

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

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 1714/Del/2018 : Asstt. Year : 2014-15**

DCIT, Circle-2(2)(2), New Delhi-110002	Vs	National Petroleum Construction Company, C/o Nangia & Co. LLP, A-109, Sector-136, Noida
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACN7799J</b>		

**Assessee by : Sh. Amit Arora, Adv.**

**Revenue by : Sh. Sunil Kumar, CIT DR**

**Date of Hearing: 20.09.2021**

**Date of Pronouncement: 22.09.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of Id. CIT (A)-43, New Delhi dated 20.12.2017.

2. Following grounds have been raised by the revenue:

*"(i) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the Project Office of the assessee in India is not its fixed place of business and Permanent Establishment as defined under Article 5 (2) (c) of the Double Taxation Avoidance Agreement between India and UAE.*

*(ii) Whether ,on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the activities of Project Office of the assessee were 'preparatory and auxiliary' in nature in terms of the*

*Article 5 (3) (e) of the Double Taxation Avoidance Agreement between India and UAE.*

*(iii) Whether, on the facts and in the circumstances of the case, the Ld.CIT(A) erred in holding that assessee did not have an Installation Permanent Establishment under Article 5 (2) (h) of the Double Taxation Avoidance Agreement between India and UAE.*

*(iv) Whether, on the facts and in the circumstances of the case, the Ld.CIT (A) erred in holding that M/s Arcadia Shipping Ltd was not a Dependent Agent Permanent Establishment of the assessee under Article 5 (4) of the Double Taxation Avoidance Agreement between India and UAE.*

*(v) Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) erred in holding that no income of the assessee can be attributed to the assessee's Permanent Establishment in India.*

*(vi) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the profits attributable to the assessee's PE at 1.55% of its offshore supply segment and 17.37% of its onshore service segment, were not taxable in India.*

*(vii) Whether on the facts and in the circumstances of the case, the Ld. CIT (A) erred in holding that interest income received from income tax refunds and from deposits is liable to be taxed as per Article 11 of the Double Taxation Avoidance Agreement between India and UAE and not as per Article 7 in spite of being effectively connected with the PE of the assessee.*

3. The appeal of the revenue mainly relates to the provisions of Article 5(2)(c) with regard to treating of project office as fixed place PE, the preparatory and auxiliary functions as per Article 5(3)(e) and treating the assessee as installation PE under Article 5(2)(h) of DTAA between India and UAE.

4. At the outset, the counsels brought to the notice of the bench that the issue stands squarely covered by the order of the Hon'ble High Court of Delhi for the A.Ys. 2007-08, 2008-09 and 2009-10 in ITA no 143/2013. **The judgment dealt with Fixed Place PE, Installation PE and Dependent PE in the assessee's own case referred in 383 ITR 648** for the A.Ys. 2007-08 and 2008-09 and the Hon'ble High Court held that the assessee did not have a PE in India and no income from the project in question can be contributed to the assessee's PE.

5. In the absence of any material change in the facts of the case and legal proposition, following the judgment of Hon'ble High Court mentioned above, we hereby dismiss the appeal of the revenue.

6. In the result, the appeal of the revenue is dismissed.  
Order Pronounced in the Open Court on 22/09/2021.

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**Dated: 22/09/2021**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**