

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

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

आ.अ.सं./I.T.A Nos.6111 & 6112/Del/2017

निर्धारणवर्ष/Assessment Years: 2013-14 & 2014-15

Sojitz Corporation C/o KNM & Partners, Law Offices, First Floor, The Great Eastern Centre, 70, Nehru Place, New Delhi.	बनाम Vs.	ACIT Circle-3(1)(2) New Delhi.
PAN No. AANCS6096C		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Ved Jain, Adv. & Shri Aman Garg, CA
राजस्वकीओरसे /Revenue by	Shri Bhuvnesh Kulshrestha, CIT DR

सुनवाईकीतारीख/ Date of hearing:	04.10.2022
उद्घोषणाकीतारीख/ Pronouncement on	26.12.2022

आदेश /O R D E R

PER SAKTIJIT DEY, J.M.

Captioned appeals by the assessee are against the final assessment orders passed under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 pertaining to assessment years 2013-14 & 2014-15, in pursuance to the directions of Learned Dispute Resolution Panel (DRP).

2. The common issues arising for consideration in these appeals are whether the assessee has a Permanent Establishment (PE) under Article 5 of India-Japan Double Taxation Avoidance Agreement (DTAA) and whether the Revenue received from offshore supplies is attributable to the PE and profits therefrom can be made taxable in India.

3. The facts, except the figures, are more or less identical in both the assessment years. Briefly stated, the assessee, a non-resident corporate entity, is incorporated in Japan and is a tax resident of that country. As observed by the Assessing Officer, the assessee operates in various sectors related to automobile, plant, energy, mineral resources, foodstuff resources, consumer goods, industrial parks, etc. In course of its business activity the assessee had undertaken certain projects in India as under:

AY 2013-14

- i) Project for providing foreign technicians for erection, start up, commissioning and demonstration of performance tests for upgrading of the existing PL-TCM at Tata Steel, Jamshedpur expansion project (Old Project).
- ii) Project for providing supervisory services for manufacturing of indigenous and equipment, erection, start up, commissioning and demonstration of performance test for Hot Strip Mill (HSM) at Tata Steel, Kalinganagar, Orissa (old project).

AY 2014-15

- i) Project for providing foreign technicians for erection, start up, commissioning and demonstration of performance test for upgrading of the existing PL-TCM at Tata Steel, Jamshedpur expansion project (Old Project).
- ii) Project for providing supervisory services for manufacture of indigenous equipment, erection, start up, commissioning and demonstration of performance test for Hot Strip Mill (HSM) at Tata Steel, Kalinganagar, Orissa (Old Project).
- iii) Assessee has set up a project office to execute a contract, along with Larsen and Tourbo, awarded by the Dedicated Freight Corridor Corporation of India Ltd. (DFCCIL) for design and construction of a double line railway from Rewari to Iqbalgarh of Western Dedicated Freight Corridor (New Project).

For the assessment years under dispute, assessee had filed its returns of income declaring income of Rs.15,58,92,620/- in Assessment Year 2013-14 and Rs.1,60,95,530/- in Assessment Year 2014-15. In course of assessment proceedings the Assessing Officer noticed that in addition to income for erection/commissioning work and capital gain which were offered as an income in the return of income, the assessee had also received substantial Revenue from offshore supply of equipment and other items to M/s Tata Steel Ltd., which the assessee has not offered to tax. When called upon to explain the reason for not doing so, assessee submitted that offshore supplies have been concluded outside India and the income

received therefrom not being connected with any activity in India, either through Permanent Establishment (PE) or otherwise, is not taxable in India. The Assessing Officer, however, was not convinced with the submissions of the assessee. After examining the contracts with Tata Steel Ltd. Assessing Officer observed that the contract is a composite one and the offshore supply of equipment is integrally connected to erection and commissioning of the plant. Therefore, one portion of the contract cannot be segregated from the other. Thus, he held that the income generated from offshore supplies is assessable as business income under Article 7 of India Japan DTAA. Having held so, he observed that the assessee itself has offered a part of the income earned as a business income attributable to the PE in the shape of project office in India. Thus, he attributed 10% out of the amount received towards offshore supplies to the PE and taxed it at 40%. Thus, he concluded the assessments for both the assessment years under dispute in identical manner. Against the assessment orders so passed, assessee raised objections before learned DRP. However, learned DRP rejected the objections of the assessee.

4. Before us, learned Counsel appearing for the assessee submitted that identical issues have been decided in assessee's

favour by the Tribunal in Assessment Year 2012-13. In this context, he placed on record order dated 30.09.2021 passed in ITA No. 993/Del/2016.

5. Though, learned Departmental Representative agreed that the issues have been decided in favour of the assessee by the Tribunal in Assessment Year 2012-13, however, he relied upon the observations of the Assessing Officer and Learned DRP.

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

7. The basic issue arising for consideration before us is, whether the Revenue received from offshore supply of plants and equipments is attributable to the PE, if at all, there is a PE in India, and whether such Revenue can be brought to tax in India. It is observed, in respect of identical issue arising in assessee's own case in Assessment Year 2012-13 against similar addition made by the Assessing Officer in respect of offshore supply of equipments, the assessee raised objections before Learned DRP. Learned DRP recorded a factual finding that offshore supply of equipments and chemicals was on FOB basis. Even, learned DRP recorded a finding that the assessee did not have any fixed place PE/service

PE/installation PE in India. Accordingly, Learned DRP deleted the addition made by the Assessing Officer in respect of offshore supply of equipments. Against the directions of learned DRP the Revenue preferred an appeal before the Tribunal. While deciding the appeal in the order referred to above, the coordinate bench held as under:

“8. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.DRP has given finding on facts in para 7 of the impugned direction by observing as under: -

7.0 Finding:

“DRP has duly examined the issue. It is undisputed that the assessee has opened a PO on 01.2.2011 only. Before that, the assessee did not have any branch office/ sale office/ factory site etc. in India. The assessee has offered to tax supervisory income attributable to PO in India. Various documentary evidences submitted by the assessee show that supply of equipment and chemicals was on FOB basis. Even acceptance test of equipment was to be carried out at assessee's premises outside India. Even if some employees of the assessee came to India for the purposes of contract negotiation / signing / or site visits, it cannot be said that the assessee had any fixed place of business in India. In Indo-Japan DT AA, there is no service PE clause. Also, installation PE is not established as prescribed threshold period is not satisfied. Therefore, DRP is of the considered view that the assessee did not have fixed place PE /service PE/installation PE in India during the period under consideration. Hence, objection is allowed.”

9. The Revenue has not rebutted the observations made in the impugned direction and reaching to the conclusion that the assessee had no PE in India. We, therefore, do not see any reason to interfere in the finding of DRP, the same is hereby affirmed.”

8. Before us, the Revenue has failed to demonstrate any factual difference in the appeals before us and the appeal decided by the Coordinate Bench in assessment year 2012-13. That being the case, respectfully following the decision of the Coordinate Bench in assessee's own case, as discussed above, we delete the addition made by the Assessing Officer in the impugned assessment years.

9. In the result, the appeals are allowed, as indicated above.

Order pronounced in the open court on 26/12/2022

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 26.12.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi