

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. N.K. CHOUDHRY, JUDICIAL MEMBER**

ITA No.4345 & 4346/Del/2019
Assessment Year: 2014-15 & 2015-16

DCIT Circle – 16 (2) New Delhi	Vs	Mitsubishi Corporation India P. Ltd. Birla Tower, 5th Tower, 25, Barakhamba Road, New Delhi PAN No.AAACM4764G
(APPELLANT)		(RESPONDENT)

ITA No.4479/Del/2019
Assessment Year: 2015-16

Mitsubishi Corporation India P. Ltd. Birla Tower, 5th Tower, 25, Barakhamba Road, New Delhi PAN No.AAACM4764G	Vs	DCIT Circle – 16 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant	Ms. Sapna Bhatia, CIT DR
Respondent	Sh. Tarandeep Singh, Advocate

Date of hearing:	14/07/2022
Date of Pronouncement:	14/07/2022

ORDER**PER N.K. BILLAIYA, AM:**

ITA No.4345/Del/2019 is the appeal by the revenue preferred against the order of the CIT(A)-37, New Delhi dated 28.02.2019 pertaining to A.Y.2014-15 and ITA No.4346/Del/2019 and ITA No.4479/Del/2019 are cross appeals by the revenue and the assessee preferred against the order of the CIT(A)-37, New Delhi dated 28.02.2019 pertaining to A.Y.2015-16.

2. Since common issues are involved in the captioned appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in both these appeals of the revenue relates to the deletion of the disallowance made by the AO on account of non deduction of TDS amounting to Rs.23.66 crores in A.Y.2014-15 and Rs.22.06 crores in A.Y.2015-16.

4. Since underlying facts in the issue are common we are addressing to the facts of A.Y. 2014-15.

5. During the course of the scrutiny assessment proceedings the AO noticed that the assessee has not deducted tax at source on purchases made from group entities. The same can be

understood from the following chart :-

S. No.	Name and Address of the AE	Description of transaction	Amount of purchases
1	Asia Modified Starch Co. Ltd. 130-132 Sindhorn Building, 2 nd Floor, Tower 1, Wireless Road, Lumpini Pathumwan, Bangkok-	Import of goods	2,44,95,061

	10330, Thailand		
2	Mitsubishi Corporation, Japan (including overseas branches) Head Office, 3-1, Marunouchi 2-Chome, Chiyoda-Ku, Tokyo, Japan	Import of goods	26,26,88,00,581
3	MC Energy, Inc 4th Floor, Mitsubishi Corp. Building, 6-3, Marunouchi 2-Chome, Chiyoda-Ku, Tokyo 100-0005	Import of goods	8,20,48,368
4	Mitsubishi Shoji Chemical Corporation 6-1, Kyobashi, 1-Chome, Chuo-Ku, Tokyo 104-0031	Import of goods	3,00,04,384
5	Mitsubishi Corporation (Taiwan) Ltd Empire Bldg, 14 th Fl., 87, Sung Chiang Road, Tapei, Taiwan	Import of goods	74,08,088
6	SPDC Ltd 2-3-10 Nagata-Cho, Chiyodaku Tokyo, 100-0014, Japan	Import of goods	1,93,65,26,219
7	Mitsubishi Corporation Hong Kong Ltd.	Import of goods	54,87,82,012
8	KOHJIN Life Sciences Co.Ltd.	Import of goods	67,56,327
9	Mitsubishi Corporation Rtm Japan Ltd. (Formerly known as Mitsubishi Corporation Unimetal Ltd.).	Import of goods	3,28,72,12,020
10	Mitsubishi Corporation (Guangzhou) Ltd.	Import of goods	1,82,921
	Total		32,19,22,15,981

6. Referring to the provisions of section 195 viz-a-viz the

relevant article of the DTAA the AO formed a belief that submission of the assessee is legally and factually not tenable because of the following reasons :-

- The assessee had submitted almost identical reply during the course of assessment proceeding for the A.Y. 2009-10 & 2010-11, 2012-13 and 2013-14 which was rejected by the A.O. after discussing all the issues/facts, which was later on affirmed by the DRP. Reference may kindly be made of the assessment order of A.Y. 2009-10 & 2010-11, 2012-13 and 2013-14.
- The said additions were deleted by the DRP in A.Y. 2011-12 based on ITAT rulings pronounced in assessee's case for A.Y. 2006-07 to A.Y. 2009-10. However, the said order of the DRP has been further appealed by the Department before the ITAT and moreover, the ITAT orders on which the DRP has relied is also pending before the HC.
- From the perusal of the assessment order of M/s Mitsubishi Corporation, Japan, for the A.Y. 2009-10 & A.Y. 2010-11, it is evident that the A.O. of International Taxation has clearly held that M/s Mitsubishi Corporation has a PE in India. The assessee's contention is that the above purchases made by the assessee from M/s Mitsubishi Corporation, Japan, are not through the PE of M/s Mitsubishi Corporation, Japan.
- The submission of the assessee that the A.O. of M/s Mitsubishi Corporation has held in the assessment order of A.Y. 2009-10 & A.Y. 2010-11 that in case of sales to the assessee there is no PE of M/s Mitsubishi Corporation is not backed up with any documentary evidence. M/s Mitsubishi

Corporation, Japan, was earlier having a Liaison Office (LO) in India. The assessee has submitted that M/s Mitsubishi Corporation, Japan, has closed the above LO and has opened a Branch Office (BO) in the F.Y. 2008-09. However, the fact remain that M/s Mitsubishi Corporation, Japan, has merely changed the nomenclature of its office in India as the above office is carrying out all the activities which were earlier being carried out by the LO. Under these circumstances, it is extremely difficult to believe that the above BO has no role in making sales to the assessee. It is against the principle of preponderance of probability which is applicable for the assessment proceeding. The onus was on the assessee to establish that the above BO has absolutely no role to play in the transactions with the assessee, which the assessee failed to discharge. Besides the above, the submission of the assessee that it has closed its Branch Office (BO) in the F.Y. 2008-09 is not backed up with any documentary evidence.

- Besides the above, the assessee took the above plea before the DRP for the A.Y. 2009-10 & A.Y. 2010-11 but the DRP has rejected the above submission of the assessee and confirmed the stand taken by the A.O. in the Draft Assessment Order. Further, the same view has been taken by DRP in AY 2012-13 and AY 2013-14 also.
- The assessee has taken the above issue before the Hon'ble ITAT as one of the grounds of appeal for the A.Y. 2006-07 to A.Y. 2009-10. The Hon'ble ITAT has not discussed the issue

regarding the PE of M/s Mitsubishi Corporation despite it being one of the grounds of appeal, hence, it may be presumed that the ITAT has confirmed the stand of the Department, especially considering the fact that the assessee has not preferred appeal against the above order of A.Y. 2006-07 before the High Court.

- Thus, it is held that the Branch Office of M/s Mitsubishi Corporation, Japan, is a PE of M/s Mitsubishi Corporation, Japan for the purpose of making sales to the assessee.
- The submission of the assessee that Companies, other than M/s Mitsubishi Corporation, Japan, have no PE in India is also rejected in view of the detailed reasons given in the Assessment Order of the assessee for the A.Y. 2009-10 which has been upheld by the DRP as well. Reference may kindly be made to the above assessment order. The order of Hon'ble ITAT in case of M/s Metal One Corporation, which has been referred by the assessee, has not been accepted by the Department and the Department has filed appeal against the above order before the High Court, which is pending.
- The order of Hon'ble ITAT passed in the case of assessee for the A.Y. 2006-07 to 2010-11 has also not been accepted by the Department and an appeal has been preferred against the above order before the Hon'ble Delhi High Court, which is pending.

7. As can be seen from the above in the last bullet the AO himself has agreed that this issue has been decided in favour of the assessee by this Tribunal for A.Y.2006-07 to 2010-11.

8. We have carefully perused the order of this Tribunal. This Tribunal has also considered this issue in ITA No.5184/Del/2017 for A.Y.2013-14. The relevant findings read as under :-

16. Following the decision rendered by coordinate Bench of the Tribunal in assessee's own case in AY 2010-11 and the decision rendered by Hon'ble High Court in *CIT vs. Herbalife International India (P.) Ltd.*, wherein the assessee was an intervener, we are of the considered view that AO/DRP have erred in disallowing of Rs.30,41,71,07,047 regarding purchases made by the assessee from its AEs u/s 40A(i) as section 40A(i) is not applicable to the assessee due to non-discrimination clause under DTAA and due to the fact that AEs do not have a permanent PE in India. So, the issue is determined in favour of the assessee. Consequently, the appeal filed by the assessee is hereby allowed.

9. Respectfully following the decision of the coordinate Bench we decline to interfere with the findings of the CIT(A) this ground is accordingly dismissed.

10. Coming to the grievance of the assessee taken by it in his appeal in ITA No.4479/Del/2019 the only grievance relates to the disallowance of donation of Rs.39 lacs which was claimed as deduction u/s. 80G of the Act.

11. The AO disallowed the same for want of documentary evidences and the CIT(A) confirmed the disallowance because though the assessee filed donation receipts but the same was not accompanied by an application for the consideration of additional evidences.

12. We are of the considered opinion that the documentary evidences submitted by the assessee before the CIT(A) go to the root of the matter the same ought to have been admitted by the CIT(A). In the interest of justice we set aside this issue to the files of the AO. The assessee is directed to furnish the necessary documentary evidences before the AO and the AO is directed to examine/ verify the same and decide the issue as per the provisions of the law.

13. In the result, the appeal of the assessee is allowed for statistical purpose and both the appeals by the revenue are dismissed.

14. Decision announced in the open court on 14.07.2022.

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .07.2022

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	15.07.2022
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	