

आयकर अपीलिय अधिकरण
मुंबई पीठ "आई", मुंबई
श्री प्रमोद कुमार, उपाध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 3161/मुं/2010 (नि.व.2006-07)
ITA NO.3161/MUM/2010 (A.Y. 2006-07)

The ADIT(IT)-2(2),
Room No.116, 1st Floor,
Scindia House, Ballard Estate,
N.M. Road, Mumbai 400 038

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Zee TV USA Inc.,
C/o. MGB & Co Jolly Bhavan 2,
1st Floor, New Marine Lines,
Mumbai 400 020
PAN: AAACF1291K

..... प्रतिवादी/Respondent

C.O. NO.15/MUM/2011
(Arising out of ITA NO.3161/MUM/2010-A.Y. 2006-07)

M/s. Zee TV USA Inc.,
C/o. MGB & Co Jolly Bhavan 2,
1st Floor, New Marine Lines,
Mumbai 400 020
PAN: AAACF1291K

..... Cross Objector

Vs.

The ADIT(IT)-2(2),
Room No.116, 1st Floor,
Scindia House, Ballard Estate,
N.M. Road, Mumbai 400 038

..... Appellant in appeal

Assessee by : S/Shri NiraJ Seth and Jay Bhanshali
Revenue by : Shri Vijay Kumar Subramaniyam

सुनवाई की तिथि/ Date of hearing : 11/02/2021

घोषणा की तिथि/ Date of pronouncement : 06/05/2021

आदेश/ ORDER**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-11, Mumbai [in short 'the CIT(A)'] dated 31/01/2010 for the assessment year 2006-07. The assessee has filed Cross Objections in the appeal of Revenue.

2. The Revenue in appeal has assailed the order of CIT(A) by raising following grounds:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) right in holding that the assessee does not have a PE in India and accordingly its business profits are not taxable in India.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) right in holding that the interest u/s 234B is not payable by a non-resident whose total income is subject to deduction of tax at source and accordingly deleted the interest u/s. 234B of the Income Tax Act, 1961.

3. The Appellant prays that the order of the Id. CIT (A) on the above ground be set aside and that of the Assessing Officer restored.

4. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The assessee in Cross Objections has raised following grounds:

"1. Without prejudice to the decision of the Hon. CIT (A) (wherein it is held that the assessee has no PE in India hence its income is not taxable in India) even if it is held that assessee has Permanent Establishment in India its income is not taxable in India as it has paid arms length remuneration/commission to its Agent in India having regards to the functions and risk performed by the agent, which is taxed in India as held by Supreme Court in the case of Morgan Stanley 292 ITR 416 and Bombay High Court in the case of Sony Entertainment Television (Singapore) Limited 173 Taxman 475.

2. Without prejudice to the decision of the Hon. CIT (A), (wherein it is held that the assessee has no PE in India hence its income is not taxable in India), even if it is held that assessee is taxable in India, interest u/s 234B of the Act is not leviable as the whole income of the assessee is liable to tax deduction at source under the Act hence no advance tax was payable relying upon the decisions CIT vs. Madras Fertilizers Ltd 149 ITR 703, Sedco Forex International Drilling Inc. Vs. DCIT 72 ITD 415 (ITATDelhi), Rheibraun Engineering & Wasser Gmbh 1915/Bom/96."

4. Shri Niraj Seth appearing on behalf of the assessee submitted at the outset that the Tribunal in preceding assessment year i.e. 2005-06 and succeeding assessment year i.e. 2007-08 has granted relief to the assessee on the ground that the international transactions between the assessee and the Associated Enterprise(AE) are at arm's length and hence, no adjustment is required to be made. Once the international transactions are held to be at arm's length the grounds raised in Departmental appeal would become academic. The Id.Authorized Representative of the assessee furnished copy of Tribunal order in ITA No.5608/Mum/2008 & CO No.47/Mum/2010 for assessment year 2005-06 decided on 23/04/2018.

5. Shri Vijay Kumar Subramaniam representing the Department fairly admitted that on identical set of facts and grounds of appeal, the Tribunal has adjudicated the issue with regard to arm's length transaction in favour of the assessee in 2005-06.

6. Both sides heard, orders of authorities below examined. The assessee is a U.S based company and is engaged in broadcasting satellite T.V Channels in USA. The assessee collect advertisements from India for telecasting the same on channels in the USA. The assessee entered into an agreement with Ambience Space Sellers Ltd., now merged with Zee Telefilms Ltd. (in short 'ZeeL'), which provides that ZeeL would act as exclusive agent in India for the provision of information to Zee TV US regarding advertisers and to help in arranging for sale of advertisement and sponsorship. The Assessing Officer after examining the agreement between the parties held that ZeeL is a Permanent Establishment (PE) of the assessee in India. Zee TV USA has ultimate controlling power for advertisement procurement in India by ZeeL. The advertiser approaches ZEE TV US through ZeeL. The advertisement charges are paid to ZeeL, who in turn after deducting its commission remits the balance to the assessee. The Assessing Officer made adjustment of Rs.27,94,180/- on account of income from advertisements in India.

In first appellate proceedings, the CIT(A) deleted the addition holding that the assessee does not have PE in India and hence, no addition could have been made in the hands of assessee. Hence, the present appeal by the Revenue.

7. The assessee in Cross Objections has raised a ground that even if it is assumed that the assessee is having PE in India, no adjustment is warranted as the transaction between the assessee and the Indian entity is at arm's length.

8. We find that the Revenue and the assessee in immediately preceding assessment year i.e. AY 2005-06 had assailed the order of CIT(A) on identical set of grounds. Both sides are unanimous in stating that the facts germane to dispute in AY 2005-06 and the impugned assessment year are identical. The Co-ordinate Bench of Tribunal in in CO No.47/Mum/2010 in ITA No.5608/Mum/2008 for assessment year 2005-06 decide on 23/4/2018, in identical set of facts accepted ground No.1 raised in Cross Objections by the assessee. The Tribunal held that the transaction between the assessee and its AE are at arm's length, therefore, no further income chargeable to tax in India can be said to be attributable for the PE of the assessee.

9. Here, we would also like to refer to the decision of Tribunal in the case of Additional Director of Income Tax (International Taxation)-1 vs. Asia Today Limited in ITA No.1878/Mum/2008 decided on 29/01/2021, where the Tribunal in somewhat similar set of facts after considering catena of judgments on the issue of taxability of Dependent Agency Permanent Establish (DAPE), where the transactions were found to be at arm's length held as under:-

"16. Once we hold, as we have held above, that in the light of the present legal position, existence of dependent agency permanent establishment in wholly tax-neutral, unless it is shown that the agent has not been paid an arm's length remuneration, and when it is not the case of the Assessing Officer, as we have noted earlier, that the agents have not been paid an arm's length remuneration, the question regarding the existence of dependent agency permanent establishment, i.e., under article 5(4), is a wholly academic question. We humbly bow to the law laid down by Hon'ble Courts above. The limited argument before us is that here is a case of dependent agency permanent establishment, and the existence of a DAPE, in the

light of these discussions, is wholly tax-neutral particularly in the light of the legal position regarding profit attribution to the DAPE. We need not, therefore, deal with the question about the existence of a DAPE, as it is an academic exercise with no tax effect involved. The related grounds of appeal are thus infructuous.”

Thus, where the transaction between DAPE and overseas entity is established to be at arms' length, the transaction would be tax neutral and no adjustment is warranted.

10. In light of undisputed facts of the case and the decisions referred above, the assessee succeeds on ground no.1 of the cross objections.

11. As we have held that the transactions between the assessee and Zeel are at arm's length, the ground no.1 raised by Revenue in appeal has become inconsequential, hence, the same is dismissed as infructuous.

12. In ground no.2 of cross objections, the assessee has assailed charging of interest u/s. 234B of the Income Tax Act, 1961 (in short 'the Act'). The Revenue has raised corresponding issue in ground no.2 of the appeal. Charging of interest under section 234B of the Act is consequential, hence, the ground No.2 of CO and appeal are dismissed.

13. In the result, appeal by the Revenue is dismissed and Cross Objections are partly allowed.

Order pronounced in the open court on Thursday the 06th day of May, 2021.

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष/VICE PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 06/05/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai