

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

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE-PRESIDENT  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.1403/Del/2022  
Assessment Year: 2019-20

Kreuz Subsea Technologies Pte. Ltd., Singapore, 10, Science Centre Road, Block 1, 01-12, Bestway Centre, Singapore	<b>Vs.</b>	ACIT, Circle- International Taxation -2(1)(2), New Delhi
<b>PAN: AAFCK7070C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	None
Department by	Sh. Vijay B. Basanta, CIT(DR)

Date of hearing	25.09.2024
Date of pronouncement	09.10.2024

**ORDER**

**PER SAKTIJIT DEY, VICE-PRESIDENT**

This is an appeal by the assessee challenging the final assessment order dated 12.04.2022 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2019-20 in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. When the appeal was called out none appeared on behalf of the assessee. Even, there is no application by the assessee seeking

adjournment. It is observed, from 1<sup>st</sup> December, 2022, the date on which appeal was listed for hearing for the first time, till the date on which, the appeal was finally heard, it has been listed for hearing on multiple occasions. Though, initially the assessee was represented by some counsel, who repeatedly sought adjournments, however, on subsequent dates, none appeared on behalf of the assessee despite issuance of notice through postal mode as well as in the email id provided in the appeal memo. Facts on record reveal that hearing notices were communicated to the assessee through email on six occasions, however, there has been no response from the assessee.

3. Keeping in view these facts, it can safely be concluded that the assessee is not interested in pursuing the present appeal. Since, several opportunities of being heard have already been granted, in our view, the assessee deserves no more leniency. Accordingly, we proceed to dispose of the appeal *ex-parte* qua the assessee with the assistance of learned Departmental Representative and based on materials on record.

4. Grounds raised by the assesses are as under:

*1. On the facts and circumstances of the case and in law, the assessment order (impugned assessment order) for AY*

2019-20 is based on surmises and conjectures and the learned AO/DRP has erred in assessing total income of Appellant at INR 7,66,36,005 as against the nil returned income as claimed by the Appellant. Hence, the order is bad in law and is liable to be quashed.

2. On the facts and circumstances of the case and in law, the Ld. AO/DRP has erred in concluding that the Appellant constituted a permanent establishment ('PE') in India under Article 5(5) of India- Singapore double taxation avoidance agreement ('DTAA') to avoid any presumed leakage of revenue without considering the following and on the basis of incorrect assertions and surmises:

2.1. The Ld. AO/DRP has erroneously concluded that the exclusive days in respect of the vessel OCEAN 303 were more than 12 days without taking into consideration the 'On-Hire' report issued by the third-party marine survey engineers i.e., Technomar Marine Surveyors and Port Clearance Certificate and thus fallaciously determining that the duration of the Appellant in India as more than 183 days during the captioned AY.

2.2. The Ld. AO/DRP in the impugned order has erroneously observed that the 'On-Hire' report obtained from an independent third-party marine survey engineers evidencing the duration of the said vessel in India as a self-serving document.

2.3. The Ld. AO/DRP has erred in not appreciating that the 'On-Hire' report provided by the Appellant is a pre-requisite document certifying that as per the relevant clause of the agreement between the Appellant and Larsen and Toubro Hydrocarbon Engineering Limited (LTHE), the bunker quantity should be the same at the time of delivery and re-delivery of the vessel which along with port clearance certificate demonstrates the commencement and end date of contract.

*2.4. The Ld. AO/DRP has ignored the copy of the invoices, agreement and Bill of Entry furnished by the Appellant which clearly demonstrates that the vessel was not present for the Appellant prior to 16 October 2018*

*3. On the facts and circumstances of the case and in law, the learned AO has erred in levying interest under Section 234B of the Act amounting to INR 41,96,281.*

*4. On the facts and circumstances of the case and in law, the learned AO has erred in initiating penalty proceedings under Section 270A of the Act without appreciating that the Appellant has neither under- reported nor misreported its income for the relevant AY.*

5. As could be seen from the grounds raised, there are two issues arising in the appeal. Firstly, whether the assessee had a service Permanent Establishment (PE) or business connection in India during the year and secondly, if so, income attributable to such PE.

6. Briefly the facts are, the assessee is a non-resident corporate entity incorporated in Singapore and a tax resident of Singapore. For the assessment year under dispute, the assessee has filed its return of income on 21.10.2020 declaring nil income. In course of assessment proceedings, the Assessing Officer called upon the assessee to furnish the details of work carried out in India with supporting evidence. On perusal of

the documents submitted by the assessee, the Assessing Officer noticed that the assessee had entered into contracts for providing services or facilities in connection with exploration, exploitation or extraction of mineral oils. He further noticed that in the year under consideration, the assessee had engaged four sea going vessels in connection with the work undertaken. Noticing these facts, the Assessing Officer called upon the assessee to explain, whether it had any PE or business connection in India. In response to the show-cause, the assessee submitted that in the year under consideration, it has deployed four vessels for rendering services relating to exploration, exploitation or extraction of mineral oil in India. It was submitted, none of these vessels have stayed within the territorial jurisdiction of India for a period of more than 183 days. Therefore, there is no PE in India.

7. The Assessing Officer, however, was not convinced with the submission of the assessee. After perusing the submissions of the assessee in the context of the evidences furnished, the Assessing Officer observed that the assessee has furnished custom clearance certificate evidencing entry of

vessels into India for all vessels, except 'Ocean 303'. He observed, in respect of 'Ocean 303', the assessee could not furnish any authentic documentary evidence to establish that it has not stayed in the territorial jurisdiction of India for more than 183 days. Accordingly, he rejected assessee's claim of non-existence of PE in India. Having done so, he attributed the entire receipts to the PE and computed the business income in terms of section 44BB of the Act at the rate of 10%. Accordingly, he framed the draft assessment order. Against the draft assessment order, the assessee raised objections before learned DRP. However, learned DRP did not find merit in the objections raised. Accordingly, DRP upheld the decision of the Assessing Officer.

8. We have considered the submissions of learned Departmental Representative and perused the materials on record. As could be seen from the observations of the Assessing Officer and learned DRP, the assessee could not furnish any corroborative evidence to establish that one of the vessels deployed by the assessee, being 'Ocean 303' had not stayed in the territorial waters of India for more than 183 days. Even,

before us, the assessee has failed to furnish any authentic evidence to establish such fact.

9. In view of the aforesaid, we do not find any valid reason to interfere with the decision of the departmental authorities. Accordingly, we uphold the final assessment order. Grounds are dismissed.

10. In the result, appeal is dismissed.

***Order pronounced in the open court on 9<sup>th</sup> October, 2024***

**Sd/-  
(NAVEEN CHANDRA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
VICE-PRESIDENT**

Dated: 9<sup>th</sup> October, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi