

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.4404/Del/2019
Assessment Year: 2011-12

With

ITA No.4405/Del/2019
Assessment Year: 2013-14

With

ITA No.4406/Del/2019
Assessment Year: 2014-15

With

ITA No.8818/Del/2019
Assessment Year: 2015-16

Alstom Transport SA, C/o-Nangia & Co. LLP, A-109, Sector-136, Noida	Vs.	DCIT, Circle-1(1)(1), Intl. Taxation, New Delhi
PAN :AAECA2499L		
(Appellant)		(Respondent)

Appellant by	Sh. Deepak Chopra, Advocate Sh. Anmol Anand, Advocate Ms. Priya Tandon, Advocate
Respondent by	Sh. Gangadhar Panda, CIT(DR)

Date of hearing	07.11.2022
Date of pronouncement	11.11.2022

ORDER

PER SAKTIJIT DEY, JM:

The captioned appeals are by the same assessee and arise out of separate orders of learned Commissioner of Income Tax

(Appeals)-42, pertaining to assessment years 2011-12, 2013-14, 2014-15 and 2015-16.

2. Since, the facts and issues arising in these appeals are identical, for the sake of convenience the appeals have been clubbed together and disposed of in a consolidated order. The basic issue arising for consideration in these appeals is whether the assessee had Permanent Establishment (PE) in India in terms with Article 5(2) of India – France Double Taxation Avoidance Act (DTAA) and whether any part of the business profit can be attributed to the PE.

3. Briefly the facts are, the assessee is a non-resident corporate entity and is a resident of France. As observed by departmental authorities, the assessee is engaged in the business of Train Control and Signaling System (TCS). It is a fact that the assessee along with other consortium members was awarded contracts by Delhi Metro Rail Corporation (DMRC) for designing, manufacturing, supply, installation, testing, commissioning of the entire Train Control and Signaling Systems for Delhi Metro Train Corridor. Besides, the assessee was awarded similar contracts by Bangalore Metro Rail Corporation and Chennai Metro Rail Ltd. As observed by the Assessing Officer, as per the scope of contract,

the assessee has to design and construct the rail based mass rapid transport system, including the supply, installation and commissioning of Train Control and Signaling and telecommunication system, including, training of operation and maintenance personnel, supervision of maintenance, supply of spares and operation and maintenance manuals.

4. Before the Assessing Officer, in different assessment years, the assessee claimed that the amounts received from services rendered under the contracts in India are taxable in India. However, insofar as, the amount received towards off-shore supply of equipments, it was submitted by the assessee that the amount is not taxable in India. The Assessing Officer, however, did not accept assessee's claim. Relying upon the assessment orders passed for assessment years 2006-07, 2008-09 and 2010-11, the Assessing Officer held that the assessee had a fixed place PE in India in terms with Article 5(1) of the Tax Treaty and 1% of the revenue earned by the assessee on account of off-shore supply of equipments is attributable to the PE in India. He further observed that in assessment year 2010-11, learned DRP has held that the assessee had a installation PE in India. Thus, relying upon past history of assessment and other departmental

proceedings, the Assessing Officer brought to tax the receipt from off-shore supply of plants and equipments by attributing 1% of the amount received to the PE. Though, the assessee contested the aforesaid decision of the Assessing Officer before learned Commissioner (Appeals), however, additions made were confirmed.

5. Before us, Sh. Deepak Chopra, learned counsel appearing for the assessee submitted that the Assessing Officer has blindly followed the earlier assessment orders and the directions of learned DRP, though, facts are completely different in the impugned assessment year. He submitted, in earlier assessment years the DRP has held that the assessee had an installation PE in India. He submitted, only one of the contracts is continuing from earlier years, whereas, all others are fresh contracts. Thus, he submitted, without properly examining the contracts it cannot be concluded, whether the assessee has any kind of PE in India in terms with Article 5 of the Tax Treaty. Admitting that the complete set of contracts were not submitted before the Assessing Officer, but only relevant extracts were furnished, learned counsel submitted, the assessee may be permitted to furnish the complete set of contracts, either before the Tribunal or before the Assessing

Officer so that facts can be properly appreciated to come to a definite conclusion, whether the assessee had a PE in India or not. In this context, he drew our attention to the application filed under rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 seeking permission to furnish additional evidences. Alternatively, he submitted, the matters may be restored back to the Assessing Officer for deciding afresh after examining the contracts and the scope of work as well as the apportionment of work between the members of the consortium.

6. Learned Departmental Representative submitted, when the assessee had opportunity to furnish the contracts before the Assessing Officer and learned Commissioner (Appeals), it did not do so. Therefore, the assessee should not be permitted to furnish the additional evidences at this stage. However, he submitted, the bench may in its discretion restore the matter to the Assessing Officer for fresh adjudication.

7. We have considered rival submissions and perused the materials on record. On a reading of the impugned assessment orders as well as the orders of learned first appellate authority, it is absolutely clear that they have proceeded on the basis of the decision taken by the departmental authorities in past

assessment years to conclude that the assessee had a PE in India. However, it is the specific contention of the assessee before us that the decision taken in the past assessment years cannot apply to the impugned assessment year, as, except one of the contracts, all other contracts under which the assessee has executed work in these assessment years are fresh contracts and the existence or otherwise of the PE has to be construed after examining the terms of the contract as well as scope of work. It is observed, though, before the departmental authorities, the assessee had furnished relevant extracts of the contract, however, complete set of contracts were not furnished. Since, existence or otherwise of PE is dependent upon the terms of the contract and the allocation of work under the contract between various consortium members in different assessment years under consideration, it is necessary to examine the contracts thoroughly. Considering the fact that while deciding the issue relating to existence of PE, the departmental authorities have simply relied upon decision taken in earlier assessment years without verifying the factual position qua contracts executed in these assessment years, in our view, the assessee must be given an opportunity to furnish the relevant contracts before the departmental authorities to establish its case

that in the assessment years under consideration the assessee did not have any PE in India so as to bring to tax the income from off-shore supplies.

8. In view of the aforesaid, we are inclined to restore the matters back to the Assessing Officer for fresh adjudication after thoroughly examining the relevant contracts and other materials brought on record. At this stage, we must make it clear that we have not expressed any opinion on the merits of the issues arising in these appeals. Needless to mention, before deciding the issue, the assessee must be afforded reasonable opportunity of being heard. Grounds are allowed for statistical purposes.

10. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open court on 11th November, 2022

**Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

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

Dated: 11th November, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi