

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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1792/DEL/2022 [A.Y. 2018-19]

Kuipercompagnos Ruimtelijke  
Ordering Stendenbouw  
Architectuur Landschap BV  
1-2, Part - II, Lajpat Nagar -II  
Delhi

Vs.

The A.C.I.T.,  
Circle 2(1)(2)  
International Taxation  
New Delhi

PAN - AAECK 0563 F

(Applicant)

(Respondent)

Assessee By : Shri S. Kumar, Adv

Department By : Shri Vizay B. Vasanta, CIT- DR

Date of Hearing : 04.10.2023

Date of Pronouncement : 06.10.2023

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 28.07.2022 framed u/s 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 [the Act, for short] pertaining to Assessment Year 2018-19.

2. The grievance of the assessee is two-fold - firstly, the assessee is aggrieved by the addition of Rs. 4,13,220/- being interest income on the Income-tax refund and secondly, the assessee is aggrieved by the denial of applicability of section 44DA of the Act.

3. Briefly stated, the facts of the case are that the assessee company is a tax resident of Netherlands. Return of income was filed on 17.11.2018 declaring income of Rs. 2,63,180/-. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has revenue from M/s Delhi International Airport Limited [DIAL] for design services. The assessee was asked to show cause as to why the impugned income should not be taxed as FTS in India.

5. The assessee filed detailed reply in which it claimed that it does not have PE in India.

6. On receiving no plausible reply, the Assessing Officer treated the revenue earned as taxable as royalty/FTS and taxed the same as per the provisions of Section 115A of the Act.

7. Objections raised before the DRP were of no avail.

8. Before the DRP, the assessee submitted that it had a PE in India and pleaded for applicability of Section 44DA of the Act. The same was denied.

9. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

10. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

11. We have carefully considered the orders of the authorities below. There is no dispute in so far as revenue from DIAL is concerned. In our considered opinion, when the assessee is itself admitting that it has PE in India, then we do not find any reason why the revenue should not be taxed as per the provisions of section 44DA of the Act. We,

accordingly, direct the Assessing Officer to tax the revenue as per provisions of law.

12. In so far as taxability of interest on Income tax refund is concerned, no evidence has been brought on record to show that the said interest income was taxed in the earlier A.Y as the assessee itself has shown income. We do not find any reason why it should not be taxed in the year under consideration. We, therefore, do not find any reason to interfere with the findings of the Assessing Officer. This ground is, accordingly, dismissed.

13. In the result, the appeal of the assessee in ITA No. 1792/DEL/2022 is partly allowed.

The order is pronounced in the open court on 06.10.2023.

**Sd/-**

**[SAKTIJIT DEY]  
VICE PRESIDENT**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 06<sup>th</sup> October, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
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