

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

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

ITA No.3831/Del/2019
Assessment Year: 2012-13

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| Addl. DCIT, International Taxation), New Delhi | Vs. | Raytheon Company, C/o SRBC & Associates LLP, Golf View Corporate Tower-B, Sector-42, Sector Road, Gurugram, Haryana PIN:122 002 |
| PAN :AADCR3511P | | |
| (Appellant) | | (Respondent) |

ITA No.4547/Del/2019
Assessment Year: 2012-13

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| Raytheon Company, C/o SRBC & Associates LLP, Golf View Corporate Tower-B, Sector-42, Sector Road, Gurugram, Haryana PIN:122 002 | Vs. | Addl. DCIT, International Taxation), New Delhi |
| PAN :AADCR3511P | | |
| (Appellant) | | (Respondent) |

ITA No.1618/Del/2020
Assessment Year: 2015-16

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| ACIT,International Taxation), New Delhi | Vs. | Raytheon Company, C/o SRBC & Associates LLP, Golf View Corporate Tower-B, Sector-42, Sector Road, Gurugram, Haryana PIN:122 002 |
| PAN :AADCR3511P | | |

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| (Appellant) | | (Respondent) |
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| Department by | Shri Abhishek Kumar, Sr. DR |
| Assessee by | Shri Nageshwar Rao, Advocate |

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| Date of hearing | 26.08.2022 |
| Date of pronouncement | 26.08.2022 |

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Captioned are a set of cross-appeals pertaining to assessment years 2012-13 and appeal by the Revenue for assessment year 2015-16. All these appeals arise out of two separate orders of learned Commissioner of Income-Tax(Appeals)-43, New Delhi. The grounds raised by the Revenue in ITA No. 3831/Del/2019 pertaining to assessment year 2012-13 are as under:

- 1) Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in holding that the assessee had no PE in India ignoring the findings of fact marshaled by the AO to hold that:
 - The liaison office of the group, M/s. Raytheon International Inc. (RII) one of the divisions that represents the assessee worldwide had a liaison office in India since 1995.

- The assessee had throughout a substantial presence at the sale of execution of contract which constituted fixed place of business PE of the assessee.
 - The liaison office of the group from which marketing and support services were being rendered constituted fixed place of business of the assessee.
 - The project office/site office of the assessee and the liaison office of the group, for the execution of the contract in India constituted PE under Article 5(2)(a), (b) and (c) of DTAA between India and USA.
 - The installation work undertaken for the period of more than 120 days as per the terms of the contract constitutes PE of the assessee under Article 5(2)(k) of the Treaty and the installation was inextricably linked with the supply of the equipment and services.
 - That the presence of the personnel for more than 90 days in India and constituted PE under Article 5(2)(1) of the Treaty.
- 2) Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing relief by deleting additions made by the A.O taxing 50% of assessee's receipts from Gagan-FOP contract, receipts of Rs.1,79,27,151/- from RASAM Contract and receipts of Rs.16,62,122/- from Chennai Contracts as Royalty in Indi, ignoring AO's detailed findings to show that right to use software was conferred under software component of these contracts which was covered by article 12(4)(a) of the treaty being ancillary to enjoyment of right conferred.
- 3) The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal.”

2. Grounds raised by the Revenue in ITA No. 1618/Del/2020 are as under:

1) *Whether on the facts and circumstances of the case, Ld. CIT (A) has erred in holding that the assessee had no PE in India ignoring the findings of fact marshaled by the AO to hold that*

- *The liaison office of the group, M/s Raytheon International Inc. (RII) one of the divisions that represents the assessee worldwide had a liaison office in India since 1995.*
- *The assessee had throughout a substantial presence at the site of execution of contract which constituted fixed place of business PE of the assessee.*
- *The liaison office of the group from which marketing and support services were being rendered constituted fixed place of business of the assessee.*
- *The project office/site office of the assessee and the liaison office of the group, for the execution of the contract in India constituted PE under Article 5(2)(a), (b) and (c) of DTAA between India and USA.*
- *The installation work undertaken for the period of more than 120 days as per the terms of the contract constitutes PE of the assessee under Article 5(2)(k) of the Treaty and the installation was inextricably linked with the supply of the equipment and services.*
- *That the presence of the personnel for more than 90 days in India also constituted PE under Article 5(2) (I) of the Treaty.*

2) *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that receipts of the assessee from the Contract for supply of ATM Material under MAFI Hardware and receipts under the contract 'BEL Athena' were not taxable in India in the absence of PE ignoring the detailed findings of the AO that the assessee constitutes a PE in India.*

3) *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that receipts of Rs. 5,09,97,939/- of*

the assessee from Amendment to Hardware Repair Support Contract were not taxable in India in the absence of PE ignoring the detailed findings of the AO that the assessee constitutes a PE in India.

4) *Whether on the facts and circumstances of the case the CIT(A) has erred in holding that the revenue of Rs. 31,64,12,157/- received from amendment to Hardware Repair Support Contract are not FIS (Fees for included services) as this revenue constituted the business income ignoring the detailed findings of the AO that the receipts of Rs. 31,64,12,157/- pertain to the services under Hardware repair support services and the sum of Rs. 31,64,12,157/- would qualify as Fee for included services (FIS) under the Article 12(4) of India-USA DTAA and Income Tax Act, 1961.*

5) *Whether on the facts and circumstances of the case the CIT(A) has erred in not holding that as per the contract, the assessee has to receive sum of Rs. 31,64,12,157/- to provide the repair support services, in case, the hardware is not functional. The services are in respect of primary Radar, Secondary Radar and Automation Equipments. The repair support enabled the person who has to operate the equipment, technically sound in hardware repair. In case, the same problem occurs in future, the recipient of the services may be able to tackle the situation. It shows that the independent knowledge or skill has been transferred. Hence, the same services are taxable as Fees for Included Services ('FIS') under Article 12(4) of India-USA DTAA.*

6) *Whether on the facts and circumstances of the case the order of the CIT(A) is perverse and liable to be quashed.*

7) *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the assessee does not have a Permanent Establishment (PE) in India in relation to all contracts of supply of equipments and maintenance as per the terms of India-US DTAA?*

8) *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the receipts of the assessee from the contract for supply of UHF radio & Ancillaries ('Bel*

Contract') [previously mentioned as 'Bel Athena' Contract] were not taxable in India in the absence of PE ignoring the detailed finding of the AO that the assessee constituted a PE in India?

3. Grounds raised by the assessee in ITA No.4547/Del/2019 pertaining to assessment year 12-13 are as under:

1. The order of learned Commissioner of Income Tax (Appeals) - 43, New Delhi ['Ld.CIT (A)'] is bad in law to the extent prejudicial to the interest of the Appellant.

Taxation of receipts from Offshore training under Chennai contract
2. The Ld.CIT (A) erred in concluding that the revenues earned from Chennai Contract in relation to Offshore training were in the nature of Fee for Included Services ('FIS') as per Article 12(4)(a) of the India-USA Double Taxation Avoidance Agreement (* India-USA DTAA') without appreciating that the services are ancillary and subsidiary as well as inextricably and essentially linked to supply and hence not taxable.

3. The Ld.CIT(A) has erred in relying on the Advance Ruling obtained by the customer under different contract for taxing the receipts under the Chennai contract as FIS by treating it as a similar contract.

4. The Ld.CIT (A) erred in not appreciating its own view that the revenues earned by the Appellant under the Chennai Contract for supply of software has been considered as embedded software and not taxable as Royalty. Similarly, the offshore training related to such software shall not be treated as FIS.

Taxation of receipts under Network Centric Systems for supply of ATM Software for Modernisation of airfield infrastructure phase -1 ('MAFI Software')

5. The Ld.CIT(A) erred in holding that the revenues from supply of software are taxable as Royalty income under Article 12 of India-

USA DTAA without appreciating that the revenues earned were only on account of “right to use of a copyrighted article” and “no right in the copyright” was granted by the Appellant to the Indian customer.

6. The Ld.CIT(A) has erred in relying on the Advance Ruling obtained by the customer under SSID contract for taxing the receipts under the MAFI Software contract as Royalty by treating it as a similar contract.

GROUND OF APPEAL

7. The Ld.CIT (A) erred in not appreciating that the revenues earned by the Appellant partook the nature of business income which were not taxable in India when the Ld.CIT (A) had deleted the constitution of PE of the Appellant in India.

Taxation of receipts under Contract for supply of UHF Radio & Ancillaries (‘BEL Contract’)

8. The Ld.CIT(A) erred in holding that the revenues from supply of documentation are taxable as Royalty income under Article 12 of India-USA DTAA without appreciating that it’s a case of documentation which has been supplied along with the equipment, for the limited purposes of use to operate the equipment and not for any commercial exploitation.

9. The Ld.CIT (A) erred in not appreciating that the revenues earned were only on account of "right to use of a copyrighted article" being documentation and "no right in the copyright” was granted by the Appellant to the Indian customer.

