

आयकर अपीलीय अधिकरण
मुंबई पीठ “आय” मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “I” BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आआसं. १७२१/मुंबई/२०२२ (नि.व. २०१९—२०)
ITA NO.1721/MUM/2022 (A.Y.2019-20)

Warner Bros. Distributing Inc. अपीलार्थी/Applicant
C/Of the Act Warner Bros. Pictures
India Pvt. Ltd.
407, 4th Floor, Windfall, Sahar Plaza
Complex, Andheri Kurla Road, JB Nagar
Andheri East,
Mumbai-400 059
PAN No. AAACW6559R
बनाम Vs.

Assistant Commissioner of Income Tax प्रतिवादी/Respondent
Room No.1611, 16th Floor, Air India Building
Nariman Point,
Mumbai-400 021

अपीलार्थी द्वारा / Applicant by : Shri A. F. Jahangir
प्रतिवादी द्वारा / Respondent by : Shri Soumendu Kumar Dash-Sr. DR
सुनवाई की तिथि / Date of hearing : 06/09/2022
घोषणा की तिथि / Date of pronouncement : 02/12/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 14/06/2022 passed u/s 144 read with section 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for assessment year 2019-20.



2. Shri A. F. Jahangir appearing on behalf of the assessee submitted at the outset that ground no. 7 of the appeal is the effective ground and if the said ground is decided in favour of the assessee, the other grounds would become infructuous. Therefore, at this stage he would be confining his submissions to ground no.7 of the appeal only.

3. The ground no. 7 raised in appeal by the assessee reads as under:

“On the facts and in the circumstances of the case and in law, the learned AO as well as the Hon’ble DRP erred in holding that Warner Bros. Pictures (India) Pvt. Ltd. is a Dependent Agent Permanent Establishment of the appellant, consciously ignoring Hon’ble DRP’s own directions for AY 2010-11 to AY 2012-13, binding orders of this Hon’ble Tribunal for AY 2006-07 in the case of appellant’s predecessor company (WBPI) and for AY 2007-08 to 2014-15 and AY 2017-18 in appellant’s own case.”

4. The learned Authorised Representative (AR) submits that in ground no. 7 of appeal, the assessee has assailed the findings of the Dispute Resolution Panel (DRP) and the Assessing Officer (AO) in holding Warner Bros. Pictures India Private Limited as Dependent Agent Permanent Establishment (DAPE) of the assessee/appellant. Therefore, income earned by the assessee as royalty from India is taxable in India. The learned AR submits that identical issue was raised by the AO in preceding assessment years. In AY 2006-07 the issue was raised by the AO for the first time. The CIT(A) in first appeal reversed the findings of the AO and held that the income from distribution and exhibition of films is not taxable in India as the assessee has no PE. The Department carried the issue in appeal before to the Tribunal in ITA No.3160/MUM/2010. The Tribunal vide order dated 30/12/2011 held that the assessee does not have any agency



permanent establishment (PE) in India. Thereafter, the AO consistently in assessment years 2007-08 to 2014-15, 2017-18 and 2018-19 held that the assessee has DAPE in India and held that royalty payable to the assessee by Warner Bros. Pictures India Pvt. Ltd as taxable in India. The assessee in all the aforesaid assessment years carried the issue in appeal before the Tribunal, The Tribunal following the decision rendered in assessment year 2006-07 granted relief to the assessee holding that the assessee has no PE in India. The facts in AY 2019-20 are identical to the facts in preceding years, therefore, following earlier decisions of the Tribunal, the addition be deleted. The learned AR furnished the orders of the Tribunal in assessee's own case in preceding assessment years. The details of appeal filed by the assessee in preceding assessment years is tabulated as under:

<i>Sr. No.</i>	<i>Assessment Year</i>	<i>ITA No.</i>	<i>Decided on</i>
1	2006-07	ITA NO.3160/MUM/2010	30/12/2011
2	2007-08	ITA NO.8734/MUM/2010	10/10/2012
3	2008-09	ITA NO.8627/MUM/2010	22/02/2013
4	2009-10	ITA NO.7553/MUM/2010	05/03/2014
5	2010-11	ITA NO.1405/MUM/2010	27/10/2016
6	2011-12	ITA NO.1615/MUM/2010	08/11/2016
7	2012-13 2013-14	ITA NO.4877/MUM/2010 ITA NO.7635/MUM/2010	26/07/2017
8	2014-15	ITA NO.6479/MUM/2010	14/10/2019
9	2017-18	ITA NO.33/MUM/2010	30/11/2021
10	2018-19	ITA NO.601/MUM/2010	28/07/2022



5. Per contra, Shri Soumendu Kumar representing the Department vehemently defended the assessment order and prayed for dismissing appeal of the assessee. The learned Departmental Representative (DR) reiterating the findings of the AO in para 15.4 to 15.6 of the assessment order submitted that the income received by the assessee from exhibition & distribution of films in India accrues and arises in India u/s 5(2) of the Act and thus, is taxable in India. The learned DR further submits that the assessee has business connection in India within the meaning of section 9(1)(i) of the Act.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The learned AR of the assessee in appeal has raised as many as 12 grounds. However, the learned AR of the assessee has confined his submissions only to ground no. 7 of the appeal.

