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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos.737 & 738/DEL/2023
[Assessment Years: 2016-17 & 2020-21]

GE Energy Parts Inc. C/o- Plot No.1-14, Tower-5, Japyee Wishtown, Sector-128, Noida, Uttar Pradesh-201304	vs	Assistant Commissioner of Income Tax, Circle-1(3)(1), International Taxation, 4th Floor, E-2 Block, Pratyakshkar Bhawan Civic Centre, New Delhi-110002
PAN-AACCG2798N		
Appellant		Respondent

Appellant by	Sh. Ravi Sharma, Adv. Ms. Saloni Shital, Adv.
Respondent by	Ms. Banita Devi Naorem, CIT-DR

Date of Hearing	**10.01.2024**
Date of Pronouncement	**17.01.2024**

ORDER

PER SAKTIJIT DEY, VP,

The captioned appeals by the assessee are against the final assessment orders passed in pursuance to directions of the Dispute Resolution Panel (in short DRP) pertaining to Assessment Years 2016-17 and 2020-21.

2. Ground No.3 in ITA No.737/Del/2023 is not pressed, hence dismissed.

3. The only issue arising in these appeals is relating to existence or otherwise of a Permanent Establishment (PE) of the assessee in India.

4. We have considered rival submissions and perused the material available on record. It is an agreed position before us that the assessee is squarely covered by the decision of the Co-ordinate Bench of the Tribunal in its own case as well as in case of another group entity. In the aforesaid context, following orders of the co-ordinate Bench have been placed before us

(i) GE Energy Parts Inc. & Anr. Vs ACIT in ITA No.2033/Del/2022 & Ors dated 25.07.2023.

(ii) GE Global Parts & Products GmbH vs ACIT in ITA NO.736/Del/2023, dated 29.11.2023.

5. Having perused the material on record, we find, while considering identical nature of dispute in case of the very same assessee, the Tribunal in order dated 25.07.2023 has held as under:-

> *6. We have considered rival submissions and perused the materials on record. As discussed earlier, the short issue arising for consideration is whether the assessees had PE in India during the assessment years under consideration? From the facts and materials on record, it is observed, not only before the Assessing Officer, but even before learned DRP, the assessees have vehemently urged that since the factual position in the impugned assessment years have*

substantially changed, the decision taken in past assessment years cannot be followed blindly. It was the case of assessees before the departmental authorities that as per the facts of the impugned assessment years, the assessees had no PE in India as the AIFACS building considered as the PE of the assessees was vacated by GEIOC on 01.05.2012. It was pleaded by the assessee that in these years, no expatriates have visited in India. As it appears, the departmental authorities have turned a blind eye to all the submissions and facts brought on record by the assessee. Merely following the decision taken by the appellate authorities and Hon'ble High Court in past assessment years, the departmental authorities have concluded the existence of PE without looking into or examining the facts and evidences brought on record, which are very much relevant for deciding the existence of PE in the impugned assessment years. It is observed, while deciding identical issue in case of Nuovo Pignone International SRL Vs. DCIT (supra) involving identical facts, the Coordinate Bench has held as under:

> *"10. We have considered rival submissions and perused materials on record. We have also applied our mind to the judicial precedents cited before us. The short issue arising for consideration is whether the assessee had a PE, either fixed place PE or dependent agent PE, in India during the year under consideration. No doubt, the past assessment history of the assessee reveals that existence of PE in India was upheld by the Tribunal and Hon'ble jurisdictional High Court in assessment years 2002-03 to 2006-07 and 2008-09. Perusal of facts on record including the discussion made by the Assessing Officer and learned DRP would reveal that the reason why the existence of PE was upheld in earlier assessment years are as under:*

(i) *The assessee has an office premises at AIFACS building;*

(ii) *Expatriates along with employees of GEIIPL have engaged themselves in the activities of soliciting business and concluding contracts.*

(iii) *Remuneration paid to GEIIPL was at arm's length.*

> *11. However, as far as the facts relating to impugned assessment year are concerned, AIFACS building, which earlier constituted the fixed place PE of the assessee in India, was vacated on 01.05.2012. In fact, this was brought to the notice of both the Assessing Officer and learned DRP in course of proceedings before them. In fact, on 29th May, 2018, the assessee has furnished annual statement u/s. 285 of the Act in Form 49C for the financial year 2017-18, clearly indicating that since no activity was undertaken by the liaison office, the Management does not intend to continue the liaison office and is to file for closure of the liaison office. Thus, the fact that AIFACS building has been vacated, no expatriates visited India during the year and the liaison office has been closed were brought to the notice of the departmental authorities in course of proceedings to demonstrate that the reasons for which the departmental authorities as well as the Tribunal and Hon'ble jurisdictional High Court held existence of PE, no longer exists in the impugned assessment year.*

> *12. This is clearly evident from the submissions made and documents filed before the departmental authorities. Despite such submissions and evidences produced by the assessee, the departmental authorities have remained oblivious to such facts and materials brought on record and proceeded to conclude existence of PE merely relying upon the past orders passed by them and higher appellate authorities. It is trite law, the existence or otherwise of PE has to be determined on year to year basis, as the*

existence of PE has to be decided based on the definition of PE in the relevant tax treaty. Merely because in one year, the assessee had a PE in India, that by itself cannot lead to the conclusion that the assessee must be having a PE in subsequent assessment year, without looking into the relevant facts. In this context, we refer to the decision in the case of M/s. Bentley Nevada Inc. (supra). Further, in case of E-Funds IT Solution Inc. (supra), Hon'ble Supreme Court has very clearly and categorically held that the onus is entirely on the Revenue to establish existence of PE.

13. Adverting to the facts of the present appeal, undisputedly, the assessee brought on record all material and evidences to establish that it does not have any PE in India. As it appears from the respective orders of the departmental authorities, without dealing with the submissions of the assessee and evidences brought on record through proper reasoning or by bringing any contrary material to controvert them, the departmental authorities have merely followed their earlier decision without making any effort to look into the specific facts of the impugned assessment year. As discussed earlier, the assessee has brought on record cogent evidence to demonstrate that there is substantial change in facts in impugned assessment year qua the existence of PE. The specific averment of the assessee regarding vacation of office premises at AIFACS building and no visit by expatriates in India during the year, have not been controverted by the departmental authorities by any specific factual finding. In case of Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. (supra), Hon'ble jurisdictional High Court, while dealing with the issue of reopening of assessment based on information received from third party, observed, though such information can form basis for an examination/investigation by the Assessing Officer, but the decision to reopen the assessment has to be of the Assessing Officer and not of the third party. The Assessing Officer cannot merely do a cut and paste job for reopening the assessment without independent application of mind or verification or investigation. The aforesaid ratio laid down by Hon'ble jurisdictional High court squarely applies to the facts of the present appeal, as the departmental authorities have merely followed the decision taken by them and higher appellate authorities in assessee's cases in past assessment years without independent application of mind to the facts brought on record by the assessee or making proper verification/investigation of the evidences.

14. Thus, essentially, the evidences brought on record by the assessee remain uncontroverted. When the evidences brought on record by the assessee are before the departmental authorities, it is the duty of the departmental authorities to examine them on merits and thereafter, either to accept them or to reject them with proper reasoning by bringing on record contrary material/evidence. In the facts of the present appeal, the departmental authorities have failed to undertake such exercise. Therefore, in our view, it has to be concluded that the departmental authorities have not found anything amiss or adverse in the facts and material brought on record by the assessee. In such a scenario, we do not find any reason to again remit the matter back to the Assessing Officer to provide him a second inning to improve upon the deficiencies in the original assessment order. In view of the aforesaid, we are inclined to hold that keeping in view the facts and materials peculiar to the impugned assessment year, it has to be concluded that the assessee did not have any PE, either fixed place PE or dependent agent PE, in India in the year under consideration. We again reiterate, our aforesaid conclusion is purely based on the facts involved in the impugned assessment year."

7. Akin to the case referred to above, in the facts of the present appeals also, the departmental authorities have failed to controvert either the submission or the materials and evidences brought on

record by the assessees to demonstrate that they did not have any PE in India in these assessment years. In fact, even at the stage of Tribunal, no contrary material has been brought on record by the Revenue to rebut the claim of the assessees that no PE existed in these years.

8. That being the factual position emerging on record, we hold that the decision taken in case of Nuovo Pignone International SRL Vs. DCIT (supra) would squarely apply to the facts of the present appeals. Accordingly, we hold that the assessees did not have any PE in India in the assessment years under dispute so as to attribute profit to such PE."

6. There being no difference in factual position in the impugned Assessment Year, respectfully following the decision of the Co-ordinate Bench referred hereinabove, we hold that the assessee did not have any PE in India in the assessment years under dispute. Hence, no profit can be attributed to such PE. Consequently, the Assessing Officer is directed to delete the addition in both assessment years.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 17/01/2024.

Sd/-	**Sd/-**
[B.R.R. KUMAR]	**[SAKTIJIT DEY]**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Delhi; Dated: 17/01/2024.
Shekhar,

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi