia had business connection as per section 9(1)(i) of the Act with LGEIL; and the assessee was carrying on business with LGEIL through fixed place of business as per Article 5(1) of the India Indonesia Treaty. The Assessing Officer further noted that the assessee i.e. PTLP Indonesia was foreign company and had not filed any return of income for the year under consideration. The details of transactions as per Form No.3CEB of LGEIL were referred i.e. export of raw material and finished goods and it was established that the assessee had business connection as well as PE in India. The Assessing Officer recorded reasons for re-opening the assessment u/s 147 of the Act, as according to him income had escaped assessment. The reasons recorded for re-opening of assessment are reproduced in the assessment

order, which are being referred, but not being reproduced for the sake of brevity. Statement of various employees were recorded during survey, which were referred by the Assessing Officer to come to a finding that the assessee had both business connection and PE in India. The assessee did not comply by filing any return of income. Various notices in this regard were issued to the assessee and then return of income was filed on 08.11.2011. The assessee sought copy of reasons recorded for re-opening the assessment, which were supplied to the assessee and objections were filed against the initiation of re-assessment proceedings. The same were disposed off by the Assessing Officer vide order dated 19.11.2012. Relying on the decision of Hon'ble Supreme Court in CIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., 291 ITR 500 (SC) and other decisions, the Assessing Officer observed that at the time of issue of notice u/s 148 of the Act, the Assessing Officer is not required to establish that there is escapement of income; mere bonafide reasons to believe that there is escapement of income is sufficient for issue of notice u/s 148 of the Act. The objection of the assessee, on the other hand, was that the reasons do not reflect any tenable or sustainable basis for concluding that any income chargeable to tax had escaped assessment in the hands of the assessee. The Assessing Officer was of the view that the conditions for assuming jurisdiction u/s 147 of the Act are fully satisfied and the initiation of re-assessment proceedings in the case u/s 148 of the Act was lawful. The Assessing Officer also observed that the jurisdiction of persons being non-resident including foreign companies was based on having PE or having business connection or having any source of income accruing or arising or deemed to be accruing or arising in the areas within Indian territories. He concluded by stating

that the survey proceedings had established business connection and PE of PT LP Indonesia. Further, it was observed that the expatriate employees of L.G. Philips Korea, the other assessee before us, not only represented LG.Korea, but also worked for its other affiliates and subsidiaries. As far as PTLP Indonesia was concerned, it was also held that it had fixed place of business in the office of LGEIL. The expatriates working in India were employees of parent company of PT LP Indonesia and also at times, employees of non-resident company PT LP Indonesia. It was also the responsibility of expatriate employees not only to look after the interest of parent company but as well as other subsidiaries. The Assessing Officer concluded by holding that *"merely having separate legal corporate entity would not prevent the subsidiary from being the PE of the establishment if other conditions of Article 5 are being met."* The objections of the assessee to the reasons recorded with regard to it [PTLP Indonesia] having business connection in India in terms of section 9(1)(i) of the Act were held to be misconceived, irrelevant and immaterial.

5. The Assessing Officer was of the view that from the facts and material available on record, there was real and intimate business connection as per section 9(1)(i) of the Act as there was continuity of business between Indian business and its AEs. The non-resident companies were doing business in India through the employees of the parent company, who were heading various divisions in the Indian Companies and also through employees visiting India regularly. The Assessing Officer held that there was close business connection in terms of dependents of Indian Companies on the non-resident companies for all imports, as it could not import raw material from any other concern, other

than L.G. affiliates. The order of purchase of raw material was placed from India in a global portal provided by L.G.Korea. The Assessing Officer was of the view that the transaction between India and other non-resident companies were also linked as the Indian company was dependent upon support of supplies by the non-resident entities. The contention of the assessee that there was no business connection was not accepted. The Assessing Officer thus held that L.G.Korea and its AE, i.e. the assessee had a business connection u/s 9(1)(i) of the Act.

6. Next plank of the decision was on the concept of fixed place of business under Article 5(1) of DTAA between India and Indonesia. As the assessee i.e. PTLP Indonesia was subsidiary of L.G.Korea and the expatriate employees of L.G.Korea were working in India, it was observed by the Assessing Officer that the assessee not only represented L.G.Korea but also worked for its other affiliates and subsidiaries. It was thus observed that the assessee had a fixed place of business in the office of LGEIL. The plea of the assessee regarding attribution of nil profits to the PE was on the ground that international transactions were held to be at Arm's Length Price (in short "ALP") by the TPO in his order dated 30.10.2008 and therefore, no adjustment is to be made. In this regard, reliance was placed on Article 7(2) of the Indo Indonesia DTAA and Circular No.5 dated 28.09.2004 issued by the CBDT and the judgement of the Hon'ble Supreme Court in DIT, International Taxation vs Morgan Stanley & Co.Inc [2007] 292 ITR 416 (SC) which stipulates that Article 7(2) of the Indo-US DTAA, which is similar to Article 7 of Indo-Indonesia DTAA. The Assessing Officer in this regard noted that certain transfer pricing adjustments were made and

hence the submissions of the assessee that no transfer pricing adjustments have been made, was not correct. It was reiterated by the Assessing Officer that the survey proceedings u/s 133A of the Act and statement of expatriates recorded on oath had brought out facts that LGEIL was functioning as PE of PTLP Indonesia and hence, there was need for further attribution of profits to the PE for functions and services provided. The Assessing Officer further notes that despite giving adequate opportunities to the assessee, it had failed to provide copies of books of accounts, balance sheet and P&L A/c for the relevant Financial Year and statement of computation of income; hence, the assessment was completed based on the material available on record. The assessee had business connection u/s 9(1)(i) of the Act and PE under Article 5(1) & 5(2) of DTAA between India and Indonesia; the transaction amounting to Rs.37,85,15,641/- for imports were held to be taxable in India. The Assessing Officer passed the draft assessment order.

7. The assessee filed objections before the DRP, who in turn issued consolidated directions for Assessment Years 2004-05 to 2006-07. With regard to the plea of the assessee that it did not have any of its employees in India, the DRP held that it was not necessary that employees of assessee should come to India so as to constitute fixed place of PE. The DRP further directed that attribution rate of profits to PE should be reduced to 30%. Final assessment order was passed by applying profit rate of 25% to the global account of the assessee and addition of Rs.9,47,21,910/- was made in the hands of the assessee.

8. Both the assessee and Revenue are in appeal before us for Assessment Years 2004-05 and 2005-06 and the assessee is in appeal for Assessment Year 2006-07 also. In the case of L.G. Philips Korea for Assessment Years 2005-06 & 2006-07, the Assessing Officer/DRP decided the issue of PE against the assessee, following the same parity of reasoning as in the case of PT LP Indonesia and also as the attribution rate of PE was reduced to 30%. Revenue is in appeal on the issue of rate of attribution of profits and assessee has filed Cross objection on the issue of existence of PE and also on re-opening of the assessment u/s 147 of the Act. Further, the CIT(A) while deciding the appeals for Assessment Years 2007-08 & 2009-10, dismissed the appeals of the assessee on the technical ground that the PAN quoted in the Memo of appeal was not that of assessee but of authorized signatory. The assessee is in appeal before us against the order of CIT(A) in Assessment Years 2007-08 & 2009-10.

9. The Ld.AR for the assessee pointed out that the present appeals are filed in the case of PTLP Indonesia relating to Assessment Years 2004-05 to 2006-07 on similar issues. He challenged the reassessment proceedings as completed u/s 147/148 of the Act and raised the issue as to whether such reassessment proceedings could be initiated against the non-resident entities, where there was no transaction between the selected non-resident entities and LGEIL though the pointed out that there were certain transactions between L.G. Korea, the parent company and LGEIL. In respect of L.G. Philips Korea, it was pointed out that the issue raised by way of cross-objection is also against the re-assessment proceedings initiated u/s 147/148 of the Act.

10. The Ld.AR for the assessee pointed out on first analysis, L.G.Korea has been held to have PE in India in LGEIL. He further pointed out that TPO passed the order in case of LGEIL for all the respective years, which are placed at Sl.Nos. 11 to 15 of the Paperbook wherein international transactions were held to be at Arm's Length Price. He then drew our attention to the order of Hon'ble Supreme Court with lead order in Civil Appeal No(S) 781 of 2018 in the case of L.G.Group Companies, judgement dated 16.01.2018 under which all the SLPs filed by the AEs including the SLP filed by the assessee for Assessment Year 2007-08 were allowed, on the basis of finding of the DRP that the AEs do not have PE in India. The Hon'ble Supreme Court allowed L.G.Korea to withdraw its SLP. The copies of the said orders are placed at pages 12 to 18 of the Convenient Paperbook. Our attention was drawn to the judgement of the Hon'ble Supreme Court in The Principal Officer, Honda Access Asia and Oceania Co.Ltd. vs ADIT, Noida & Ors. and other connected matters in C.A.No.19659/2017, judgement dated 23.11.2017 under which the case of Honda Motors Co.Ltd. and also LGEIL was decided on the basis that once the DRP has found that there is no PE in India, then the re-assessment proceedings need to be withdrawn. Vide lead order in SLP (C) No(s).24455/2014 and other connected SLPs, judgement dated 16.01.2018, following the earlier order in Honda Access Asia and Oceanic Co.(Supra), as DRP in present appeals had found that there is no PE India, consequently the reassessment proceedings were dropped**.** In the said bunch of appeals, one of the petition M/s L. G. Korea Co. Ltd. made a prayer for permission to withdraw SLP and pursue the statutory remedy under the

Income Tax Act and the same was allowed. The Ld.AR for the assessee further placed reliance on the decision of Hon'ble Supreme Court in Honda Motors Co. Ltd. vs ADIT in Civil Appeal Nos.2833 to 2840 of 2018, judgement dated 14.03.2018, reported in [2018] 92 taxmann.com 353 (SC) for the proposition that once the international transactions were held to be at arm's length price, even if there was PE in India, no profit could be attributed to it. Thus, reassessment proceedings initiated on the allegation that the assessee has PE in India were quashed by the Hon'ble Supreme Court on the ground that the notice for reassessment could not be sustained, once arm's length price procedure had been followed. The said order is placed at pages 19 to 20 of the Convenience Paperbook. The Ld.AR for the assessee further placed reliance on the decision of Hon'ble Supreme Court in ADIT vs Honda Motors Co.Ltd. (supra) [2019] 108 taxmann.com 300 (SC), judgement dated 18.07.2019 for the proposition that once arm's length principle has been followed, there can be no further profit attributable to person even if it has PE in India. It was thus held that re-assessment notice issued to assessee on the allegation that it had PE in India, considering the facts that arm's length price procedure was followed, the Hon'ble Supreme Court held that the notice could not be sustained. The Revenue filed review petition against the said order of the Hon'ble Supreme Court which was dismissed on the ground that there was no error apparent on face of record warranting re-consideration of the order passed.

11. The Ld.DR for the Revenue in reply stated that in the case of LGEIL, it has been held that other than L.G.Korea, no other affiliates had PE in India; hence no need to deduct tax at source. He then referred to the decision of

Delhi Tribunal in GE Energy Parts Inc. vs ADIT in ITA No.671/Del/2011 order dated 27.01.2017 copy of which is filed, which talks of group PE. As far as PT.LP Display Indonesia is concerned, he stated that no expatriate personnel were in India. Admittedly, no expatriates/personnel of the said entities were based in India. However, in the case of GE Energy Parts Inc. vs ADIT (supra) also, it is held that it is not critical that expatriates from each country should be in India. The Ld.DR for the Revenue stressed that on account of contribution by various entities, goodwill of business was achieved by the role of secondment employees hence, payment of Royalty. The Ld.DR for the Revenue placed reliance on the orders of the authorities below.

12. The Ld.AR for the assessee in his re-joinder stated that the first issue to be decided is initiation of reassessment proceedings u/s 147 of the Act and in the absence of any transaction, there is no question of assessment in the hands of the assessee for non-resident entities. He further placed strong reliance on the orders of the Hon'ble Supreme Court (supra) wherein it was held that if international transaction was found to be at arm's length, then the entire question of PE becomes academic and reassessment notice cannot be sustained. In the case of L.G. Philips Korea, the assessee has filed Cross-objection for AYs 2005-06 & 2006-07 and Ground of appeal No.2 of the Cross-objection are pressed by the assessee.

