

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

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

**ITA No.2312/Del/2022
Assessment Year: 2018-19**

Curits, Mallet-Prevost, Colt & Mosle LLP, New York – USA C/o. Krishnomics Legal, 810, DLF, Prime Tower, F-79 & 80, Okhla Industries Area Ph-1, New Delhi, Delhi-1100 20	Vs.	ACIT, Circle International Taxation (2)(1), New Delhi.
PAN :AAJFC0206F		
(Appellant)		(Respondent)

**Stay Application No.361/Del/2022
(In ITA No. 2312/Del/2022)
Assessment Year: 2018-19**

Curits, Mallet-Prevost, Colt & Mosle LLP, New York – USA C/o. Krishnomics Legal, 810, DLF, Prime Tower, F-79 & 80, Okhla Industries Area Ph-1, New Delhi, Delhi-1100 20	Vs.	ACIT, Circle International Taxation (2)(1), New Delhi.
PAN :AAJFC0206F		
(Appellant)		(Respondent)

Assessee by	Shri Gagan Kumar, Adv.
Respondent by	Shri Abhishek Kumar, Sr. DR

Date of hearing	04.11.2022
Date of pronouncement	.11.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Captioned appeal has been filed by the assessee challenging the final assessment order dated 27.07.2022 passed under Section 143(3) read with section 144C(13) of the Income-Tax Act, 1961 for the assessment years 2018-19, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. At the outset, we must observe, though, the corresponding stay application was fixed for hearing today, however, learned representatives appearing for the parties submitted that considering the limited grievance of the assessee, the appeal itself can be disposed of. Therefore, with the consent of both the parties, the appeal is taken up for hearing.

2. Drawing our attention to the submissions made before learned DRP, learned counsel submitted that the assessee is a resident of United States of America (USA). He submitted, due to COVID-19

Pandemic, it was unable to appear before the Assessing Officer in course of assessment proceeding and furnish requisite documentary evidences to establish its case that the employees of the assessee did not stay in India for a period exceeding 90 days, so as, to construe that assessee's income is taxable under Article 15 of the India - USA Double Taxation Avoidance Agreement (DTAA). However, he submitted, before learned DRP, assessee furnished all requisite documents including the passport of the employees who travelled to India and various other documents indicating their period of stay in India. He submitted, though, all these documents were furnished before learned DRP by way of additional evidence and were taken on record, however, learned DRP failed to record any finding on them and simply endorsed the view of the Assessing Officer in a cryptic order. He submitted, under identical facts and circumstances, in case of *Corteva Agriscience India (P) Ltd. Vs. DCIT (2022) - 142 taxmann.com 107 (Del –Trib.)*, the Tribunal has restored the matter back to the DRP for deciding afresh after considering all the evidences. He submitted, similar directions may be given in case of the present assessee as well.

3. Learned Departmental Representative fairly agreed for restoration of issue to learned DRP.

4. We have considered rival submissions and perused the material on record.

5. The assessee is a non-resident limited liability partnership and resident of United States of America (USA). Assessee is a law firm having its head office at New York. The Government of India had engaged the assessee to represent it in arbitration proceedings before the Permanent Court of Arbitration at the Hague. In connection with such work, the assessee had received fees. On perusal of impugned assessment order, it is observed, in the year under consideration, the assessee had received certain amount from providing independent personal services in India out of which an amount of Rs.36,27,27,693 was claimed as non-taxable in India under Article 15 of the India USA Tax Treaty. However, the Assessing Officer refused to accept assessee's claim on the ground that the assessee was unable to establish through proper documentary evidences that the employees of the assessee did not stay in India for more than 90 days. Accordingly, he brought to tax the amount claimed as non-taxable under Article 15

of the Tax Treaty. It has been submitted before us that due to prevailing pandemic situation arising out Covid-19, the assessee could not furnish the requisite documents before the Assessing Officer. However, it is observed, before learned DRP the assessee by way of additional evidence furnished number of documentary evidences including passport of the concerned employees to demonstrate that the period of stay in India was less than 90 days. However, learned DRP has failed to consider the documentary evidences furnished by the assessee and simply disposed of the objections with the following observations:

“3.2.2. The Panel has considered the submission. It is noticed that to verify the 90 days period of stay, the AO called for the copies of passport in respect of employees which were, however, not made available and, therefore, the AO could not have verified the stay of the employees. The law is clear in this regard, if a piece of evidence is withheld from the AO, the AO can draw adverse inference on the issue, which the AO has done in this case. The Panel, therefore, find no infirmity in the action of the AO. All objections on this count are accordingly, rejected.”

6. This in our view is in gross violation of principles of natural justice.

7. In view of the aforesaid, we are inclined to restore the issue to learned DRP for deciding assessee's objections afresh after examining the documentary evidences furnished by the assessee. Grounds are allowed for statistical purposes.

8. In view of our decision in the appeal, the stay application having become infructuous is dismissed.

9. In the result, the appeal is allowed for statistical purposes and the stay application is dismissed.

Order pronounced in the open court on 16th November, 2022.

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 16th November, 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):	04.11.2022
2.	Date on which the draft of order is placed before the Dictating Member:	07.11.2022
3.	Date on which the draft of order is placed before the other Member:	11.11.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	14.11.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	16.11.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	16.11.2022
7.	Date on which the final order is uploaded on the website of ITAT:	16.11.2022
8.	Date on which the file goes to the Bench Clerk	16.11.2022
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:	