10. The Ld.CIT(A) has erred in relying on the Advance Ruling obtained by the customer under SSID contract for taxing the receipts under the BEL contract as Royalty by treating it as a similar contract.

11. The Ld.CIT (A) erred in not appreciating that the revenues earned by the Appellant partook the nature of business income which were not taxable in India when the Ld.CIT (A) had deleted the constitution of PE of the Appellant in India.

Taxation of contract for Automation Software Maintenance Services (‘ASMS’)

12. The Ld.CIT(A) erred in concluding that the revenues earned from Software Maintenance under ASMS contract (in relation to the equipment supplied under DG-Servers contract) were in the nature of Fee for Included Services ('FIS') as per Article 12(4) (a) of the India-USA DTAA.

13. The Ld.CIT(A) has grossly erred in concluding that since the embedded software in the DG Servers contract was in the nature of Royalty, hence the revenues from Automation Software Maintenance Contract partake the nature of FIS as per Article 12(4)(a) of the India-USA DTAA.

14. The Ld.CIT(A) has erred in relying on the Advance Ruling obtained by the customer under other contract i.e. the Amendment to Software Maintenance contract to which the appellant was not a party for taxing the receipts under the ASMS contract as FIS.

15. The Ld.CIT (A) erred in not appreciating that the revenues earned by the Appellant under the ASMS Contract partook the nature of business income which was not taxable in India when the Ld.CIT (A) had deleted the constitution of PE of the Appellant in India.

Taxation of receipts under Contract for Mumbai ATC Automation

16. The Ld.CIT(A) erred in holding that the revenues from supply of documentation are taxable as Royalty income under Article 12 of India-USA DTAA without appreciating that it's a case of documentation which has been supplied along with the equipment, for the limited purposes of use to operate the equipment and not for any commercial exploitation.

17. The Ld.CIT (A) erred in not appreciating that the revenues earned were only on account of "right to use of a copyrighted article" being documentation and "no right in the copyright" was granted by the Appellant to the Indian customer.

18. The Ld.CIT (A) erred in not appreciating that the revenues earned by the Appellant partook the nature of business income which were not taxable in India when the Ld.CIT (A) had deleted the constitution of PE of the Appellant in India.

All of the above grounds of appeal are without prejudice and notwithstanding each other.

The Appellant craves leave to add, amend, vary, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of hearing of the appeal. Any consequential relief, to which the Appellant may be entitled under law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted.

4. As could be seen from the grounds raised, the issues arising in these appeals are concerning taxability of income earned by assessee in India as royalty/fee for including services (FIS)/business profit) and whether or not assessee has Permanent Establishment (PE) in India.

5. At the time of hearing of these appeals, Shri Nageshwar Rao, learned counsel appearing for the assessee submitted, the issues arising in these appeals have been resolved under the Mutual Agreement Procedure (MAP), upon consultation between the tax authorities in India and USA. He submitted, in terms with Rule 44G(7) read with Rule 44G(8) of Income-Tax Rules, 1962, assessee is required to communicate his acceptance of MAP Resolution and also furnish proof of withdrawal of the appeal. Thus, he submitted, in view of MAP Resolution, both the assessee and the Revenue are required to withdraw the appeals so that the Assessing Officer can compute the

tax liability in terms with the MAP Resolution. Thus, he submitted all these appeals may be treated as withdrawn.

6. Learned Departmental Representative fairly agreed with the submission of learned counsel for the assessee.

7. Having considered rival submissions and perused the material on record, we find that vide letter dated 02.03.2021, copy of which has been placed on record, the Central Board of Direct Taxes (CBDT) has communicated to the assessee regarding resolution of dispute concerning the issues arising in these appeals under MAP. Thus, to facilitate the Revenue to give effect to the MAP Resolution in terms with Rule 44G of the Rules, we permit, both, the assessee and the Revenue to withdraw the grounds raised, respectively, by them in these appeals. Accordingly, appeals are dismissed as withdrawn.

8. In the result, all the appeals are dismissed.

Order pronounced in the open court on 26th August, 2022.

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

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

Dated: 26th August, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

| Sl. No. | Particulars | Date |
|----------------|--|-------------|
| 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: | 26.08.2022 |
| 3. | Date on which the draft of order is placed before the other Member: | 26.08.2022 |
| 4. | Date on which the approved draft of order comes to the Sr. PS/PS: | 26.08.2022 |
| 5. | Date of which the fair order is placed before the Dictating Member for pronouncement: | 26.08.2022 |
| 6. | Date on which the final order received after having been singed/pronounced by the Members: | 26.08.2022 |
| 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: | |