

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH, DEHRADUN**

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

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 1316/Del/2017 : Asstt. Year: 2012-13**

DCIT, International Taxation, Dehradun	Vs	Samsung Heavy Industries, C/o Price Water House Coopers Pvt. Ltd., Building No. 10, 17 <sup>th</sup> Floor, Tower-C, DLF Cyber City, Gurgaon-122002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAJCS7859K</b>		

**Assessee by : None**

**Revenue by : Sh. T. S. Mapwal, Sr. DR**

**Date of Hearing: 28.04.2022**

**Date of Pronouncement: 29.04.2022**

**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)-2, Noida dated 19.12.2016.

2. Following grounds have been raised by the Revenue:

*"(i) Whether the CIT (A) has erred in ignoring the findings of the Assessing Officer in the year under consideration and the Hon'ble Tribunal for earlier years for the same contract whereby it was held that the contract was a composite and indivisible contract executed in India through the assessee's Permanent Establishment already in existence in India and therefore, the so-called outside India revenue were taxable in India.*

*(ii) Whether the CIT (A) has erred in not appreciating that once the contract has been held to be a composite one and a Permanent Establishment of the assessee is already in existence, the onus is on the assessee to explain as*

*to how revenue from so-called outside India activities is not taxable in India.*

*(iii) Whether the CIT(A) has erred in ignoring the judgment of the Hon'ble Tribunal in assessee's own case for A.Y.2007-08 as well as the assessment order for the year under consideration and not appreciating the fact that the issue regarding proper quantification and attribution of the so-called outside India revenues to operations inside India through the PE relates to findings of facts and the Hon'ble Tribunal, the final fact-finding authority, has upheld in principle the action of the AO in earlier years.*

*(iv) Whether the CIT (A) has erred in relying upon the judgment of Hon'ble Uttarakhand High Court in assessee's own case for AY 2007-08 ignoring the fact that the same has been challenged by the revenue before Hon'ble Supreme Court?*

*(v) Whether on facts and circumstances of the case the CIT (A) has erred in holding that interest u/s 234B of the Act is not chargeable in the case of the assessee, ignoring the judgment of Delhi High Court in the case of M/s Acatel Lucent dated 07.11.2013 in ITA No. 327 & others of 2012, and ignoring the fact that the judgment of Delhi High Court in GE Packaged Power has not attained finality and on the review application filed by the Department, the Apex Court has recalled its earlier order of dismissing the SLP against the decision of Delhi High.*

*(vi) Whether on facts and circumstances of the case the CIT (A) has erred in holding that interest u/s 234 C of the Act is not chargeable in the case of the assessee ignoring the fact that assessee's tax-liability even on its returned income itself is not covered by the TDS made in its case and a major part of this liability has been met from self-assessment tax."*

3. The only issue involved is whether the assessee has a Permanent Establishment (PE) in India or not. The Assessing Officer held that the assessee has a PE in India and profit has

been attributed accordingly. The Co-ordinate Bench of ITAT in assessee's own case for A.Y. 2007-08 held that the assessee had a PE in India.

4. Aggrieved, the assessee appealed before the Hon'ble High Court of Uttarakhand which reversed the order of the Tribunal. The Hon'ble Apex Court in CA No.12183 of 2016 in the case of Director of Income Tax-II (Intl. Tax) Vs. M/s Samsung Heavy Industries Co. Ltd. (the assessee) vide order dated 22.07.2020 held that the office of the assessee is solely an auxiliary office meant to act as a liaison office between the assessee and ONGC and in effect held that the assessee had no PE.

5. Since, the matter has attained the finality by the order of the Hon'ble Apex Court, the appeal of the revenue is liable to be dismissed.

6. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 29/04/2022.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

**Dated: 29/04/2022**

**\*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**