

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. K. N CHARY, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.5575, 5576 & 5577/Del/2016
Assessment Year: 2010-11 to 2012-13

William E Connor & Associates Ltd. India Liaison Office, G-66/2, Ground Floor, Gautam Nagar, New Delhi-110049 PAN No.AAACW5832H	Vs	DCIT Circle – 3 (1) (2) Intl. Taxation New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. R. K. Mehra, CA
Respondent by	Sh. Vipul Kashyap, Sr. DR

Date of hearing:	14/09/2021
Date of Pronouncement:	14/09/2021

ORDER

PER N. K. BILLAIYA, AM:

By a consolidated order dated 30.08.2016 the CIT(A)-43, New Delhi has decided the appeals of the assessee for A.Y.2010-11, 2011-12 and 2012-13 .

2. Against the said order of the CIT(A), the assessee has preferred appeals before us in ITA No.5575/Del/2016, 5576/Del/2016 and 5577/Del/2016 for A.Y.2010-11 to 2012-13.

3. Since the common grounds are involved in the captioned appeals, all the appeals are disposed of by this common order for the sake of convenience and brevity.

4. The common grounds involved in the captioned appeals read as under :-

1. That on the facts and in the circumstances of the Appellant India Liaison office case, the learned Commissioner of income tax (Appeals) erred in law in as much that while giving a categorical finding that the action of the learned assessing officer is not sustainable in law under section 147 and 148 and having decided the first ground of appeal in favor of the appellant, adjudicating remaining grounds of appeal raised before him was not essential since those grounds of appeal had become academic nature after rejecting the very action of the learned assessing officer in issuing notice under section 148 of the Income tax Act, 1961.

2. That on the facts and in the circumstances of the Appellant India Liaison office case and without prejudice to the first ground of appeal, the learned Commissioner of Income tax (Appeals) erred in law and on facts in upholding the action of the learned assessing officer in treating the India Liaison office of William E Connor Associates Limited as Permanent Establishment in India without there being any evidence whether produced by the learned assessing officer or the First Appellate Authority and simply relying on a case law without any basis. The entire approach of both the lower authorities is based on suspicion, surmises and conjectures.

3. That on the facts and in the circumstances of the Appellant India Liaison office case, and without prejudice to the first ground of appeal, the learned

Commissioner of Income tax (Appeals) erred in law and on facts in not dealing with the specific ground raised before him that there existed no treaty between India and Hong Kong since on that basis inter alia the assessment had been made by the learned assessing officer.

4. That on the facts and in the circumstances of the Appellant India Liaison office case and without prejudice to the first ground of appeal, the learned Commissioner of income tax (Appeals) erred in law and on facts in upholding the action of the learned assessing officer in wrongly computing its taxable total income at Rs. 5214339 in an adhoc and arbitrary manner, instead of Rs. Nil, without there being any justification of the basis adopted by the learned assessing officer, completely ignoring the principles of natural justice.

5. That on the facts and in the circumstances of the Appellant India Liaison office case and without prejudice to the first ground of appeal, the learned Commissioner of Income tax (Appeals) erred in law and on facts in upholding the action of the learned assessing officer in not allowing the deduction of the entire expenditure aggregated Rs. 168635309 (Rs.194707006-Rs.26071697) incurred by the liaison office during the year even if the manner in which the learned assessing officer has estimated total income has to be upheld. This ground of appeal is, however, without prejudice to the other grounds of appeal raised in the foregoing.

6. That on the facts and in the circumstances of the Appellant Liaison office case, the learned Commissioner of income tax (Appeals) erred in law in not interfering on the issue of charging interest under section 234B of the Income tax Act, 1961 amounting to Rs. 1321259.

5. A perusal of the order of the CIT(A) shows that the CIT(A) at para 7.4 and 7.5 has held as under :-

“7.4 I find that the AO in his reasons to believe did not specify the quantum of income (even in broad terms), that he had reason to believe, had escaped assessment.

7.5 The AO’s action u/s. 147/148 is more for making enquiries than to actually assess the income which had escaped assessment. The AO has not been able to find (or point out) the quantum of income that had escaped assessment, at the time of forming of belief or even at the time of assessment (where an estimated addition has been made). The AO has conjectured / surmised / hypothesized at the time of recording of reasons ‘After extensive study of the P/L a/c of the assessee it is evident that the assessee has incurred crores of rupees separately under the heads of Salary, rent, Traveling and conveyance.

For the purpose of LO, these kinds of expenditures cannot be justified In view of the above, it is clear that the LO is not limited to perform the work it supposed to be performed, but it definitely engaged in commercial activities other than permitted by the RBI’.

The basis of AO’s action is thus a hypothesis. The basis of AO’s belief has no substratum.”

6. The CIT(A) concluded as under :-

“In the light of the analysis as above, I hold that the AO’s action u/s. 147/148 is not sustainable in law. I, therefore, decide this ground in favour of the appellant.”

7. The CIT(A) further observed :-

“In the light of analysis/ adjudication at para 7 above, this ground gets adjudicated.

The appellant succeeds in appeal for AY 2010-11.”

8. While deciding the appeal for A.Y.2011-12 the CIT(A) observed :-

“It is noted that the facts in A.Y.2011-12 are similar to those obtaining in AY 2010-11. Even the grounds of appeal are almost replicas of grounds of AY 2010-11. The appellant too had made consolidated submissions. Accordingly, on a basis similar to 2010-11 in appeal no.66/2015-16, this appeal for AY 2011-12 stands adjudicated.

The appellant succeeds in appeal for AY 2011-12.”

9. While deciding the appeal for A.Y.2012-13 the CIT(A) observed :-

“It is noted that the facts in A.Y.2012-13 are similar to those obtaining in AY 2010-11. Even the grounds of

appeal are almost replicas of grounds of AY 2010-11. The appellant too had made consolidated submissions. Accordingly, on a basis similar to 2010-11 in appeal no.66/2015-16, this appeal for AY 2012-13 stands adjudicated.

The appellant succeeds in appeal for AY 2012-13.”

10. We have given a thoughtful consideration to the findings of the CIT(A). We fail to understand when the captioned appeals have been decided in favour of the assessee there remains no cause for the assessee to file appeals before this Tribunal. We have no hesitation to hold the captioned appeals as infructuous.

11. Decision announced in the open court in the presence of both the representatives on 14.09.2021.

Sd/-
((K. NARSIMHA CHARY))
JUDICIAL MEMBER

NEHA

Date:-14.09.2021

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	14.09.2021
Date on which the typed draft is placed before the dictating Member	14.09.2021
Date on which the typed draft is placed before the Other member	14.09.2021
Date on which the approved draft comes to the Sr.PS/PS	14.09.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	14.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	14.09.2021
Date on which the final order is uploaded on the website of ITAT	14.09.2021
Date on which the file goes to the Bench Clerk	14.09.2021
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	