13. We have heard the rival contentions and perused the record. The issue arising in the bunch of appeals is against the initiation of re-assessment proceedings u/s 147/148 of the Act against the assessee. All the assessees

before us are non-resident entities which are associated concerns of L.G.Korea. It has been held that L.G.Korea has a PE in India in LGEIL by the Revenue authorities, which is under challenge. The case of the Revenue is that all other associated concerns of the L.G.Korea group, which are non-resident entities, also have connection in the business module of purchase of raw materials, capital goods, etc. and hence there is PE in India, though no income was assessed in the hands of the respective PEs. Reassessment proceedings were initiated u/s 147/148 of the Act consequent to TDS survey u/s 133A of the Act in the case of LGEIL and Honda Motors Co. Ltd.(supra). However, before referring to the said proceedings, we refer to judgement of the Hon'ble Supreme Court in the Principal Officer, Honda Access Asia and Oceania Co.Ltd. vs ADIT, Noida & Ors. and other connected matters in C.A.No.19659/2017, judgement dated 23.11.2017 wherein it was held as under:-

> *"Leave granted.*
>
> *In view of the fact that the Dispute Resolution Panel has found that there is no permanent establishment in India, the judgement of the High Court is set aside and the appeals are allowed accordingly."*

14. This proposition was also followed in the Civil Appeal No(S). 781 of 2018 & Ors. in the case of L.G. Group Companies, judgement dated 16.01.2018 under which all the SLPs filed by the AEs including the SLP filed by the assessee for Assessment Year 2007-08 were allowed, on the basis of finding of the DRP that the AEs do not have PE in India. It was noted by the Hon'ble Apex Court that where the DRP has found that there is no PE in India, consequently the Assessing Officer was directed to pass orders dropping the

proceedings. Hence, bunch of appeals were allowed by the Hon'ble Supreme Court (Supra).

15. Consequent thereto, Vide lead order in SLP in (C) No(s).24455/2014 and other connected SLPs, judgement dated 16.01.2018, it was held as under:-

> *5. "In the aforesaid matters, the Dispute Resolution Panel (DRP) has found that there is no permanent establishment (PE) in India. Consequently, the Assessing Officer has passed orders dropping the proceedings. Accordingly, we pass the same order as was passed in C.A.No.19659/2017 (The Principal Officer, Honda Access Asia and Oceania Co.Ltd. vs Asst. Director of Income tax, Noida & Ors.) and other connected matters on 23.11.2017, viz.*
>
> > *"Leave granted.*
> >
> > *In view of the fact that the Dispute Resolution Panel has found that there is no permanent establishment in India, the judgment of the High Court is set aside and the appeals are allowed accordingly."*
>
> *6. Ordered accordingly."*

16. The Hon'ble Supreme Court allowed L.G.Korea to withdraw its SLP. The copy of the said order is placed at pages 12 to 18 of the Convenient Paperbook.

17. Now coming to the facts of the present case on the basis of findings in the case of LGEIL, re-assessment proceedings u/s 147/148 of the Act have been initiated against the assessee on the ground that all the AEs of the L.G.Korea has PE in India in LGEIL. The plea of the assessee that it did not send any of its employees on secondment to LGEIL for the years under consideration has not been accepted. For all relevant Assessment Years, the transaction between the assessee and LGEIL, has been found to be at arm's length by the TPO, was not accepted by the Assessing Officer in the draft assessment order. The DRP also issued directions for Assessment Years 2004-

05 to 2006-07 holding that the assessee had PE in India. Final assessment order has been passed in terms of the directions of the DRP and consequent appeals placed before us.

18. The case of the assessee is that where the transactions between the assessee and LGIEL has been found to be at arm's length by the TPO then there cannot be further profit attribution to a person even if it has PE in India. In this regard, we may refer to two proceedings; wherein one is proceedings taken up by the LGEIL which challenge the order passed u/s 201(1) of the Act before the CIT(A), who passed consolidated order dated 04.09.2018 for Assessment Year 2005-06 to 2010-11 holding that none of the AEs apart from L.G.Korea had PE in India. The said order has not been appealed against the Department and hence the findings had become absolute. In these circumstances, consequent fall out is the case of the assessee, which in turn were re-opened u/s 147 of the Act consequent to survey u/s 133A of the Act on LGEIL. The basis for initiation of re-assessment proceedings falls as in the hands of LGEIL by the order dated 04.09.2018, the CIT(A) has given a finding that none of the AEs apart from L.G.Korea had PE in India for Assessment Years 2005-06 to 2010-11. Copy of the said order is placed at pages 39 to 105 of the Convenience Paperbook. In these circumstances and applying the ratio laid down by the Hon'ble Supreme Court in L.G.Group of companies dated 16.01.2018 & Honda Motors Co.Ltd.(supra) dated 14.03.2018, wherein it has been held that since, the DRP has given the finding that the AEs of LGEIL i.e. assessee before us do not have PE in India; the basis for initiating the re-assessment proceedings fail and the same are held to be infructuous.

