

**THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 819/Del/2024  
(Assessment Year 2018-19)**

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| FCC Co. Ltd.<br>Plot No. 5, Sector 3,<br>IMT Manesar, Gurgaon,<br>Haryana 122001 | Vs. | ACIT (IT), Circle (1)(3)(1)<br>D Block, Civic Centre,<br>New Delhi<br>110002 |
| स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AABCF5381M                               |     |  |
| Appellant  | ..  | Respondent   |

|                 |                            |
|-----------------|----------------------------|
| Appellant by :  | Ms. Shruti Khimta, AR      |
| Respondent by : | Ms. Surbhi Sharma, CIT, DR |

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| Date of Hearing       | 12.11.2024 |
| Date of Pronouncement | 29.11.2024 |

ORDER

**PER MADHUMITA ROY, JM:**

The instant appeal filed by the assessee is directed against the order dated 03.01.2024 passed by the ACIT(A (IT) Circle 1(3)(1), Delhi, under Section 147 r.w.s 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2018-19.

2. The assessee has filed this appeal with the following effective grounds:

- “3. On the facts and circumstances of the case and in law, the final assessment order u/s 143(3) read with section 144C(13) of the Income Tax Act, 1961 is barred by limitation and therefore, is void-ab-initio, bad in law and is liable to be quashed as the final assessment order is in violation of the statutory provisions of section 153 of the Act.
4. On the facts and in the circumstances of the case & in law, the Ld. AO/DRP has erred in alleging the existence of a Permanent Establishment ('PE') in the nature of a fixed place PE and supervisory PE under the Article 5 of the Double Taxation Avoidance Agreement ('DTAA') between India and Japan on incorrect appreciation of facts and law.”

3. It is the case of the assessee that the issue involved is covered by assessee's own case for A.Y. 2018-19 by the order passed by the Coordinate Bench in S.A. No. 95/Del/2024 for A.Y. 2018-19 a copy whereof has been duly submitted before us. While dealing with this aspect of the matter the Coordinate Bench has been pleased to observe as follows.

“This Stay Application in hand has been moved for stay of recovery of tax demand for Assessment Year 2018-19.

2. Heard and perused the record.

3. The Ld. AR has submitted that in appellant own case on similar facts and circumstance the issue of existence of PE has been decided in favour of the assessee vide order dated 09/03/2022 in ITA No. 54/Del/2019 and ITA No.8960/Del/2019 for AY. 2014-15 and 2015-16 and the order dated 26/12/2022 in ITA No.1789/Del/2022 for AY 2017-18 and order dated 19/04/2023 vide 766/Del/2022 for AY 2020-21. It was submitted that finding of the Revenue Authorities holding existence of fixed Place Permanent Establishment or Supervisory Permanent Establishment were reversed, however, Ld. DRP has followed its own findings for earlier years. Ld. DR could not dispute the aforesaid facts.

4. In the light of the aforesaid, as issue stands squarely covered in favour of the assessee for AY 2014-15 and 2015-16, 2017-18 & 2020-21. We find a prima facie case and balance of convenience in favour for the assessee and, accordingly, allow the application and the impugned demand for AY 2018-19 shall remain stayed for a period of 180 days or disposal of appeal, whichever is earlier.”

4. It was further submitted by the Ld. Counsel appearing for the assessee that the order relied upon passed by the Coordinate Bench in

assessee's case on identical issue was further confirmed by the jurisdictional High Court by and under the order dated 23.07.2024 for A.Ys. 2014-15, 2015-16, 2017-18 and 2020-21 a copy whereof has also been supplied to us, relevant observation whereof is reproduced herein below:

“3. Proceeding further to deal with the argument of Supervisory PE, the Tribunal has ultimately found that although the employees of the foreign principal were visiting India, they were clearly not involved in supervising any installation or assembly project. It becomes pertinent to note that [Article 5\(4\)](#) of the India-Japan Double Taxation Avoidance Treaty<sup>2</sup> does not speak of supervisory activities as a broad genre. The said supervisory activities must be in connection with a building site construction, installation or assembly project. Undisputedly, and as per the facts which have been recorded by the Tribunal, none of those would stand attracted to the operations of the respondent-assessee.

4. We in this respect deem it apposite to extract paras 13, 13.1, 13.2, 13.3 and 13.4 of the order of the Tribunal impugned before us:

“13. Now coming to the Supervisory PE, [Article 5\(4\)](#) of the India-Japan DTAA provides as under:-

“An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for more than six months in connection with a building site or construction, installation or assembly project which is being undertaken in that Contracting State.”

13.1 In the previous hearing held on 1.11.2021 this Bench had directed the assessee to file the description of services rendered by the employees of the assessee on their visit to India and the corresponding clause under the Agreement for Dispatch of Engineers under which such services would fall. In response, the assessee furnished Annexure 1 for AY 2014-15 and Annexure 2 for AY 2015-16 vide its written submission filed on 17.11.2021 providing the names of the employees who visited India along with

the work performed by them giving reference of the relevant clause of the Agreement for Dispatch of Engineers along with Request for Technical Services (RFT) of the respective employee. The said Annexure 1 and Annexure 2 are on record.

13.2 Perusal of the above documents shows that the employees of the assessee visited India to assist FRL in relation to supplies made by FRL/FCC Clutch to its customers; resolving problems relating to production, fixing of machines, maintenance of machines; checking safety status at the premises and suggesting ways for enhancing safety; support in quality control; IT related services; support for launch of new segment line; etc. In our considered opinion, none of these activities performed by the employees are in the nature of supervisory functions, supervision being the act of overseeing or watching over someone Or something which is not reflected in the work done by the engineers in India for. FRL.

13.3 Moreover, no installation or assembly project was on going at FRL's premises. FRL is in the existing business since many years and no new line of business has been launched by FRL. The employees were not rendering any services in connection with building site or a construction project or an installation project or an assembly project. From the nature of the services rendered by the employees, it is amply clear that these activities were not in connection with a building site or construction installation or assembly project. Hence the issue of computation of period of six months also becomes academic. The employees are visiting India on year to year basis under the contract. In AY 2014-15 and AY 2015-16, the employees visited India to render certain technical services under the Licence Agreement read with Dispatch of Engineers Agreement which have been duly offered to tax by the assessee as FTS as per the provisions of India-Japan DTAA. We therefore hold that the there is no Supervisory PE of the assessee for the AYs under consideration.

13.4 Since we have held that the assessee does not a PE the issue of attribution of profits to such PE does not arise for consideration.”

5. In view of the aforesaid, we find that the appeals fail to raise any substantial question of law. They shall, consequently, stand dismissed.”

5. Upon perusal of the above order it appears that as submitted by the Ld. A.R that the issue is covered in assessee's own case by the order passed by the Hon'ble High Court of Delhi is found to be correct. In fact, the Ld. D.R has also not been able to controvert the same.

6. Having heard the Ld. Counsel appearing for the parties and having regard to the facts and circumstances of the matter particularly when the issue is found to be covered in assessee's own, respectfully relying upon the judgment passed by the Hon'ble Delhi High Court in ITA 441/2023, 442/2023, 444/2023 and 651/2023, the appeal preferred by the assessee is allowed and the impugned addition is, therefore, deleted.

7. Assessee's appeal is, therefore, allowed.

Order pronounced in the open court on 29.11.2024

Sd/-

(Naveen Chandra)  
ACCOUNTANT MEMBER

Dated 29.11.2024

PS: Rohit

Sd/-

(Madhumita Roy )  
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI