

## आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 113/Mum/2005

(निर्धारण वर्ष / Assessment Year 2001-02)

M/s DHL Operations B.V., The Netherlands, C/o RSM & Co Ambit RSM House, 449, Senapati Bapat Marg, Lower Parel, Mumbai-400 013	बनाम/ Vs.	The Dy. Director of Income Tax (International Taxation)- Range 1(2), Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACD7306H		

आयकर अपील सं./ ITA No. 1481/Mum/2005

(निर्धारण वर्ष / Assessment Year 2001-02)

The Dy. Director of Income Tax (International Taxation)- Range 1(2), Mumbai	बनाम/ Vs.	M/s DHL Operations B.V., The Netherlands, C/o RSM & Co Ambit RSM House, 449, Senapati Bapat Marg, Lower Parel, Mumbai-400 013
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Madhur Aggarwal, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri S.S. Iyanger, DR

सुनवाई की तारीख / Date of hearing:	08.04.2021
घोषणा की तारीख / Date of pronouncement:	13.05.2021

## **आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /

**PER MAHAVIR SINGH, VP:**

These cross appeals are arising out of the order of the Commissioner of Income Tax (Appeals)]-XXXI, Mumbai, [in short CIT(A)], in appeal No. CIT(A) XXXI/ADIT (IT) 1(2)/IT-Director of Income Tax (International Taxation) 1(2), Mumbai (in short ADIT/ AO), for the A.Y. 2001-02 vide order dated 24.03.2004 under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The learned Counsel for the assessee submitted that the appeal filed against the assessment order under section 143(3) of the Act is infructuous hence, requested for withdrawal. The letter read as follows:-

*"Dear Sirs,*

*Re: DHL Operations B.V. merged with DHL International GmbH ('DHLI' / 'the Appellant') PAN – AADCD0913D*

*Assessment Year ('AY') – AY 2001-02*

*Appellant's Appeal Number – 1481/Mum/2005*

*Department's Appeal Number – 113/Mum/2005*

*Sub: Notice issued for scheduling hearing on 8 April 2021 – Request for withdrawal of appeal*

*This is with reference to the captioned appeal filed before your honour for the Assessment Year 2001-02. In this connection, the Appellant wishes to submit as under:*

- The Appellant had filed its Return of Income on 10 October 2001 declaring NIL income.*
- The scrutiny assessment under Section 143(3) of the Income-tax Act, 1961 ('the Act') was completed and an order dated 24 March 2004 was passed by the Assessing officer. The Assessing officer in the order under Section 143(3) of the Act concluded that the Appellant has business connection in India and also constitutes Permanent Establishment under Article 5 of India - Netherlands tax treaty ('the Tax Treaty'). Accordingly, Appellant's income as computed by the Assessing officer from outbound consignment (Rs. 8,16,43,341) and income from inbound consignment (Rs. 6,21,54,344) is taxable in India.*
- The Appellant had filed an appeal before the Hon'ble Commissioner of Income-tax*

*(Appeal) ('CIT(A)') against the said assessment order. The Hon'ble CIT(A) followed the order of Hon'ble Tribunal in the Appellant's owned case for AY 1989-90 and AY 1990-91 and passed the order on 30 November 2004 holding that*

*i) Income from outbound consignment is not taxable; and*

*ii) Income from inbound consignments is taxable and given the partial relief on the quantum of income from inbound consignment*

- Appellant and the Department both have filed an appeal against the said order in 2005, Appellant's appeal number - 1481/Mum/2005 and Department's appeal number - 113/Mum/2005 and the same are pending before your honour for hearing.*

- The assessment under section 143(3) of the Act was reopened under section 148 of the Act and the assessing officer vide order under Section 143(3) read with Section 147 of the Act dated 26 December 2007 (copy of reassessment order is enclosed as Annexure*

1), re-assessed the total income of the Appellant as under:

i) Income taxable as Royalty - Rs. 5,10,66,976

ii) Income taxable as Fees for Technical Services - Rs. 25,53,34,884; and

iii) Taxable Business income - Rs. 1,93,03,316.

- The Appellant has filed a letter on 6 February 2008 for non-filing of appeal stating that it's not in agreement with the conclusions drawn by the assessing officer in the reassessment order, however, in order to buy peace with the tax department, the Appellant is not filing any appeal against the said order. The copy of the letter is enclosed as Annexure.

*In the light of the above, the Appellant submits that the re-assessment order dated 26 December 2007 passed under Section 143(3) read with Section 147 of the Act will survive and the assessment order under Section 143(3) of the Act dated 24 March 2004 will be subsumed with the*



*re-assessment order. Accordingly, the Appellant submits that the appeal filed against the assessment order under Section 143(3) of the Act will stand infructuous.*

*Accordingly, we request your honour to take the above on record and provide a confirmation that the appeal has been obliterated.*

*Yours faithfully*

*For DHL International GmbH*

*Sd/-*

*Authorised signatory"*

3. In view of foregoing, the appeal of assessee stand dismissed as withdrawn and Revenue's appeal is also dismissed as infructuous.
4. In the result, both the appeals are dismissed.

Order pronounced in the open court on 13.05.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 13.05.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**