19. We may further refer to the order of DRP relating to Assessment Year 2007-08 dated 11.12.2015 wherein it has been held as under:-

> *"9.1. .....The contention of the assessee is that none of the expatriate came to India from assessee's company on secondment basis to work in LG India. Further, no personnel from assessee's company came to LG India on short term or long term basis for providing any technical services. During the course of survey proceedings carried out in premises of LG India on 24.06.2010, the Assessing Officer recorded statements of certain expatriates employees who had come from L.G.Korea to work on secondment basis with L.G.india. On basis of these statements, the Assessing Officer has observed that there existed PE in India for LG Korea and its other group companies. The Assessing Officer has not specified how presence of expatriate employees of LG Korea in India can lead to PE in India of all group companies of L G Korea including assessee.*
>
> *9.2. DRP has duly gone through various statements of expatriates, excerpts from which have been reproduced by the Assessing Officer in draft assessment order. It is seen that it is not the case of the Assessing Officer that any expatriate employee from the assessee company has come to India to work with LG India on secondment basis. None of the expatriate employee in his statement has said that he has come from LG Indonesia or he is working for and on behalf of LG Indonesia. None of the expatriate has said that he has been reporting to LG Indonesia. The expatriates have in fact come from L G Korea and their salaries have been paid by LG India during the period of secondment. IN view of these facts, there is no question of existence of PE of the assessee in India under Article 5(1)/5(2) of DTAA as no fixed place of business or place of management is available to the assessee in India.*
>
> *9.3. Further, from language of Article 5(6) of DTAA, it is clear that any subsidiary shall not be PE of its holding company or vice versa unless conditions of its being PE under other paragraphs of Article 5 of DTAA are satisfied. Here, the Assessing Officer has gone one step further by saying that LG India represents PE of its parent company and also of all other affiliates. This observation of the Assessing Officer is not supported by provisions of law on the issue."*

20. Now coming to the next aspect of the issue which is an alternate plea before the authorities below and also before us that the transaction between the assessee and LGEIL has been found at arm's length by the TPO and hence, no merit in any profit attribution to a person even if there was PE in India. The

Hon'ble Supreme Court in Honda Motors Co. Ltd. vs ADIT in Civil Appeal Nos.2833 to 2840 of 2018, judgement dated 14.03.2018, reported in [2018] 92 taxmann.com 353 (SC) had held that once the international transactions were held to be at arm's length price, even if there was PE in India, no profit could be attributed to it. It was held as under:-

> 3. *In the judgement of this Court dated 24.10.2017 in Asstt. DIT vs E-funds IT Solutions Inc. [2017] 86 taxmann.com 240/251 Taxman 280/399 ITR 34 (SC) and connected matters, it has been held that once arm's length principle has been satisfied, there can be no further profit attributable to a person even if it has a permanent establishment in India.*
>
> *4. Since, the impugned notice for the reassessment is based only on the allegation that the appellant(s) has permanent establishment in India, the notice cannot be sustained once arm's length price procedure has been followed.*
>
> *5. Accordingly, the impugned order(s) is set aside and the appeals are allowed."*

21. The assessee before us referred to the following orders of the TPO/s passed in the case of LGEIL for Assessment Years 2004-05 to 2007-08 and 2009-10, which are placed at pages 247 to 403 as under;

Annexure No.	***Particulars***	***Page No.***
11.	*Copy of TPO order dated 20.12.2006 in the case of LGIL for Assessment Year 2004-05*	*247-279*
12.	*Copy of TPO order dated 20.12.2008 in the case of LGIL for Assessment Year 2005-06*	*280-301*
13.	*Copy of TPO order dated 15.10.2009 in the case of LGIL for Assessment Year 2006-07*	*302-323*
14.	*Copy of TPO order dated 18.10.2011 in the case of LGIL for Assessment Year 2007-08*	*324-325*
15.	*Copy of order dated 30.01.2013 in the case of LGIL for Assessment Year 2009-10*	*326-403*

22. Once the international transaction, if any, had been found to be at arm's length in the TP proceedings carried out in the case of LGEIL, then the entire question of PE becomes academic in nature. We find support from the ratio laid down by Hon'ble Supreme Court in the case of Honda Motors Co. Ltd. vs ADIT, Noida [2018] 92 taxmann.com 353 (SC). It has been laid down by the Hon'ble Supreme Court (supra) that where once the arm's length principle has been satisfied then there could be no further profit attributable to a person, even if it had PE in India. Therefore, it was further held that where notice was issued to the assessee for re-assessment based only on allegation that it had PE in India, said notice could not be sustained, once arm's length procedure has been followed. Accordingly we hold that in any case, transaction has been found to arm's length then the entire question of PE becomes academic and there is no merit in the re-assessment proceedings initiated u/s 147 of the Act. As far as the objections of the Ld.DR for the Revenue is concerned, existence of PE of the assessee in India under Article 5(1)(i) of the DTAA i.e. fixed place of business or place of management is available to the assessee in India, then also the consequent reassessment proceedings initiated against the assessee u/s 147 of the Act do not survive. Thus, the preliminary issue raised by the assessee is allowed. The issue raised in Assessment Years 2005-06 and 2006-07 in the case of PT. LP. Display Indonesia is similar and following the same parity of reasoning, the said issue is allowed.

23. The appeals of the Revenue for Assessment Years 2004-05 & 2005-06 on merits are thus dismissed.

24. Now, coming to the appeals filed by the assessee in L.G. Philips Korea. First for Assessment Years 2005-06 & 2006-07, the cross-objections have been filed by the assessee on the issue of both re-opening of the assessment and existence of PE. Following the same line of reasoning as in para above, we hold that the reassessment proceedings initiated against the assessee under section 147 of the Act do not survive. Accordingly, the Cross objection No.2 raised by the assessee in Assessment Years 2005-06 & 2006-07 is allowed. consequent thereto the other cross objections raised by the assessee become academic in nature. Further the appeal of the Revenue are dismissed as we have held that reassessment proceedings to be invalid.

25. Now, coming to the appeals of assessee for Assessment Years 2007-08 & 2009-10 which are dismissed by the CIT(A) on the technical ground that the PAN quoted in the Memo of appeal was not that of the assessee but that of the Authorized signatory. The Hon'ble Supreme Court in CIT vs Ashoka Engg.Co. [1992] 194 ITR 645 (SC) has held as under:-

> *"But it is an equally well settled preposition of law that, if there is a provision conferring right of appeal, it should be read in a reasonable, practical and liberal manner."*

26. Applying the said ratio laid down by the Hon'ble Supreme Court(supra), we find that there is no merit in the summary disposal of the appeals by CIT(A). In any case, the assessee raised both issue on merits and re-opening of assessment u/s 147 of the Act before us. We have already decided the said issue of reopening of assessment under section 147 of the Act in the case of PT. LP Display Indonesia, it may be pointed therein that in the case of the assessee

none of the authorities below have found any international transactions whatsoever with LGEIL. In these circumstances, there is no merit in the reassessment proceedings initiated under section 147 of the Act.

27. In the result, appeals of the assessee of PT. LP. Display Indonesia, relating to Assessment Year 2004-05 to 2006-07 are allowed and appeals of the Revenue relating to Assessment Years 2004-05 & 2006-07 are dismissed. Further, cross objections filed by the assessee (M/s L.G. Philips Display Korea Co. Ltd.) for Assessment Year 2005-06 & 2006-07 and appeals of the assessee relating to Assessment Years 2007-08 & 2009-10 are allowed. The appeals of the Revenue relating to Assessment Years 2005-06 and 2006-07 are dismissed.

Order pronounced in the open court on 20th October, 2020.

Sd/-	**Sd/-**
(DR. B.R.R. KUMAR)	**(SUSHMA CHOWLA)**
लेखा सदस्य/ACCOUNTANT MEMBER	**उपाध्यक्ष / VICE PRESIDENT**

दिल्ली / दिनांक Dated : 20th October, 2020
** Amit Kumar **

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण , दिल्ली
Assistant Registrar, ITAT, Delhi