IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
[DELHI BENCH : "DEHRADUN" /NEW DELHI]
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

I.T.A. No. 91/DDN/2024 (2010-11)

Dy. Commissioner of Income Tax Aayakar Bhawan, 13-A, Subhash Road, Dehradun, Uttarakhand	Vs.	Hyundai Heavy Industries Ltd C/o. Hemant Arora & CO.LLP, 1 Tyagi Road, Dehradun, Uttarakhand **PAN: AAACH5727Q**

I.T.A. No.54/DDN/2024 (2011-12)

Addl. Commissioner of Income Tax AayakarBhawan, 13-A, Subhash Road, Dehradun, Uttarakhand	Vs.	Hyundai Heavy Industries Ltd C/o. Hemant Arora & CO.LLP, 1 Tyagi Road, Dehradun, Uttarakhand
Appellant		**Respondent**

I.T.A. No. 156/DDN/2024 (2009-10)

Dy. Commissioner of Income Tax AayakarBhawan, 13-A, Subhash Road, Dehradun, Uttarakhand	Vs.	Hyundai Heavy Industries Ltd C/o. Hemant Arora & CO.LLP, 1 Tyagi Road, Dehradun, Uttarakhand

Assessee by	Sh. Jeetean Napal, CA &Ms.Pallavi, CA
Revenue by	Sh. Mohan Lal Joshi, Sr. DR
Date of Hearing	07/08/2025
Date of Pronouncement	15/10/2025

ORDER

PER YOGESH KUMAR, U.S. JM:

The captioned appeals are filed by the Revenue challenging the orders of Ld. CIT(A) dated 28/06/2024 for Assessment Year 2009-10, 29/02/2024 for Assessment Year 2010-11 and 23/01/2024 for Assessment Year 2011-12. The Appeals are clubbed and heard together.

For the sake of convenience the brief facts for Assessment Year 2010-11 as mentioned in the order of the Ld. CIT(A) are taken into consideration, which reads as under:-

" The Appellant is a limited company incorporated in Korea and is a non resident for the purpose of Income Tax Act 1961 [the Act]. The return of income for AY 2010-11 was filed on 15.10.2010 declaring a total income of Rs. 4410820. For the impugned year the assessment us 143(3) r.w.s. 144C(13) of the Actwas completed on 23.01.201 5 assessing the total income at Rs. 16,01,14,878. Against the said assessment order the Appellant preferred an appeal before the Hon'ble Income Tax Appellate Tribunal New Delhi [Hon'ble ITAT]. The Hon'ble ITAT vide its order dated 12.02.2016 set aside the matter back to the fileof the AO to allow due opportunity of hearing to the Appellant and decide the issues afresh. Accordingly notice us 143(2) of Act was issued to the Appellant on 30.08.2016 by the Ld. AO. In responsethereto the AR of the Appellant filed due submissions and represented the matter before the Ld. AO. The order under section 254 read with section 143(3) of the Act was passed on 10.01.2017 by making following additions.

a. Attribution o income from outside India revenues @ 1% of revenues Rs. 31,10,16 2
b. Levy of interest us 234B Rs. 74,42,299
c. Levy of interest us 23 4C Rs. 7,52,420
d. Levy of interest us 220(2) Rs. 3,08.813."

3. Similar additions have been made for Ay 2009-10 and 2011-12 as well vide Assessment orders dated 10/01/2017 and 15/10/2018 respectively.

4. Aggrieved by the Assessment Orders dated 15/10/2018 for A.Y 2009-10, 10/01/2017for AY 2010-11and 25/10/2018 for A.Y 2011-12, the Assessee preferred three Appeals before the CIT(A), the Ld. CIT(A) vide orders dated 28/06/2024 for A.Y 2009-10, 29/02/2024 for A.Y 2010-11 and 23/01/2024 for A.Y 2011-12, allowed the Appeals of the Assessee. As against the orders of the Ld. CIT (A), the Revenue preferred the present Appeals.

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5. In Ground No. 1 & 2 of the Revenue, the Department contended that the Ld. CIT(A) has erred in not appreciating the findings of the Assessing Officer that the Assessee's office situated in Mumbai was not simply a liaison office, but it accepted orders on behalf of Company and executed work like pre bid survey on behalf of the Company. It was also not the case that it was just a communication channel. The Ld. Department's Representative submitted that the above facts have not been properly considered by the Ld. CIT(A) in deciding the issue in favour of the Assessee, thus sought for allowing Ground No. 1 & 2 of the Revenue.

6. Per contra, the Ld. Assessee's Representative submitted that the issues as to whether Mumbai office of the Assessee is a Permanent Establishment or not has been ongoing between Assessee and Revenue for many years and the said issue has been decided in favour of the Assessee. Further submitted that, at no point of time Assessee accepted that Mumbai Liaison Office is a Permanent Establishment. Thus, sought for dismissal of the Ground No. 1 & 2 of the Revenue.

7. We have heard both the parties and perused the material available on record. The issue as to whether Liaison Office is a PE or not has been decided by the various Courts in favour of the Assessee in Assessee's own cases. The Hon'ble High Court of Uttarakhand vide Judgment dated 14/03/2019 for Assessment Year 1998-99 to 2004-05 in ITA No. 30/2011 while dismissing the Appeal of the Revenue held as under:-

> *"We see no reason, therefore, to interfere with the order of the Income Tax Appellate Tribunal to the extent it held that income of the Assessee, arising outside India, was not attributable to the Bombay office since it could not be held to be a Permanent Establishment in view of Article 5(4)(e) of the Double Taxation Avoidance Agreement."*

8. By respectfully following the ratio laid down by the Hon'ble High Court of Uttarakhand in Assessee's own case in ITA No. 30/2011 (supra), we hold that the Ld. CIT(A) committed no error in treating the Assessee's office situated in Mumbai as Liaison Office. Accordingly, we dismiss Ground No. 1 & 2 of the Revenue.

9. In Ground No. 3, the Department contended that the Ld. CIT(A) has erred in deleting the addition of Rs. 9,54,09,037/- made by the Assessing Officer, being the amount received by the Assessee during the year as FTS from various projects.

10. The Ld. Assessee's Representative submitted that the said ground is not emanating from the order of the Ld. CIT (A),the averments of Ground No. 3 is which is factually erroneous. Therefore, sought for dismissal of the Ground No. 3.

11. Per contra, the Ld. Department's Representative relying on the order of the Ld. CIT(A) sought for allowing the Ground No.3.

12. We have verified the record and found that the Ground No. 3 is not emanating from the order of the Ld. CIT(A) accordingly, the Ground No. 3 of the Revenue being mis-conceived is hereby dismissed.

13. Further, it is found that after the order of the Tribunal dated 12/02/2016, in the second round, A.O. while giving effect to the order of the Tribunal, following the Tribunals order for Assessment Year 2007-08 and 2008-09, deleted the addition on account of outside India revenues from GMR and accepted the income declared by the Assessee from inside India operations. Thus, no addition has been made by the A.O. on account of income determination for GMR Projects either on account of revenues from operation inside India or operation outside India,

therefore, even the those groundson the issue of revenue from GMR outside from India are also not emanating from the order of the Ld. CIT(A). Accordingly, finding no merits in the Ground No. 4 to 6, the same are dismissed.

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14. The Ground No. 1 of the Revenue is regarding the question as to whether Assessee's office situated in Mumbai to be treated as Permanent Establishment or not.

15. The above issue has already been decided in favour of the Assessee in A.Y 2010-11(supra) by following the ratio laid down by the Hon'ble High Court of Uttarakhand in Assessee's own case in ITA No. 30/2011 (supra). Thus, following the principals of consistency, we hold that the Ld. CIT(A) committed no error in treating the Assessee's office situated in Mumbai as Liaison Office for the year under consideration. Accordingly, Ground No. 1 is dismissed.

16. In Ground No. 2, the Department contended that the Ld. CIT(A) erred in deleting addition of Rs. 11,33,95,070/- made by the A.O. being the amount received by the Assessee during the year as FTS from various projects. The Ld. Department's Representative submitted that the Ld. CIT(A) has erred in not appreciating the findings of the A.O. that the Assessee has considered the second part of sub article 3(b) of Article 12

of India Korea DTAA, and has ignored first part of this treaty. Thus, sought for allowing the Ground No. 2 of the Revenue.

17. Per contra, the Ld. Assessee's Representative relying on the order of the Ld. CIT(A), submitted that the Assessee entered into the contract with the parties which is undisputedly involved with off-shore supply and off-shore services/supply. Further submitted that the contracts entered into by the Assessee are divisible in nature, and revenues pertaining to operations conducted outside India cannot be charged to tax in India. The Ld. Counsel relying on the Judgment of Hon'ble Supreme Court in the case of Hyundai Heavy Industries Company Limited's case [2007] 291 ITR 482 (S.C) sought for dismissal of Ground No. 3 & 4 of the Revenue.

18. We have heard both the parties and perused the material available on record. During the year under consideration, the Assessee has received a total amount of Rs. 14,04,72,459/- on account of supply of material from the contracts of following parties:-

Sl No.	***Name of the Party***	***Amount (Rs.)***
1	*Tata Motors Ltd.*	*11,48,17,479*
2	*Nissan Motor India Pvt. Ltd.*	*2,19,01,169*
3	*SAIL*	*12,12,932*
4	*NTPC*	*25,40,879*
	TOTAL	***14,04,72,459***

19. It is the case of the Assessee that the supplies from outside India were made outside the territorial jurisdiction of India and had no nexus with a PE in India and as per the provisions of Section 9(1) (i) of the Act, there is no business connection between off shore supplies and the activities carried out within India, therefore, the income for the said supplies are not taxable in India either under DTAA or domestic law. The Ld. CIT(A) relied on Assessee's own case reported in (2007) 291 ITR 482 (S.C) and the order of the Tribunal in Assessee's own case for Assessment Year 2005-06 and 2006-07 reported in (2011) 14 Taxmann.com 26. In view of the above, in the absence of any contrary judicial precedents, we find no reason to interfere with the findings and the conclusion of the Ld. CIT(A), accordingly, Ground No. 2 of the Revenue is dismissed.

20. In Ground No. 3, the Revenue contended that the Ld. CIT(A) has erred in considering the Assessee's interest income from its AE, on delayed payment without appreciating the findings of the A.O. that there is no denying fact that the interest earned by the Assessee arises to its AE through its PE and hence is clearly covered under para 5 of Article 12 of DTAA. The Department's Representative relying on the assessment orders, sought for allowing the Ground No. 3 of the Revenue.

21. Per contra, the Ld. AR relying on the findings and the conclusion of the Ld. CIT(A), sought for dismissal of Ground No.3.

22. We have heard both the parties and perused the material available on record. The Ld. CIT(A) while deleting the addition held as under:-

> *" The appellant has made detailed written submission on the aforesaid issue. The interest income received by Appellant from its AE is undisputedly arising from debt-claim as defined in Article 12(4) of the DTAA. Also, it is not in dispute that in respect of services rendered to HCEIPL the appellant does not have a PE in India. Thus the exclusionary clause 12(6) is also not applicable to the present case. Hence the Appellant is entitled to beneficial rate of 15% taxation prescribed in Article 12(2) of the DTAA and the Ld. A.O. h as erred in bring to tax the said interest income at MMR."*

23. In the absence of any contrary material on record, as the Assessee does not have PE in India, the exclusionary clause 12(6) of DTAA does not applicable. Accordingly, we dismiss Ground No. 3 of the Revenue.

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24. The Ground No. 1 and its sub ground of the Revenue is regarding the question as to whether Assessee's office situated in Mumbai to be treated as Permanent Establishment or not.

25. The above issue has already been decided in favour of the Assessee in A.Y 2010-11(supra) by following the ratio laid down by the Hon'ble High Court of Uttarakhand in Assessee's own case in ITA No. 30/2011 (supra). Accordingly, we hold that the Ld. CIT(A) committed no error in treating the Assessee's office situated in Mumbai as Liaison Office for the

year under consideration. Accordingly, Ground No. 1 and its sub ground are dismissed.

26. Ground No. 2 is regarding considering the Assessee's interest income from its AE, on delayed payment. The Ld. Department's Representative submitted that the Ld. CIT(A) has not appreciated the findings of the A.O. that there is no denying fact that the interest earned by the Assessee arises to its AE through its PE and hence is clearly covered under para 5 of Article 12 of DTAA. The Department's Representative relying on the assessment orders, sought for allowing the Ground No. 2 of the Revenue.

27. We have already decided the identical ground in Assessment Year 2011-12 (supra), by following the same, we hold that as Assessee does not have PE in India, the exclusionary clause 12(6) of DTAA does not applicable. Accordingly, we dismiss Ground No. 2 of the Revenue as devoid of merit.

28. In the result, appeals of the Revenue in ITA Nos. 91/DDN/2024, 54/DDN/2024 and 156/DDN/2024 are dismissed.

Order pronounced in the open court on 15th October, 2025

Sd/ **Sd/-**

(MANISH AGARWAL) **(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**
Date:- 15 .10.2025

R.N, Sr.P.S*

Copy forwarded to:
1. **Appellant**
2. **Respondent**
3. **CIT**
4. **CIT(Appeals)**
5. **DR: ITAT**

ASSISTANT REGISTR
ITAT, NEW DELHI