7. The assessee is a tax resident of USA. The assessee is engaged in export of films from USA, produced either by its group studios or produced by third parties. The assessee has entered into an agreement dated 01/04/2009 with Warner Bros. Pictures (India) Pvt. Ltd. granting exclusive rights of distribution of cinematographic films on payment of royalty in terms of the above referred Agreement. During the period, relevant to assessment year under appeal, the assessee received Rs.39,19,73,663/- in the nature of royalty income from Warner Bros. Pictures (India) Pvt. Ltd. The assessee claimed the aforesaid "Royalty Income" as exempt under the Act as well as under India US Double Tax Avoidance Agreement (DTAA). The case of the assessee is that Warner Bros. Pictures (India) Pvt. Ltd. is not an agency PE of the assessee in India. In fact, the assessee has no PE, therefore, the royalty income is not taxable in India. The learned AR of the assessee asserted that the issue in appeal by the assessee is



squarely covered by the decision of Tribunal in assessee's own case in the preceding assessment years.

8. We find that the Tribunal in appeal by Revenue in ITA No.3160/MUM/2010 for AY 2006-07 (supra) examined the issue and held that the assessee has no PE in India. The relevant extract of finding of Co-ordinate Bench is reproduced herein under:

“10) The issue can be examined in another dimension whether the amount is taxable under the Indian Income Tax Act in India if not as royalty, but as business income. The CIT (A) finding is that assessee has a business connection in India. However, he considered that there is no PE to the assessee, the fact of which was also accepted by the Assessing Officer as he has invoked only Article 12(2) and not considered the amounts business income as per PE proviso. It was the contention of the learned Departmental Representative that the assessee having business connection, the findings of which was given by the CIT (A), the amount cannot be excluded without examining 'PE proviso provisions of the DTAA. In this regard the learned Counsel's submission that under the Income Tax Act as well as under the provisions of DTAA the transaction between the assessee and Indian Company to whom license was granted by virtue of the agreement cannot be considered as Agency PE as the Indian assessee is not exclusively dealing with the assessee and referred to the receipts from another company 20th Century Fox to submit that the assessee is also dealing with the other Non Resident Companies, so assessee cannot be considered as Agency PE within the definition of Permanent Establishment.



11) We have examined this aspect also. As rightly held by the CIT (A) even if income arises to the Non-Resident due to the business connection in India, the income accruing or arising out of such business connection can only be taxed to the extent of the activities attributed to permanent establishment. In this case, the assessee does not have any permanent establishment in India. Since the Indian company who obtained the rights is acting independently. Agency PE provisions are not applicable to the assessee company The assessee relied on the decision of Ishikawajma Harima Heavy Industries Ltd vs. Director of Income Tax 2007-(158)-TAXMAN 0259-SC that incomes arising to a Non-Resident cannot be taxed as business income in India, without a PE. As the assessee does not have any permanent establishment in India, the incomes arising outside Indian Territories cannot be brought to tax. Therefore, there is no need to differ from the findings of the CIT (A) and accordingly the Revenue Appeal is dismissed."

Thereafter, the Tribunal in subsequent assessment years i.e. AY 2007-08 to 2014-15 and 2017-18 to 2018-19 has consistently decided this issue in favour of assessee by following the decision rendered in assessment year 2006-07 (supra).

9. We find that DRP in para 9.3 of the directions for the impugned AY has recorded the fact that the DRP in assessee's case has considered the issue in AY 2017-18 and the material facts remain the same during year under reference. The only reason for not following the order of Tribunal for preceding years is that the Hon'ble Bombay High Court on the issue of existence of PE of the assessee in India has admitted similar question of law in appeal by the Revenue in assessee's case for assessment year 2008-09.



No contrary decision was brought to the notice of Bench by the Revenue.

In the light of the fact that in the preceding assessment years on same set of facts, the Tribunal has been consistently holding that the assessee has no PE in India. Following the decision of Co-ordinate Bench in assessee's own case ground no. 7 of the appeal is allowed.

10. The learned AR of the assessee has stated at Bar that if ground no. 7 of the appeal is allowed, the other grounds would become infructuous. In view of the aforesaid statement, ground no. 1 to 6 and 8 to 12 are dismissed as infructuous.

11. In the result, appeal of the assessee is allowed *pro-tanto*.

Order pronounced in the open court on Friday the 2nd day of December 2022.

Sd/-

(GAGAN GOYAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIALMEMBER

मुंबई/Mumbai,

दिनांक/Dated: 02/12 /2022

Mahesh R. Sonavane

प्रतिलिपी अग्रेषित of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त (अ)/ The CIT(A)-
4. आयकर आयुक्त/ CIT



5. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाईल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr. Private Secretary
ITAT, Mumbai