

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

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.8770/Del/2029  
Assessment Year: 2016-17

<b>Geodate Engineering S.P.A., 206-A, 2<sup>nd</sup> floor, NDM-1, Building Netaji, Subhash Place, New Delhi PAN No.AADCG7297H</b>	<b>Vs.</b>	<b>ACIT Circle Intl. Tax 1(3)(1) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Salil Aggarwal, Sr. Advocate Sh. Shailesh Gupta, CA Sh. Madhur Aggarwal, Advocate Sh. Mahir Aggarwal, Advocate
Respondent by	Sh. Abhishek Sharma, CIT DR

Date of hearing:	03/06/2024
Date of Pronouncement:	20/06/2024

**ORDER**

**PER SUDHIR KUMAR, JM:**

This appeal by the assessee is directed against the order of the Assistant Commissioner of Income Tax, Circle Int Tax 1 (3)(1) [hereinafter referred to as "CIT"] vide order dated 13.09.2029 pertaining to A.Y. 2016-17 and arises out of the assessment order dated 25.01.2019.

2. The assessee has raised the following grounds of appeal :-

1. *That the learned AO/DRP has grossly erred both in law and on facts by treating the receipts earned by way of "Engineering Design Services", so provided by the non-resident assessee in India as Business Profits under Article 7 of India Italy DTAA, by failing to appreciate the fact that the engineering design services so provided are covered under the head "Fees for Technical Services" under Article 13 of India-Italy DTAA and also as per Explanation-2 to clause (vii) of sec-section(1) of section 9 of the Income Tax Act and that the contracts in respect of such services are effectively not connected with the permanent establishment of the assessee in India and as such, the treatment so made is wholly untenable both on facts and in law.*

1.1 *That the learned AO/DRP has failed to appreciate the fact that gross amount received of a sum of Rs.5,49,62,620/- was on account of Engineering Design Services and there was no involvement of Branch Office in earning of said receipts and as such, the said amount was not taxable in India and thus, the addition so made is wholly misconceived in law and misplaced on facts and deserves to be deleted.*

1.2 *That the adverse findings recorded by the learned AO/DRP are factually incorrect and have been recorded with pre-determined and preconceived notions and without considering the submissions/evidences/material produced on record and also without providing fair and proper opportunity of being heard, hence such findings are vitiated and deserves to be deleted.*

*2. That the learned AO/DRP has grossly erred in making the impugned treatment without providing to the assessee, a fair and proper and meaningful opportunity of being heard, thereby violating the principles of natural justice and thus such, the addition so made is vitiated both on fact and in law.*

3. The brief fact of the case is that the assessee filed its return of income for the concerned year under consideration of Rs.7,14,84,770/-. The case was selected for scrutiny assessment under Section 143(3) of the Act, 1961. Notice under Section 143(2) was served within the statutory time limit. Scrutiny proceedings were carried out through E-assessment. Notices under Section 142(1) with questionnaires were issued during the proceedings in the response of notice, assessee has filed the details which were duly considered.

3.1 The assessee is a resident of Italy. It has a branch office in New Delhi, India since the year 2012. It is engaged in commercial operation in India in the field of infrastructure engineering services, particularly those relating to underground infrastructure project like rail, road, metro, highway, hydro projects etc and is rendering consultancy engineering services on regular basis as an ongoing concern to clients from Government as well as private sector. During the year the

assessee has worked for fulfilment of existing contracts and got the receipt as follows;

SL no	Particulars	Amount Rs	Tax treatment by the assessee
1	Revenue from engineering design service gross	54962620	Offered to tax at the rate of 10%as FTS under the India-Italy ,DTAA
2	Revenue from site Supervision services	97583690	Offered to tax after deduction of expenses as business income at normal rates (Business income of Rs16522153

The Dispute Resolution Panel -1 New Delhi has directed the AO to complete the assessment. In assessment order the total

income of the assessee's assessed Rs 7,14,84,770/- as income from business. Aggrieved by this order this appeal filed before us.

4. The DRP observed in the order in para 4.2 as under;

*“4.2 Since no new facts have to be considered, and the Ld. AR during hearing on 2.06.2019 has expressed his inability to produce any evidence of the reports/designs prepared by GIPL being forwarded to Geodata (HO), Italy and the same being actually reviewed by Geodata (HO), Italy, it was not considered necessary to grant further hearing.”*

5. We have heard the parties and perused the material available on the records.

6. Before us at the outset Ld DR supported the order and submitted that the assessee company has been described as professional which used to charge fees for providing software training to Raya Contact Centre Egypt but no details of software training has been mentioned in the work order dated 01-09-2012. He has further submitted that paper work has been fabricated to avoid the tax. Therefore, he submitted that the order of CIT(A) be up held.

7. Ld Counsel for assessee has submitted that without providing the fair and proper opportunity of being heard to the assessee the impugned order was passed.

8. Perusal of the order of the Ld DRP reveals that opportunity of hearing was denied on the ground that AR has shown inability to produce any evidence. If the AR sought time to produce the details or documents then one opportunity should have been given to him. In passing the impugned order, the rule of natural justice has not been followed by DRP. He should have decided the matter after giving one more opportunity to the assessee for filing relevant documents. In the present case it would be appropriate to remand the matter before DRP to decide after giving an opportunity to assessee to file the relevant documentary evidence. Hence, the appeal is allowed and the case is remand back to DRP to decide afresh as discussed above.

9. As a result, the appeal of the assessee is allowed for the statistical purpose.

Order pronounced in the open court on 20.06.2024.

**Sd/-**  
**(DR. B R R KUMAR)**  
**ACCOUNTANT MEMBER**

\*NEHA, Sr. PS\*  
Date:- .06.2024  
Copy forwarded to:  
1.Appellant  
2.Respondent  
3.CIT  
4.CIT(Appeals)  
5.DR: ITAT

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI