

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.2870/DEL/2024	Assessment Year: 2018-19
ITA No.2871/DEL/2024	Assessment Year: 2019-20
ITA No.2872/DEL/2024	Assessment Year: 2020-21
ITA No.2873/DEL/2024	Assessment Year: 2021-22

Assistant Commissioner of Income Tax Delhi	Vs.	Italian Thai Development Public Company, 301 302 Tower District Centre Janakpuri, Janakpuri A-3 S.O. JanakpuriA-3 West Delhi PIN: 1100 58 Delhi PAN: AABCI2013D
(Appellant)		(Respondent)

Assessee by:	Shri S.R. Wadhwa, Adv. & Ms. Sumeet Bareen, FCA
Department by:	Shri Rohit Garg, CIT DR
Date of Hearing:	01.07.2025
Date of pronouncement:	18.07.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeals of Revenue are against separate orders dated 15.03.2024 under Section 250 of the Income-Tax Act, 1961 (hereinafter referred to as "the Act") arising out of orders dated 26.11.2021, 28.11.2021, 17.11.2022 and 19.02.2023 of the Assistant Commissioner of Income Tax (International Taxation)-2(1)(1) hereinafter referred to as "Ld. AO") under Section 143(3) of

the Act for the assessment years 2018-19 to 2021-22 respectively.

2. All the four appeals involve same/similar facts, grounds and issues. Therefore, the appeals were heard together for the sake of convenience.

3. Brief facts of ITA No. 2870/Del/2024 are that assessee company M/s. Italian Thai Development Public Company e-filed return of income on 30.11.2018 declaring nil income for assessment year 2018-19. The case was selected for scrutiny. Notice under Section 143(2) of the Act dated 22.09.2019 was issued. The assessee filed required information online and submitted that the assessee is a foreign company incorporated in Thailand and is engaged in the business of civil construction. The company was awarded civil construction contracted by NTPC Ltd. for the construction of Hydro Power Dam at Koldam. The construction site is located at Kyan, Mandi (HP). The company has been awarded civil construct in 2006 by National Highway Authority of India (NHAI) for civil works for widening and strengthening of existing National Highway from two lane to four lane of NH-31C in West Bengal on East West Corridor under

phase-II program of NHPD. In assessment year 2017-18 relevant to assessment year 2018-19, the assessee company was also involved in construction of Royal Embassy and renovation of Ambassador's residence located in New Delhi.

4. On perusal of submissions made by the assessee, it was found that the assessee's Head Office had entered into an agreement with ITD Cementation India Ltd. whereby ITD Cementation India Ltd. had paid royalty for use of the "ITD Logo" amounting to Rs.9,11,50,646/-. Further, assessee had rendered technical services to M/s. ITD Cemindia JV and had earned FTS income amounting to Rs.1,72,87,003/-. However, the assessee had not offered these incomes to tax separately, but instead had set off these incomes of HO with the losses incurred by the PE.

5. On the basis of above findings, the assessee was issued a show-cause-notice on 15.09.2021. Assessee filed reply online. After considering the matter, Ld. AO vide order dated 26.11.2021 made additions of Rs.1,72,87,003/- and Rs.9,11,50,646/-.

6. Similarly, Ld. AO passed order dated 28.11.2022, 17.11.2022 and 19.02.2023 for assessment years 2019-20, 2020-21 and 2021-22 respectively.

7. Being aggrieved, appellant/assessee preferred appeals against the assessment orders dated 26.11.2021, 28.11.2021, 17.11.2022 and 19.02.2023, passed under Section 143(3) r.w.s. 144C(3) of the Act before Ld. CIT(A) which were allowed vide separate orders dated 15.03.2024.

8. Being aggrieved, Appellant/Revenue preferred present above cited appeals, in ITA No.2870/Del/2024, following are grounds of appeals:

“1A. The Ld. CIT(A) has erred in holding that there is no provision under the DTAA for disallowing set off of losses of PE with income earned by HO when it has been clearly specified in section 1&2 of Article 7 of the India-Thailand DTAA that PE and HO are to be treated as separate entities and consequently set off of losses of PE with income earned by HO cannot be allowed when PE has no role in income earned by HO.

B. The Ld. CIT(A) has erred in deleting the disallowance of set off of losses of PE with 110 relying on the facts that in previous year, the Assessing Officer has accepted the stated position of the assessee. However, principal of res-judicata is not applicable in the instant case as every year is treated as separate in Income Tax Act, 1961.

C. The Ld. CIT(A) has erred in allowing set off of loss of PE with HO when Assessing Officer has clearly established in assessment order (Asset test) that the TradeMark on which royalty earned is owned by HO and not by PE.

2D. The Ld. CIT(A) has erred in ignoring the disallowance made by Assessing Officer when the Assessing Officer vide para 8 in assessment order stated that by virtue of

activity/function test, the PE has no role in providing technical services to the assessee.

E. The L.d. CIT(A) has erred by without appreciating the facts stated by clause 7(1) of the OECD Model Convention that income producing activities should be connected with PE not only economically but also in substance.

F. The Ld. CIT(A) has erred in overlooking the provisions of Article-12 of the India-Thailand DTAA deciding that income earned by H.O. can be set off with the losses of PE even when the PE is neither owner nor performed any activity with regard to such income of H.O.”

9. Learned Authorised Representative for Revenue submitted that Ld. CIT(A) erred in holding that EP with income earned by HO. When, it has been specified in clause 1 and 2 of Article 7, principles of res judicata is not applicable in the instant case as every year is treated as separate in Income-Tax Act, 1961.

10. Learned Authorised Representative for assessee submitted that the respondent company had earned and also disclosed income in the nature of royalty and fees for technical services (FTS) while filing its returns of income for the A.Ys. 2008-09, 2009-10, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2017-18. In these returns of income, the respondent company had claimed and was allowed the set off and carry forward of losses against the incomes in the nature of royalty and FTS. For all these eight assessment years, the Assessing Officer had raised

similar issues and submissions were filed by the respondent company against those issues. After examination of the details filed, the Assessing Officer duly allowed the set off of losses as claimed. All the returns of income were accepted after due examination and regular assessment orders u/s 143(3) of the Act were passed in accordance with law. Accordingly, the Assessing Officers had themselves allowed the set off and carry forward of losses against the incomes in the nature of royalty and FTS earned by the respondent in all the prior years which was in accordance with law. The present Assessing Officer overlooked this settled position thereby leading to the present problem. Copies of the assessment orders for A.Ys. 2008-09, 2009-10, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2017-18 are enclosed at Annexures-I to VIII in each of the paper books for the A.Ys. 2018-19 to 2021-22.

11. From examination of record in light of aforesaid rival contentions, it is crystal clear that ground of appeal nos. A to E are interconnected. The primary issue of disallowance of set off current years and brought forward losses against income earned by assessee through its HO. Assessee has a single PAN Number, i.e. AABCI2013D and the Ld. Assessing Officer's contention of

segregating the company into two entities, thereby disallowing the set off of losses, is incorrect and is not according to law. In para no.5.1.1, Ld. CIT(A) has held as under:

“5.1.1 Grounds No. 1 to 5 are inter-connected and relate to the primary issue of disallowance of set-off of losses of Permanent Establishment (PE) with the Royalty and FTS earned by the Head Office (HO). On perusal of assessment order and submission made by the appellant, following findings have emerged:

(a) On perusal of the assessment order, it is noted that the Ld. AO has tried to segregate the appellant into two entities while disallowing the set off of losses, without appreciating that the appellant is a foreign company having a single Permanent Account Number: AABCI2013D, which has been duly allotted by the Income-tax Department.

(b) The appellant has also been filing its tax returns using the same PAN, the incomes of the appellant have been assessed under the single PAN and the Ld. AO has been accepting the position adopted by the appellant in prior assessments completed for A. Ys. 2008-09, 2009-10, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2017-18. The Ld. Assessing Officer has allowed set off of carried forward losses in all the above assessment years.

(c) The provisions of the Income-tax Act including the applicability of sections 70-80 of the Act, would continue to be applicable to the appellant and the appellant, being a foreign company, would also be entitled to any relief applicable under DTAA between India and Thailand. There is also no provision under the DTAA for disallowing set off of losses of PE with the income earned by HO.

(d) The Ld. Assessing Officer has relied upon the decision of ITAT in the case of M/s Iveco Spa, Italy v ADIT (ITA No 5696/Del/2012) and Sumitomo Corporation v CIT [ITA No. 714/2014]. Both these cases are silent on the issue with regard to the allowability of set off of current year or brought forward losses against incomes earned by an assessee through its HO.”

12. In view of above material facts, the findings of Ld. CIT(A) being just, fair, reasonable and legal are sustainable. The grounds of appeals being devoid of merit are dismissed.

13. Learned representatives fairly agree that whatever we decide in ITA No.2870/Del/2024 along with ITA Nos.2871/Del/2024 to 2873/Del/2024 will apply mutatis mutandis in this appeal as well as the facts and circumstances in all the other three appeals are similar/identical.

14. In the result, all the appeals of the appellant/revenue are dismissed.

Order pronounced in the open court on /07/2025.

**(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

**(VIMAL KUMAR)
JUDICIAL MEMBER**

**Dated: /07/2025
Mohan Lal**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi