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

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.1726/Del/2021
Assessment Year: 2013-14

DCIT, Circle-2(2)(2), International Taxation, New Delhi	**Vs.**	M/s. Nanjing Electric Group Co. Ltd., A-22, Second Floor, Green Park Main, Aurobindo Marg, New Delhi
		PAN :AADCN3651Q
(Appellant)		**(Respondent)**

Appellant by	Sh. Vivek Bansal, Advocate Sh. Ayush Mittal, CA Sh. Shrey Aggarwal, CA
Respondent by	Sh. Sanjay Kumar, Sr. DR

Date of hearing	22.08.2022
Date of pronouncement	22.08.2022

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the Revenue against order dated 23.09.2021 of learned Commissioner of Income Tax (Appeals)-43, New Delhi, pertaining to assessment year 2013-14.

2. The grounds raised by the Revenue are as under:

1. *Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition made by the AO of Rs. 3,84,68,416/- (being 35% of attributed profit) to the assessee's PE in India as business income as per provision section 9(1) of Income Tax Act, 1961 & Article 7 of India-China DTAA.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the finding of the AO that the assessee*

has a Permanent Establishment in India and thus income is chargeable to tax in accordance with Article 7 read with Article 5 of the India-China tax treaty (DTAA).

3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that no income of the assessee is chargeable to tax in India as the assessee has no business connection or PE in India.*
4. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the finding of the AO that the assessee has a fixed place of business in India available to it through its Indian agent.*
5. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the finding of the AO that the contract towards offshore supply between the Assessee and PowerGrid Corporation of India Limited (PGCIL) and onshore service contract between the Assessee and Alpasso International Engineering Co (Alpasso) are composite turnkey contract and are inextricable linked, on the ground that the assessee. has overall responsibility for the entire contract.*
6. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the finding of the AO that the income from offshore supply of goods shall be deemed to accrue or arise in India as per section 9(1) of the Income Tax Act, 1961 and hence profit arising from supply of the equipment are taxable in India in terms of section 9(1)(i) of the Income Tax Act, 1961.*
7. *The appellant craves to add, amend, modify or alter any grounds of appeal at any time or before the hearing of the appeal.*

3. As could be seen from the grounds raised, the dispute between the assessee and the Revenue is with regard to existence of a Permanent Establishment (PE) of the assessee in India through a dependent agent and the attribution of profit to such PE.

3. Briefly the facts are, the assessee is a non-resident corporation entity incorporated under the laws of Republic of China and tax resident of that country. As stated by the Assessing Officer, assessee is a leading international manufacturer and supplier of products and associated services for composit insulators, high

voltage disconnector, toughened glass insulators, oil-impregnated paper consider type transformer bushings HVCT's etc. During the year under consideration, the assessee had made off-shore supply of certain manufactured goods to M/s. Power Grid Corporation India Ltd. However, for the assessment year under dispute, the assessee filed its return of income declaring nil income and claiming refund of Rs.2,85,45,070/-. In course of assessment proceeding, the assessee pleaded that the receipts from off-shore supplies are not taxable in India as the assessee had no PE in India. The Assessing Officer, however, did not agree with assessee's claim. After analyzing the contract entered with M/s. Power Grid Corporation India Ltd. and another party, viz., with M/s. Alpasso International Engineering Co., the Assessing Officer was of the view that the contract for off-shore supply of manufactured goods is inextricably linked with on-shore activity in India. Thus, he held that the assessee had a fixed place of business in India available to it through its Indian agent. Hence, the assessee has a dependent agent PE in India. Accordingly, he attributed 35% of global net profit to the PE in India. Ultimately, he determined the taxable income in India at Rs.3,84,68,416/-.

4. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals), having found that the issue has been decided in favour of the assessee in its own case, both, by the Tribunal and the Hon'ble Jurisdiction High Court in assessment year 2009-10, followed the same and held that since the assessee does not have any PE in India, no part of its global profit is taxable in India. Accordingly, he deleted the addition made by the Assessing Officer.

5. Before us, both, learned counsel appearing for the assessee and learned Departmental Representative fairly agreed that the issue in dispute stands decided in favour of the assessee in its own case by the decisions of the Tribunal as well as Hon'ble Jurisdictional High Court.

6. Having considered the submissions of the parties, we find, the issue, whether assessee had PE in India, came up for consideration before the Tribunal in its own case in assessment year 2009-10. While deciding the issue, the Tribunal in ITA No. 6175/Del/2012, dated 22.02.2013 held that the assessee did not have any PE in India, hence, no part of its income is taxable in India. The aforesaid

decision of the Coordinate Bench was upheld by the Hon'ble Jurisdictional High Court while dismissing the Revenue's appeal in ITA 488/2013, dated 06.11.2013. Pertinently, identical issue arising in assessee's own case again came up for consideration before the Tribunal in assessment year 2011-12. While deciding the appeal in ITA No. 1124/Del/2015, the Tribunal in order dated 10.02.2020 followed its earlier decision and deleted the addition made by the Assessing Officer. Thus, respectfully following the consistent view of the Tribunal in assessee's own case, which in assessment year 2009-10 stands confirmed by the Hon'ble Jurisdictional High Court, we uphold the decision of learned Commissioner (Appeals). Grounds raised are dismissed.

7. In the result, the appeal is dismissed.

Order pronounced in the open court on 22nd August, 2022

Sd/-	***Sd/-***
(G.S. PANNU)	**(SAKTIJIT DEY)**
PRESIDENT	**JUDICIAL MEMBER**

Dated: 22nd August, 2022.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi