

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1822 /MUM/2015
(Assessment Year: 2010-11)

Swiber Offshore Construction Pte. Ltd.,
(Judicial Manager appointed),
C/o M/s BSR & Associates LLP
(Att.: Ms. Neetu Vinayek),
C/o KPMG Services Pte. Ltd.
(Judicial Managers),
B S R & Associates LLP,
5th Floor, Lodha Excelus, Apollo Mills
Compound, N.M. Joshi Marg, Mahalakshmi,
Mumbai - 400011 [PAN: AALCS6312H] Appellant

Additional Commissioner of Income-tax, Vs
(International Taxation) – 4(2),
17th Floor, Air India Building, Nariman Point, Respondent
Mumbai - 400021

ITA No. 1191/MUM/2016
(Assessment Year: 2011-12)

Swiber Offshore Construction Pte. Ltd.,
(Judicial Manager appointed),
C/o M/s BSR & Associates LLP
(Att.: Ms. Neetu Vinayek),
C/o KPMG Services Pte. Ltd.
(Judicial Managers),
B S R & Associates LLP,
5th Floor, Lodha Excelus, Apollo Mills
Compound, N.M. Joshi Marg, Mahalakshmi,
Mumbai - 400011 [PAN: AALCS6312H] Appellant

Additional Commissioner of Income-tax, Vs
(International Taxation) – 4(2),
17th Floor, Air India Building, Nariman Point, Respondent
Mumbai - 400021

ITA Nos. 1822/Mum/2015,
ITA Nos. 1191 & 1348/Mum/2016,
ITA Nos. 2233/Mum/2017,
ITA Nos. 7321/Mum/2018

ITA No. 2233/MUM/2017
(Assessment Year: 2012-13)

Swiber Offshore Construction Pte. Ltd.,
(Judicial Manager appointed),
B S R & Associates LLP,
5th Floor, Lodha Excelus, Apollo Mills
Compound, N.M. Joshi Marg, Mahalakshmi,
Mumbai - 400011 [PAN: AALCS6312H] Appellant

Deputy Commissioner of Income – Tax,
International Taxation),
Circle 4(2)(2), Mumbai, Vs
17th Floor, Room No. 1708,
Air India Building, Nariman Point,
Mumbai - 400021 Respondent

ITA No. 7321/MUM/2018
(Assessment Year: 2015-16)

Swiber Offshore Construction Pte. Ltd.,
(Judicial Manager appointed),
C/o M/s BSR & Associates LLP
(Att.: Ms. Neetu Vinayek),
C/o KPMG Services Pte. Ltd.
(Judicial Managers),
B S R & Associates LLP,
5th Floor, Lodha Excelus, Apollo Mills
Compound, N.M. Joshi Marg, Mahalakshmi,
Mumbai - 400011 [PAN: AALCS6312H] Appellant

Assistant Commissioner of Income-tax,
(International Taxation), Vs
Circle 4(2)(2), Mumbai
Room No. 1624, 16th Floor,
Air India Building, Nariman Point,
Mumbai - 400021 Respondent

ITA No. 1348/MUM/2016
(Assessment Year: 2011-12)

ACIT (IT)-4(2)(2),
Scindia House, Ballard Pier, N.M. Road,
Mumbai - 400038

Appellant

M/s Swiber Offshore Constructions-
Pte Ltd. ('SOCPL'),
C/o SRBC & Associates, 14th Floor,
The Ruby, 29th Senapati Bapat Marg,
Dadar (West), Mumbai - 400028
[PAN: AALCS6312H]

Vs

..... Respondent

Appearances

For the Appellant/ Assessee : Shri Jigar Vora
For the Respondent/Department : Shri Somendu Kumar Dash

Date of conclusion of hearing : 07.07.2022
Date of pronouncement of order : 29.09.2022

ORDER

Per Bench:

1. This is batch of 5 appeals consisting of four appeals filed by the Appellant for the Assessment Years 2010-11, 2011-12, 2012-13 and 2015-16 and a cross appeal filed by the Revenue for the Assessment Year 2011-12.
2. The common issue involved in these appeals pertains to determination of the existence of Permanent Establishment of the Appellant in India in terms of Article 5(1), 5(2)(c) and/or 5(3) of the Agreement for Avoidance of Double Taxation and Fiscal Evasion between India and Singapore [hereinafter referred to as 'the Tax Treaty'] during the relevant previous year(s) and the attribution of income to

such Permanent Establishment in terms of Article 7 of the Tax Treaty read with Section 44BB of Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. We note that in the appeal preferred by the Appellant for the Assessment Year 2009-10, [ITA No. 7724/Mum/2012] involving identical issue arising from similar factual matrix, the Tribunal had set aside the final assessment order and restored issues raised in appeal back to the file of the Dispute Resolution Panel (DRP) holding as under:

"18. Thus, we set aside the final assessment order and restore the entire matter back to the file of the DRP i.e., to the stage of filing of objections by the assessee before the DRP. The DRP will consider the entire objections as well as the evidences filed by the assessee in support of its contention and then give clear direction to the Assessing Officer in accordance with the provisions of law and after giving due and effective opportunity of hearing to the assessee. Thus, we accept the preliminary objection of the learned counsel partly and without going into the merits of the other grounds raised before us, we remand the matter back to the file of the DRP. Accordingly, the appeal is treated as allowed for statistical purposes".

4. Vide order dated 14.06.2018, passed in ITA No. 1191/Mum/2016 [Assessment Year 2010-11] and ITA No. 1822/Mum/2015 [Assessment Year 2011-12] forming part of the present batch of appeals, the Tribunal had, on account of commonality of factual/legal issues having impact on adjudication of issues raised in the present

appeals, observed that in order to proceed with the appeals it was imperative that the issue that whether the Appellant had Permanent Establishment during the Assessment Year 2009-10 must be decided first by the DRP in pursuance to the directions issued by the Tribunal. The present appeals have been adjourned since then to await the order passed by the DRP. No order has been passed by the DRP till date. Therefore, we deem it appropriate and the interest of justice to set aside the final assessment order remand all the issue raised in appeal(s) preferred by the Appellant and the Revenue back to the file of DRP for fresh adjudication keeping in view, the final assessment order to be passed by the Assessing Officer as per the directions to be issued by the DRP in compliance with the order of the Tribunal, dated 06.08.2014, passed in appeal preferred by the Appellant for the Assessment Year 2009-10 [ITA No. 7724/Mum/2012]. All the rights and contentions of the parties are left open.

5. In view of the above, the present appeals are allowed for statistical purposes. As apparent from Revised Form No. 36B filed by the Appellant, the affairs of the Appellant are being managed by the Judicial Managers appointed by the Hon'ble High Court of Singapore, and therefore, DRP should consider expeditious disposal of the issues.
6. In the result, Assessee's appeals [ITA No. 1822/Mum/2015, ITA No. 1191/Mum/2016, ITA No. 2233/Mum/2017 and ITA No. 7321/Mum/2018] as well as the appeal preferred by

ITA Nos. 1822/Mum/2015,
ITA Nos. 1191 & 1348/Mum/2016,
ITA Nos. 2233/Mum/2017,
ITA Nos. 7321/Mum/2018

Revenue [ITA 1348/Mum/2016] are allowed for statistical purposes.

Order pronounced on 29.09.2022.

Sd/-

(Om Prakash Kant)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.09.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai