

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

**BEFORE SHRI G.S. PANNU, PRESIDENT &  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA Nos.1727 & 1728/Del/2021  
Assessment Years: 2016-17 & 2017-18

DCIT, Circle-2(2)(2), Int. Tax, Delhi	<b>Vs.</b>	National Petroleum Construction Company, New Delhi
<b>PAN :AAACN7799J</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Ms. Anupama Anand, CIT (DR)
Assessee by	Shri Amit Arora, CA

Date of hearing	24.08.2022
Date of pronouncement	24.08.2022

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

Captioned appeals by the revenue arise out of two separate orders, both dated 08.09.2021, of learned Commissioner of Income-

Tax (Appeals)-43, New Delhi for the assessment years 2016-17 and 2017-18.

2. The core issue arising for consideration in these appeals is, whether or not assessee had a fixed place of business and Permanent Establishment (PE) in terms with Article 5 of India- United Arab Emirates (UAE) Double Taxation Avoidance Act (DTAA).

3. Briefly the facts, which are common in both assessment years under consideration, except, variation in figures are, the assessee is a non-resident corporate entity incorporated under the Laws of United Arab Emirates (UAE) and a tax-resident of UAE. As stated by the assessing officer, assessee, inter alia, is engaged in fabrication of petroleum platform, sub-marine pipeline and other equipments. The assessee also undertakes contracts for installation of petroleum platforms, submarine pipelines and pipeline coating at various sites. The assessee had entered into contracts with Oil & Natural Gas Commission (ONGC) and L & T for installation of petroleum platform and sub-marine pipelines since the previous year relating to assessment year 2007-08.

4. In course of assessment proceedings, assessee pleaded that the Revenue received from contracts entered with ONGC and L & T for offshore supply and installation are not taxable in India and assessee does not have any PE in India. Further, it was submitted, the project office in India cannot be treated as either fixed place PE or installation PE as it had no role to play in the execution of the activities performed under the contract with ONGC and no business was carried out through the project office. The assessing officer, however, did not accept the claim of the assessee. Accordingly, he attributed 10% of the revenue earned from the contracts with ONGC and L & T to the PE and brought it to tax. Further, the assessing officer held that since the assessee had a PE in India, the interest earned on refund would also be taxable in India and while doing so, the assessing officer followed the decision taken by him in the preceding assessment years.

5. Against the additions so made, assessee preferred appeals before learned Commissioner (Appeals).

6. After considering the submission of assessee in the context of facts and material available on record, learned Commissioner

(Appeals) having found that in assessee's own case in preceding assessment years, the issue has been decided in favour of assessee by the Hon'ble High Court and Tribunal, he held that assessee did not have any PE in India. Accordingly, he allowed assessee's claim.

7. Before us, both, learned counsel appearing for the assessee as well as learned Departmental Representative have fairly submitted that the issues arising in the appeals are squarely covered by the decisions of the Hon'ble High Court and Tribunal in assessee's own case in the preceding assessment years.

8. Having considered the submissions of the parties, it is observed that the issues relating to existence of PE through the project office came up for consideration before Hon'ble jurisdictional High Court in assessment years 2007-08 and 2008-09. While deciding the issue, Hon'ble High Court held that assessee didn't have either fixed place PE or installation PE or dependent agent PE in terms with Article 5 of India -UAE DTTA. Following the aforesaid decision of the Hon'ble jurisdictional High Court, the Tribunal in assessment years 2013-14 to 2015-16 has consistently held that assessee didn't have any PE in India. Thus, respectfully following the consistent view of the

coordinate Benches, as well as, Hon'ble jurisdictional High Court in the past assessment years, we uphold the decision of learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

9. In the result, both the appeals are dismissed.

***Order pronounced in the open court on 24<sup>th</sup> August, 2022.***

**Sd/-  
( G.S. PANNU )  
PRESIDENT**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 24<sup>th</sup> August, 2022.  
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (Order drafted through Dragon software):	26.08.2022
2.	Date on which the draft of order is placed before the Dictating Member:	30.08.2022
3.	Date on which the draft of order is placed before the other Member:	30.08.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	30.08.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	31.08.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	31.08.2022
7.	Date on which the final order is uploaded on the website of ITAT:	31.08.2022
8.	Date on which the file goes to the Bench Clerk	31.08.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	