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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.5083/Mum/2003	-	Assessment year–1998-99
I.T.A. No.7720 /Mum/2010	-	Assessment year–1999-00
I.T.A. No.7721/Mum/2010	-	Assessment year–2001-02
I.T.A. No.7022/Mum/2010	-	Assessment year–2000-01

Integrated Container Feeder Service 5, Duke of Edinburg Avenue Port Louis, Mauritius. PAN : AAACI3605C	vs	Joint Director of Income-tax (Intl.tax)-4, Mumbai
APPELLANT		**RESPONDENT**

Appellant by	Shri Dhanesh Bafna / Hiral Desai, AR
Respondent by	Shri N. Padmanabhan, Sr. DR

Date of hearing	06-09-2021
Date of pronouncement	23-09-2021

O R D E R

Per Saktijit Dey (JM)

Captioned appeals by the same assessee arise out of separate orders of learned Commissioner of Income Tax(Appeals) passed for the assessment years 1998-99, 1999-2000, 2000-01 & 2001-02.

ITA No.5083/Mum/2003 - A.Y. 1998-99

2. The assessee has raised the following grounds:-

"1, a) On the facts and in the circumstances of the case, the Learned Commissioner of Income-tax (Appeals) ['CIT(A)'] has legally erred in holding that the appellant has income chargeable to tax in India, The Learned CIT(A) ought to have held that no pan of the Appellant's income Is chargeable to tax in India.

b) On the facts and in the circumstances of the case, the Learned CIT(A) has legally erred in holding that under Article 8 of the Double Taxation Avoidance Agreement between India and Mauritius ('DTAA[1]), the place of effective management may be a state other than India or Mauritius.

c) On the facts and in the circumstances of the case, the Learned CIT(A) has legally erred in holding that the place of effective management of the Appellant is not In Mauritius and consequently denying the benefit of Article 8 of the DTAA.

Without prejudice to ground no. 1 above and on the facts and in the circumstances of the case, the Learned CIT(A) has legally erred in holding that the Appellant had a Permanent Establishment ('PE'} in India in the form of Agents and thereby has erred in charging to tax the Business Profits of the Appellant in India under Article 7 of the DTAA

b) Without prejudice to ground no. 1 above and on the facts and in the circumstances of the case, the Learned C1T(A) has legally erred in holding that the Agent's do not fall within the category of exclusions as referred to in Article 5(5) of the DTAA. He further erred in law in not considering the fact that the activities of the agents wore not exclusively or almost exclusively for the Appellant, and erred in holding that they are dependent Agents and constitute PF of the Appellant in India.

c) Without prejudice to ground no. 1 above and on the facts and in the circumstances of the case, the Learned CIT(A) has legally erred in holding that the business of the Appellant is carried out through a fixed place through the Agents in India and, therefore, erred in holding that they are a PE of the Appellant within the meaning of Article 5(1) of the DTAA.

3. a) Without prejudice to ground nos. 1 and 2 above, and on the facts and in the circumstances of the case, the Learned CIT(A) has legally erred in computing the profits of the Appellant under section 44B of the Income-tax Act, 1961 ('IT Act').

b) Without prejudice to ground nos. 1 and 2 above and on the facts and in the circumstances of the case, the Learned CIT(A) has legally erred in applying the provisions of section 448 of the IT Act, instead of taxing the profits attributable to the activities performed in the Indian territorial waters.

c) Without prejudice to the fact that the appellant does not have a PE in India, the Learned CIT(A) erred in not applying the provision of Article 7(2) of the DTAA and Circular No.23, dated 23 July 1969 issued by Central Board of Direct Taxes in order to determine Appellant's profits attributable to Indian operations."

3. At the outset Shri Dhanesh Bafna, learned counsel for the assessee, on instructions, did not press ground 1. Accordingly ground 1 is dismissed as not pressed.

4. In ground 2 assessee has challenged the taxability of business profit in absence of a permanent establishment (PE) in India.

5. Briefly stated, the assessee, as observed by the assessing officer, is a shipping company incorporated in Mauritius and a tax resident of that country. In fact, the assessing officer has also acknowledged that in course of proceedings, the assessee had furnished tax residency certificate issued by the tax authorities in Mauritius. Be that as it may, for the assessment year under dispute assessee filed its return of income declaring income of USD 6,80,510/-. On verifying the return of income, the assessing officer noticed that the assessee has shown gross receipts from freight at USD 90,73,481/-. Whereas, applying the provisions of section 44B the assessee has shown income of USD 6,80,510/- being 7.5% of the total receipts and has also claimed 100% relief under Article 8(1) of India-Mauritius Double Taxation Avoidance Agreement (DTAA). After verifying the return of income and other documents, the assessing officer issued a show cause notice to the assessee to demonstrate that effective management of the company is in Mauritius and if the assessee fails to so demonstrate, the income from operation of ships would be computed as per Article 7 of the DTAA and brought to tax in India. In reply, assessee made its submission justifying its claim of benefit under Article 8(1) of the tax treaty, as according to the assessee, its place of effective management is in Mauritius. The assessing officer, however, did not accept the submissions of the assessee. The assessing officer observed that two of the shareholders of the assessee company are located in UAE and they have issued letters of authority in the name of the assessee. He also observed that board meetings are attended by the shareholders located in UAE. Thus, he ultimately concluded that the place of effective management of the assessee is

not in Mauritius but in UAE. Thus, ultimately he concluded that the assessee is not eligible to get the benefit of Article 8(1) of the tax treaty.

6. Having held so, the assessing officer proceeded to conclude that the assessee has PE in India in the form of its agents, viz. M/s Samsara Shipping Pvt Ltd and M/s Parekh Marine Agencies Pvt Ltd. After analyzing the shipping agency agreement between the assessee and the aforesaid two entities, the assessing officer observed that the aforesaid two agents constitute assessee's PE in India. Accordingly, he brought to tax the entire receipts from shipping activities while completing the assessment. Against the assessment order so passed, assessee preferred appeal before learned Commissioner (Appeals). However, learned Commissioner (Appeals) endorsed the view of the assessing officer. Thereafter, the assessee preferred appeal before the Tribunal. While deciding assessee's appeal vide order dated 26-02-2004, the Tribunal accepted revenue's view that Article 8 of the tax treat will not be applicable to the assessee. However, the Tribunal did not decide the alternative issue relating to applicability of Article 7 by holding that it is academic in nature. Further, the Tribunal held, once the assessee does not come within the purview of Article 8, its income has to be taxed in India as per section 44B r.w.s. 5(2) of the Act. Against the aforesaid order of the Tribunal, assessee went in appeal before the Hon'ble jurisdictional High Court. Further, the assessee also filed an application under section 254(2) of the Act before the Tribunal seeking rectification of the appellate order. While deciding the miscellaneous application, the Tribunal, being of the view that certain mistakes have crept into the order of the Tribunal, recalled the order for the

limited purpose of deciding whether or not the income of the assessee is taxable in India, keeping in view Article 7 of the India-Mauritius tax treaty, and if so, on what basis. Whereas, while deciding assessee's appeal against the order of Tribunal, the Hon'ble jurisdictional High Court in order dated 29-08-2007 restored the issue back to the Tribunal while deciding Income Tax Appeal No.661 of 2004. This is how the present appeal has come up for hearing before us.

7. The issue, arising for consideration in ground 2 is, whether the assessee has a PE in India and if so, whether the shipping income received by the assessee is taxable in India under Article 7 of the tax treaty. The assessing officer, after referring to various clauses of agency agreement between M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd has held that both these entities are exclusively working on behalf of the assessee and are not providing services to the assessee in regular course of their business. The assessing officer referring to Article 5(5) of India-Mauritius tax treaty held that both the aforesaid entities cannot be considered to be agents having independent status and are acting in the ordinary course of their business. Thus, he has held that the exceptions provided under Article 5(5) are not applicable to M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd. Thus, the assessing officer concluded that the assessee has a PE in India. Learned Commissioner (Appeals), as stated earlier, endorsed the aforesaid view of the assessing officer.

8. The learned counsel for the assessee submitted, neither M/s Samsara Shipping Pvt Ltd nor Parekh Marine Agency Pvt Ltd can be considered as agents of the assessee as their activities are not devoted exclusively for the assessee.

Drawing our attention to various facts and materials on record, he submitted that in the year under consideration, both the entities have rendered their services to various other shipping companies including the assessee. He submitted, the amount received by M/s Samsara Shipping Pvt Ltd from assessee constitutes 2.2% of the entire commission received, whereas, in case of Parekh Marine Agency Pvt Ltd it constitutes 5.56%. Thus, he submitted, the facts on record clearly reveal that both M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd are agents of independent status and have rendered services to the assessee in the ordinary course of their business. Thus, he submitted, the exceptions contained under Article 5(5) would clearly apply and they cannot be considered as the PE of the assessee in India. Thus, he submitted, once the assessee does not have a PE in India, the business profit cannot be made taxable in India in terms of Article 7 of the India-Mauritius tax treaty. In support of his contention, learned counsel relied upon a decision of the co-ordinate bench in case of DCIT vs Overseas Transport Co. Ltd in ITA No.3129/Mum/2002 & Ors dated 27-07-2020. Further, he submitted, the very clauses of the shipping agency agreement based on which both the assessing officer and learned Commissioner (Appeals) have treated M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd as exclusive agents of the assessee were considered by the Tribunal in case of ADIT vs Bay Lines (Mauritius)(2018) 91 taxmann.com 110 but the Tribunal, ultimately held that presence of such clauses in the agreement would not make the entities the PE of the assessee, if they are rendering services in ordinary course of their business and are having independent status. The learned counsel submitted, since both the

entities, considered to be the PE in India, are working for various shipping companies in their ordinary course of business, they cannot be considered to be assessee's PE in terms of Article 5(5) of the tax treaty. In support of such contention, he also relied upon the following decisions:-

1. DDIT vs ARC Lines (Mauritius) (2010) ITA No.1096/Mum/2010 (Mum. Trib)

2. ARC Lines (Mauritius) vs DCIT (2019) 112 taxmann.com 95(Mum Trib)

3. DCIT vs Overseas Transport Co.Ltd (2020) ITA No.3129/Mum/2009

4. ADIT vs Bay Lines (Mauritius) (2018) 91 taxmann.com 110 (Mum-Trib)

9. Per contra, learned departmental representative submitted, once the assessee has given up its claim under Article 8 of the tax treaty, it goes out of the treaty benefits altogether and assessee's income has to be taxed as per the provisions contained under the domestic law, since, the assessee accepts that it does not have effective place management in Mauritius. Without prejudice, he submitted, different clauses of the shipping agency agreement between the assessee and M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd clearly establish that they are exclusively working for the assessee. Drawing our attention to the specific observations of the assessing officer and learned Commissioner (Appeals) he submitted, these two entities are doing the agency work for and on behalf of the assessee in most of the Indian ports. He submitted, the agents are responsible for obtaining all clearances from the government departments; they are looking after all functions such as dividing brokers,

contracting with parties for loading cargo, dealing with labours for loading and unloading, collecting the freight on behalf of the assessee, etc. Thus, he submitted, the specific conditions of the shipping agency agreement are determinative whether M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd as agency PE of the assessee under Article 5(4) r.w. Article 5(5). Further, he submitted, as per United Nations' model convention, when the activities of an agent are devoted wholly on behalf of the enterprise, and conditions are made or imposed between enterprise and the agent in their commercial and internal relations which differ from those which have been made between independent enterprise, he will not be considered as an agent of independent status. He submitted, various conditions and restrictions imposed in the shipping agency agreement would not make M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd agents of independent status. Thus, he submitted, since the assessee has agency PE in India, the business profit would be taxable even under Article 7 of the India-Mauritius tax treaty.

10. We have considered rival submissions in the light of decisions relied and perused materials on record. Undisputedly, before us, the assessee has given up its claim under Article 8 of the India-Mauritius tax treaty by not pressing the ground raised on such issue. However, the assessee has canvassed an alternative argument that since it does not have a PE in India in terms of Article 5 of the tax treaty, the business profit would not be taxable under Article 7 of the tax treaty. As a preliminary counter-point to the aforesaid claim of the assessee, the revenue has contended that once the assessee has given up its claim under Article 8 of the

tax treaty, it goes out of the treaty provisions and its income has to be taxed under the domestic law. In our view, the aforesaid argument of the revenue is totally misplaced due to the following reasons–

11. As discussed earlier, in the first round of litigation, the Tribunal, while deciding assessee's appeal held that the assessee is not eligible for availing the benefit of Article 8 of the tax treaty. Having held so, the Tribunal did not decide assessee's alternative contention regarding applicability of Articles 5 and 7 of the tax treaty, as according to the Bench, such issue is of academic nature. However, the Tribunal opined that once Article 8 of the tax treaty is held inapplicable to the assessee, the consequence should be that income earned by the assessee in India from operation of ships in international traffic has to be taxed as per the provisions of the domestic law.

