

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. C.N. PRASAD, JUDICIAL MEMBER**

ITA No.2972 & 2973 /Del/2022
Assessment Year: 2018-19 & 2019-20

DCIT Central Circle -2 (2) (2) International Taxation New Delhi	Vs	National Petroleum Construction Company C/o Nangia & Co. LLP, A- 109, Sector-136, Noida U.P. 201304 PAN No.AAACN7799J
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Vizay B. Vasanta, CIT DR
Respondent by	Sh. Amit Arora, CA Sh. Vishal Misra, CA

Date of hearing:	22/06/2023
Date of Pronouncement:	22/06/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No. 2972/Del/2022 and 2973/Del/2022 are two separate appeals by the revenue preferred against two separate orders of the CIT(A)-43, New Delhi dated 12.10.2022 and 17.10.2022 pertaining to A.Y. 2018-19 and 2019-20 respectively.

2. Since common grievance is involved in both the appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance of the revenue read as under :-

1. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the Project Office of the assessee in India is not its fixed place of business and Permanent Establishment as defined under Article 5 (2)(e) of the Double Taxation Avoidance Agreement between India and UAE.*

2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the activity of Project Office of the assessee were 'preparatory and auxiliary' in nature in terms of the Article 5(3)(e) of the Double Taxation Avoidance Agreement between India and UAE.*

3. *Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that assessee did not have an Installation Permanent Establishment under Article 5(2)(h) of the Double Taxation Avoidance Agreement between India and UAE.*

4. *Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that M/s Arcadia Shipping Ltd was not a Dependent Agent Permanent Establishment of the assessee under Article 5(4) of the Double Taxation Avoidance Agreement between India and UAE.*

5. *Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that no income of the assessee can be attributed to the assessee's Permanent establishment in India based on the finding of the AO.*

6. *Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that the profits attributable to the assessee's PE at 10% of its total receipts as per the provision of section 44BB of the Income Tax Act, 1961, were not taxable in India.*

7. *Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that interest income received from income tax refunds and from deposits is liable to be taxed as per Article 11 of the Double Taxation Avoidance Agreement between India and UAE and not as per Article 7 in spite of being effectively connected with the PE of the assessee.*

4. At the very outset the Counsel for the assessee stated that the issues raised by the revenue have been decided by this Tribunal in assessee's own case in ITA No.5563/Del/2017 for A.Y.2011-12 and ITA No.1727 and 1728/Del/2021 for A.Y.2016-17 and 2017-18. The Counsel supplied the copies of the coordinate Bench.

5. Per contra the DR, though strongly supported the findings of the AO, but could not bring any distinguishing decision in favour of the revenue.

6. We have carefully considered the orders of the authorities below. The following observations made by the AO would make the issues fully covered from the earlier assessment years :-

“5.1 The assessments for the preceding assessment years i.e. AY 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16,2016-17 and 2017-18 have also been completed in the almost identical manner wherein it was held that the project office of the assessee constituted a P.E. and profits were computed arising out of the offshore and onshore activities. The nature of activities for the current assessment year under consideration i.e. AY 2018-19 is identical to that of the earlier years, as mentioned above and being

so, the facts of the case as far as existence of PE is concerned remain the same as in earlier years. During the course of assessment of the Assessee for earlier assessment years (i.e. AY 2007-08 to AY 2017-18), the aspect of PE of the Assessee and its taxability were examined in detail and discussed. There being no material change in the business model and nature of projects executed by the Assessee with ONGC/L&T in India, facts mentioned in the relevant para of the assessment order for AY 2007-08 to 2017-18 are also being relied upon in the present case.”

7. This Tribunal in ITA No.1727/Del/2021 and 1728/Del/2021 for A.Y.2016-17 and 2017-18 had the occasion to consider a similar grievance. The coordinate Bench held as under :-

6. *After considering the submission of assessee in the context of facts and material available on record, learned Commissioner (Appeals) having found that in assessee’s own case in preceding assessment years, "foe issue has been decided in favour of assessee by the Hon’ble High Court and Tribunal, he held that assessee did not have any PE in India. Accordingly, he allowed assessee’s claim.*

7. *Before us, both, learned counsel appearing for the assessee as well as learned Departmental Representative have fairly submitted that the issues arising in the appeals are squarely covered by the decisions of the Hon’ble High Court and Tribunal in assessee’s own case in the preceding assessment years.*

8. *Having considered the submissions of the parties, it is observed issues relating to existence of PE through the project office came up for consideration before Hon’ble jurisdictional High Court in assessment years 2007-08 and 2008-09. While deciding the issue, Hon’ble High Court held that assessee didn’t have either fixed place PE or installation PE or dependent agent PE in terms with Article 5 of India-UAE DTAA. Following the aforesaid decision of the Hon’ble*

jurisdictional High Court, the Tribunal in assessment year 2013-14 to 2015-16 has consistently held that assessee didn't have any PE in India. Thus, respectfully following the consistent view of the coordinate Benches, as well as, Hon'ble Jurisdictional High court in the past assessment years, we uphold the decision of learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

8. On finding parity of facts respectfully following the decision of the coordinate Bench the appeals of the revenue are dismissed.
9. Decision announced in the open court on 22.06.2023.

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Dated: .06.2023

Neha

Copy forwarded to:

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

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi