

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

**(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.96/Del/2019  
(Assessment Year : 2015-16)

ACIT, Circle-2(2)(2), International Taxation New Delhi	Vs.	M/s. National Petroleum Construction Company, C/o. M/s. Nangia & Co. LLP, A-109, Sector-136, Noida-201304(U.P.) PAN : AAACN7799J
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Amit Arora, AR
Revenue by	Sh. Sanjay Tripathi, Sr. DR

Date of hearing:	04.04.2022
Date of Pronouncement:	06.04.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal is preferred by the revenue against order dated 05/10/2018 in appeal no. 172/2017-18 for the assessment year 2015-16 passed by Ld. Commissioner of Income Tax (Appeals)-43, New Delhi against order dated

27.02.2018 passed by Dy. Commissioner of Income Tax, International Taxation, Circle 2(2)(2), New Delhi U/s 143(3) read with section 144(c) of the Income Tax Act, 1961.

2. Now before the Tribunal the revenue has raised following grounds of appeal:-

*“1. Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) erred in holding that assessee did not have PE in India by ignoring the facts that*

*(i) Project office of the assessee in India is its fixed place of business and Permanent Establishment as defined under Article 5(2)(c) of the Double Taxation Avoidance Agreement between India and the UAE.*

*(ii) Activities of the Project Office of the assessee were not ‘preparatory and auxiliary’ in nature in terms of Article 5(3)(e) of the Double Taxation Avoidance Agreement between India and the UAE.*

*(iii) Assessee has an Installation Permanent Establishment under Article 5(2)(h) of the Double Taxation Avoidance Agreement between India and the UAE.*

*(iv) Arcadia Shipping Ltd. was a dependent agent Permanent Agent Permanent Establishment under Article 5(4) of Double Taxation Avoidance Agreement between India and the UAE.*

*2. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that interest income is not taxable as income of PE.*

*3. The appellant craves to add, amend, modify or alter any grounds of appeal at any time or before the hearing of the appeal.”*

3. The facts in brief are assessee had filed return on income declaring income of Rs. 3,66,34,000/- which was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued and a questionnaire u/s 142(1) was issued. The assessee company is a company incorporated under the laws of UAE and is a tax resident of that country. The assessee is, inter alia, engaged in fabrication of petroleum platforms, pipelines and other equipment and in addition, the Assessee also undertakes contracts for installation of petroleum platforms, submarine pipelines and pipeline coating at various sites. In the course of its business, the appellant tendered for and entered into contracts for the installation of petroleum platforms and submarine pipelines with ONGC, L& T and Afcons Infrastructure Limited. The ld. AO observed that the assessments for the preceding assessment years i.e. AY 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 have also been completed in the almost identical manner wherein it was held that the project office of the assessee constituted a P.E. and profits were computed arising out of the offshore and onshore activities. The nature of activities for the current assessment year under consideration i.e. AY 2015-16 is identical to that of the earlier years, as mentioned above and being so, the facts of the case as far as existence of PE is concerned remain the same as in earlier years. During the course of assessment of the Assessee for earlier assessment years (i.e. AY 2009-10 & AY 2010-11), the aspect of PE of the Assessee and its taxability were examined in detail and discussed. There being no material change in the business model and nature of projects executed by the Assessee with ONGC in India, facts mentioned in the relevant para of the assessment order for AY 2009-10 to 2014-15 are also being relied upon in the present case.

5. Accordingly, the additions were made which were challenged before First Appellate Authority which had disagreed with Ld. AO and followed the earlier year findings and held that assessee has no PE in India during the A.Y. 2015-16.

6. Heard the counsels for the assessee and ld. Sr. DR for the revenue.

7. It was pointed out by Ld. Counsel for the assessee that in assessee's own case Hon'ble Delhi High Court has allowed the appeal of assessee for Assessment Year 2007-08, 2008-09 & 2009-10 which has been followed in assessee's own case for A.Y. 2011-12 in ITA no. 5563/Del/2017, for A.Y. 2012-13 vide ITA No. 4771/Del/2016, for A.Y. 2013-14 vide ITA No. 5552/Del/2016 and for Assessment Year 2014-15 in ITA No. 1714/Del/2018. Ld. DR could not contradict the aforesaid arguments and submitted that the revenue stands with the orders of Ld. AO and presses the grounds for appeal.

8. Giving thoughtful consideration to the matter on record and the judgments relied on behalf of the assessee in its own case there is no dispute to the fact that Ld. AO merely followed the grounds of assessment on the basis of previous years assessments which have been set aside by the Hon'ble Delhi High Court in assessee's own case for the A.Y. 2007-08 to 2009-10. Hon'ble High Court has held in para 56. *"The question framed in the appeals preferred by the Revenue essentially pertains to the attribution of income arising from the contracts in question for the purpose of taxing the same under the Act. In the present case, we have concluded that the Assessee does not have a PE in India in terms of the DTAA, thus, the question of splitting the business profits of the Assessee arising from the contract into profits attributable to India and profits attributable to*

*the Assessee overseas does not arise.”* Same has been relied by the Coordinate Benches in following years and so also by Ld. FAA. Accordingly, there is no substance in the grounds of appeal filed by revenue. **The appeal of the revenue is dismissed.**

**Order pronounced in open court on this 6<sup>th</sup> day of April, 2022.**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:-6<sup>th</sup> .04.2022*

**\*Binita, SR.P.S\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**