12. While deciding the miscellaneous application filed by the assessee challenging some of the observations of the Tribunal in the appellate order, in M.A. 184/Mum/2004 dated 17-06-2006, the bench has held as under:-

> *"5. The case of the assessee before the Tribunal was two fold- first that the income of the assessee company is not taxable in India by the virtue of Article 8 of the India Mauritius DTAA, and second that, in case his case fails on the touchstone of Article 8 and accordingly provisions of Article 7 are to be applied, the income is to be taxed on net basis and only in case the assessee can be said to have a permanent establishment (PE) in India. It was also the assessee's contention that the assessee did not have any PE in India in terms of the definition of that expression under the India Mauritius DTAA. When the Tribunal came to the conclusion that Article 8 is not applicable, corollary to this conclusion was that taxability under Article 7 was to be adjudicated upon. However, the Tribunal declined to go into that question by observing that "..... articles 4, 5,7 of DTAC have no application and relevance under the facts of the present case' and by observing that "the discussion of these articles is academic and does not affect the assessability of such income as per normal provisions of the Income Tax Act.1961". The Tribunal also observed that ".....we are of the opinion that once Article 8 is held inapplicable on the facts of the present*

case, the consequence will be that income of the assessee earned in India from operation of ships in international traffic has to be taxed as per provisions of the Indian Income Tax Act, as per section 44B read with section 5(2) of the Act". We are of the considered view that it is at this stage that the Tribunal indeed committed a mistake apparent on record which needs to be rectified. It was not open to the Tribunal to hold that provisions of Article 7 do not apply to the facts of this case when it was an uncontested position before the Tribunal. What was really required to be examined was that in the context of application of provisions of Article 7, whether or not the assessee had a PE in India and whether or not even in a case where provisions of Article 7 are applicable the income can still be taxed on gross basis under section 44B as held by the authorities below.

6. In the light of the above discussions, we deem it fit and proper to recall the order dated 26th February 2004 passed by the Tribunal for the limited purpose of deciding whether or not the income of the assessee, even under the provisions of Article 7 of the India Mauritius DTAA, is and if so on what basis. That would take care of ground numbers 2 and 3 of the assessee's ground of appeals. To this extent, the Tribunal shall decide the issue afresh."

13. Thus, as could be seen from the aforesaid observations of the co-ordinate bench, the issue whether assessee has a PE in India so as to tax the business profit in terms of Article 7 is very much alive for adjudication before the Tribunal. No material has been brought to our notice by the revenue to demonstrate that the aforesaid order of the Tribunal while disposing of the miscellaneous application has either been challenged by the revenue in a higher court or has been reversed. In the aforesaid scenario, the order passed in M.A. 184/Mum/2004 dated 17-06-2006 has attained finality. That being the case, revenue's objection to ground 2 raised by the assessee is unsustainable.

14. Having held so, now the issue arising for consideration is, whether the assessee has agency PE in India in terms of Articles 5(4) and 5(5) of the tax treaty. While the assessee has submitted that both M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd are agents of independent status rendering

services to the assessee in the ordinary course of their business, it is the revenue's case that both these entities are exclusively working for the assessee; hence, do not have independent status of an agent. As could be seen from record, during the year under consideration, M/s Samsara Shipping Pvt Ltd has rendered services to various shipping companies and earned commission income as under:-

Name of the Principals	**Amount in Rs.**
Mediterranean Shipping Co.	30,008,193
Seven Seas Container Line Ltd	2,36,638
Overseas Transport Company Limited	4,653,998
Singapore Soviet Shipping Company Pte. Ltd	1,348,517
Integrated Container Feeder Services	859,253
Ethiopian Shipping Line	1,214,207
Total	**38,320,806**

15. As could be seen from the aforesaid, M/s Samsara Shipping Pvt Ltd is providing services to various companies relating to shipping activities and for providing such services has earned income from a number of shipping companies. Out of Rs.3,83,20,806/- earned as commission income from various shipping companies, the income earned from the assessee is Rs. 8,59,253/- which works out to a meager 2.2% of the entire commission received by the party. Similar is the factual position with regard to Parekh Marine Agency Pvt Ltd. Thus, keeping in view the aforesaid factual position, it has to be seen whether these two entities can be considered to be providing exclusive agency services to the assessee or they are of independent status and providing such services in the ordinary course of their business. The very fact that the aforesaid entities are providing services to

a number of shipping companies including the assessee demonstrates that they are not exclusively working for the assessee. Not only they are agents of independent status, but the services provided by them to various shipping companies including the assessee are in course of their ordinary business as per Article 5(5) of the Tax treaty. At this stage, we must observe, since the language used in Article 5(5) is simple and unambiguous, there is no necessity of interpreting it with external aid. Pertinently, while dealing with a similar issue involving identical facts and the very same entities treated as agency PE, the Tribunal, in case of DCIT vs Overseas Transport Co Ltd (supra), has held as under:-

> *"13. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. The short issue arising for consideration before us is, whether the assessee has a fixed place PE in India or a PE through dependent agents? Article-5 of the Tax Treaty defines PE. As per Article-5(l), PE means a fixed place of business through which the business of the enterprise of one contracting State is wholly or partly carried out in the other contracting State. Article-5(2) illustrates the facilities which can be considered as PE, such as/ place of management, a branch, an office, a factory, a workshop, a warehouse in relation to a person providing storage facilities for others and so on and so forth as provide^ in items (a) to (j) of the Article-5(2) of the Tax Treaty. Thus, first and foremost it is necessary to understand the meaning of the term "fixed place of business" as used in Article-5(l). The tests required to satisfy the existence of a PE under Article-5(l) are- there must be a business of the enterprise of one contracting State in the other contracting State, there must be place of business in the other contracting State, the place of business must be at the disposal of the enterprise, the place of business must be fixed and through this fixed place of business the enterprise either wholly or partly carries on its business. Facts on record clearly indicate that the assessee does not possess a fixed place of business to either wholly or partly carry out its business. There is no permanent infrastructure, office, supervisory staff, tangible and intangible assets in India to constitute a fixed place PE. There is nothing on record to establish that the assessee carries on its core business activities in India through fixed place of business.Though, the Assessing Officer has alleged that the effective place of management is in India, however, he has miserably failed to prove such fact through cogent evidence. The allegation of the Assessing Officer that the directors of the assessee company are staying in UAE and are exercising their control over the affairs of the company* ***from*** *UAE, under no circumstances, creates a fixed piace PE in India as* ***none*** *of the conditions of Article-5(l) of the Tax Treaty are satisfied. Thus,*

we are unable to accept the contention of the Revenue that the assessee as a fixed place PE in India under Article-5(l) of the Tax Treaty.

14. As regards the contention of the Revenue that the assessee has a PE in India through two dependent agents viz. Parekh Marine Agency Pvt. Ltd. and Samsara Shipping Pvt. Ltd,let us examine this aspect keeping in view Artic(e-5(4) and 5(5) of the Tax Treaty. Article-5(4) of the Tax Treaty which overrides Article 5(1) and (2) says, where a person acts in a contracting State for or on behalf of an enterprise of the other contracting State, such person shall be deemed to be a PE in respect of any activities such person carries on for the enterprise. However, an exception has been carved out in Article-5(5) to exclude an agent from being treated as a PE, if such agent is of an independent status and provides services to the enterprise in the ordinary course of its business. It is further clarified that if the activities of such agent are exclusively devoted for and on behalf of the enterprise, it will not be considered as an agent of independent status under Article-5(5).

15. Keeping in perspective Article-5(5) of the Tax Treaty if we examine the status of Parekh Marine Agency Pvt. Ltd. and Samsara Shipping Pvt. Ltd. vis-a-vis the assessee, it would clearly emerge that while providing services to the assessee, both these entities are acting in the ordinary course of their business and are having their independent status. As could be seen from the facts on record as well as observations made by learned Commissioner (Appeals), during the year under consideration, Samsara Shipping Pvt. Ltd., has provided services to six shipping companies including the assessee and out of the total commission earned of Rs. 3,83,20,806, it received an amount of? 46,53,998, from the assessee which constitutes a meagre 12.14% of the total income earned by Samsara Shipping Pvt. Ltd. from various principals. The same is the case with Parekh Marine Agency Pvt. Ltd. As observed by learned Commissioner (Appeals), during the year this entity has received income of Rs. 629.74 lakh from various principals, out of which, an amount of Rs. 17.62 lakh was earned from the assessee which constitutes merely 2.79% of the total income earned by the said party. Thus, the aforesaid facts clearly established that both Parekh Marine Agency Pvt. Ltd. and Samsara Shipping Pvt. Ltd., were not exclusively working for the assessee and are having their independent status. Further, the services provided to the assessee by them are in the ordinary course of their business. That being the case, the exceptions provided under Article-5(5) of the Tax Treaty would be clearly appliable. Hence, neither Parekh Marine Agency Pvt. Ltd. nor Samsara Shipping Pvt. Ltd. can be considered as dependent agents so as to constitute PE in India, The Co-ordinate Bench in Bay Lines Mauritius (supra) while deciding identical issue involving more or less similar facts, has held that if the agent was not exclusively acting on behalf of the assessee enterprise, it cannot be considered as dependent agent so as to constitute a PE. Thus, the ratio laid down in the aforesaid decision would also support assessee's case. The other decisions relied upon by the learned Counsel for the assessee also express similar view. In view of the aforesaid, we do not find any infirmity in the order of learned Commissioner (Appeals) holding that the assessee does not have a PE in India even under Article-5(5) of the Tax Treaty, hence, is eligible to avail the

benefits of the Tax Treaty. More so, considering the fact that the Tax Authorities in Mauritius have issued Tax Residency certificate in favour of the assessee. Grounds no. 1 and 2 are dismissed.

16. As regards the ground no.3 raised by the Revenue relying upon the decision of the Co-ordinate Bench in DHL Operations B.V., Netherland, we must observe that the aforesaid aspect has been dealt with by the Co-ordinate Bench in Bay Lines Mauritius (supra) wherein the Bench has observed that in view of the decisions of the Hon'ble Jurisdictional High Court in DCIT(IT) v/s B4U International Holdings Ltd., [2012] 23 taxmann.com 372 (Bom.), the decision rendered in DHL Operations B.V., Netherland (supra) is no more a good law. Therefore, this ground is also dismissed."

16. It is relevant to observe, while coming to its conclusion, the Tribunal has also taken note of Tribunal's decision in case of DHL Operations B.V. Netherlands relied upon by the revenue but has also explained why such decision cannot come to the rescue of the revenue. It is further relevant to observe, the specific clauses of the agreement referred to by the assessing officer and learned Commissioner (Appeals) for concluding that M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd are agency PE of the assessee were considered by the co-ordinate bench in case of ADIT vs Bay Lines Mauritius (supra). However, even after taking note of such clauses available in the agreement, the co-ordinate bench held that agents in India are of independent status and providing services to the assessee in ordinary course of business. In our considered opinion, the aforesaid decisions of the Tribunal would squarely apply to the facts of assessee's case. Therefore, it has to be held that M/s Samsara Shipping Pvt Ltd and Parekh Marine Agency Pvt Ltd do not constitute agency PE of assessee in India. Thus, in absence of a PE in India, the business profits of the assessee would not be taxable in view of Article 7 of the tax treaty. Accordingly, we delete the addition. This ground is allowed.

17. In view of our decision in ground 2, ground 3 has become academic and need not be adjudicated upon.

18. In the result, appeal is partly allowed.

ITAs 7720/Mum/2010 (A.Y. 1999-2000); ITA 7722/Mum/2010(A.Y. 2000-01); and ITA 7721/Mum/2010 (A.Y. 2001-02

19. Ground 1 challenges the reopening of assessment u/s 147 of the Act. On instructions, learned counsel for the assessee did not press this ground. Accordingly, ground 1 in all these appeals is dismissed, as not pressed.

20. Ground 2 of these appeals are identical to ground 1 of I.T.A No.5083/Mum/2003 decided by us in the earlier part of the order. On instructions, learned counsel did not press this ground. Hence, ground 2 in all these appeals is dismissed as not pressed.

21. Ground 3 in all these appeals are identical to ground 2 of ITA No.5083/Mum/2003. Following our decision therein, we delete the additions made by the assessing officer in all the years under dispute. This ground is allowed in all these appeals.

22. Grounds 4 and 5 in all these appeals having become academic are dismissed.

23. In the result, appeals are partly allowed.

24. To sum up all the appeals are partly allowed.

Order pronounced on 23/09/2021.

Sd/- sd/-

(RAJESH KUMAR)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dt : 23/09/2021
Pavanan

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3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
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