IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN

Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Manish Agarwal, Accountant Member

ITA No. 128/DDN/2025 : Asstt. Year: 2022-23

R and B Falcon A Pty Ltd., Office No. 402, 4th Floor, One Boulevard Lake, Boulevard Road, Hiranandani Business Park, Powai Lit S.O. Mumbai-400076	Vs	ACIT, Circle-2, Dehradun, Uttarakhand-248001
(APPELLANT)		(RESPONDENT)
PAN No. AACCR5345Q		

Assessee by : Sh. Amit Arora, CA &
Sh. Vishal Mishra, CA
Revenue by : Sh. Mohan Lal Joshi, Sr. DR

Date of Hearing: 15.01.2026		**Date of Pronouncement: 30.01.2026**

ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2022-23, arises against the CIT(A)-3, Noida's DIN & order No. ITBA/APL/S/250/2025-26/1076592383(1) dated 30.05.2025, in proceedings u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961.

2. Heard both the parties at length. Case file perused.

3. Coming to the assessee/appellant sole substantive ground raised herein, we notice during the course of hearing that it is aggrieved against both the learned lower authorities respective

findings rejecting it's claim seeking assessment of it's interest on income tax refund amounting to Rs.2,02,05,584/- to be chargeable to tax @15% under article 11 of the India-Australia Double Taxation Avoidance Agreement ("DTAA"). Both the learned representatives invite out attention to the CIT(A)'s lower appellate discussion upholding the Assessing Officer's action as under:

> *"5.1 Ground Nos. 1& 2*
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> *5.1.1 Vide these grounds of appeal, the appellant has contended that the AO has erred in holding the receipts aggregating to Rs. 2,02,05,584/- on account of interest on income-tax refund be taxed at a flat rate of 40 percent as opposed to the claim of the Appellant that the same be taxable at the rate of 15 percent in terms of Article 11 of India-Australia Double Taxation Avoidance Agreement. Further, the appellant has contended that the AO has erred in alleging the interest income to be effectively connected to a Permanent Establishment in India without appreciating that the Appellant did not have any Permanent Establishment in India.*
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> *5.1.2 The appellant in its ITR has claimed interest on income-tax refund of Rs. 2,02,05,584/- to be chargeable to tax @ 15% under Article 11 of India-Australia Double Taxation Avoidance Agreement. The AO found that the interest on refund received by the appellant pertains to AY 201011 and 2014-15 wherein the appellant had business operations in India and PE existed in India for AY 2010-11 and 2014-15. Hence, the AO passed the assessment vide order under section 143(3) r.w.s 144C(3) of the Act dated 28.12.2022, at an income of Rs. 2,02,05,584/- charging the same to tax @ rate applicable to business income.*
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> *5.1.3 I have carefully gone through the facts of the case, submissions of the appellant and judicial pronouncements on the issue. It is an undisputed fact*

that the appellant had business income in India and had existence of PE in India in AY 2010-11 and 2014-15 (as stated by the appellant itself in its submissions that PE existed upto August 2013). It is also an undisputed fact that the refund pertains to AY 2010-11 and 201415 for which years the appellant had PE in India. It is also a fact that in the instant year i.e. AY 2022-23, when the interest on refund is received, the appellant did not have PE in India. Hence there are two questions which need to be decided:

(A) whether interest on refund is business income (as held by the AO) or income from other sources (as claimed by the appellant); and

(B) whether non-existence of PE in AY 2022-23 changes the nature of interest of income as decided in discussion w.r.t. para (A) above.

5.1.4 With regard to the first issue (A) as to whether interest on refund is business income or income from other sources, the issue has been discussed at length by the Hon'ble High Court of Uttrakhand in the case of BJ services Company Middle East Limited Vs ACIT. The Hon'ble jurisdictional HC vide order dated 19.05.2015 reported at 60 taxmann.com 246 (Uttarakhand) has held that interest on income tax refund u/s 244A of the Act is business income as this interest is effectively connected with the Permanent Establishment (PE) of the appellant in India. The relevant extract of the observation of the hon'ble HC is reproduced hereunder for ready reference:

> *"..6. The agreement is one for avoidance of double taxation and prevention of fiscal evasion between United Kingdom of Great Britain and Northern Ireland. Since we are concerned with only Article 12 of the Treaty which deals with interest, we refer to the relevant portions which are Clause 1, 2 & 6 of Article 12 of the Treaty.*
>
> *"1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
>
> *2. However, such interest may also be taxed in the Contracting State in which it arises and accordingly to the law of that State, provided that where the resident of the other Contracting State is the beneficial owner*

of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the disinterest.

6. The provisions of paragraphs 1, 2 and 3(a) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business profits) or Article 15 (Independent personal services) of this Convention, as the case may be shall apply."

7. We will consider whether there is any merit in the contention of the appellant that the appellant should have been taxed at the rate of 15 per cent on the gross amount of the interest under Clause 2 of Article 12. Under Clause 1 of Article 12, interest arising in a Contracting State and paid to the resident of the other Contracting State may be taxed in the other State. In the facts of this case, interest which was received in India can be taxed in England. However, Clause 2 provides that the said interest can also be taxed in the Contracting State in which it arises (which in this case is India) as tax was paid by the Government of India in the Income Tax Department on the excess tax paid on behalf of the assessee/appellant's employees. It is to be taxed according to the law in India, namely, the Income Tax Act, 1961, as it stands. The limitation which is cast is that when the beneficial owner of the interest so charged is a resident of the other State which means that since the appellant is resident of England, the tax so charged should not exceed 15 per cent of the gross amount of the interest. Therefore, the appellant would contend that the tax should have been charged at 15 per cent of the interest received which the appellant became entitled to on the basis of excess tax paid.

8. As matters stood there if there was no other provision to consider, the appellant would indeed be justified in offering 15 per cent to taxation. But if we come to Clause 6, we notice that Clause 6 expressly provides that provisions of paragraph 1, inter alia, will

not apply, if the beneficial owner of interest (the appellant in this case) is the resident of the Contracting State carries on business in the other Contracting State (in India) in which the interest arises through a permanent establishment situated therein. There is not much dispute raised before us that the appellant was indeed carrying on business through a permanent establishment in India. Since the word 'or' figures immediately thereafter, we need not be concerned with the further provisions as the requirement of the Clause that interest arises through a permanent establishment situated therein as fulfilled in this case. To continue with the requirement of Clause 6 of Article 12, it contemplates that the debt claim in respect of which interest paid is effectively connected with such permanent establishment on fixed rates. In this case, appellant paid excess tax on behalf of its employees. The Income Tax Officer, after assessment, apparently has ordered refund. There was the delay and interest was paid under the Act at the statutory rate fixed. So there arises a debt claim and the interest is effectively connected with the permanent establishment on fixed rates. In such an eventuality, Clause 6 of Article 12 provides that the provisions of Article 7, which relate to Business profits, or Article 15 (Independent personal services) of this Convention, as the case may be, shall apply. This will be assessed as business profits and in regard to business profits, the rate of tax is 48 per cent. It is on the said basis that, in fact, the Assessing Officer in the first assessment and also in the further assessment after proceedings under Sec. 147 of the Act had assessed the appellant. This assessment has been upheld by the First Appellate Authority as also by the Tribunal.

9. We would think that in this analysis of the provisions of the Clauses of the Treaty, there is no error as such committed by the Assessing Officer as confirmed by the First Appellate Authority and the Tribunal and, therefore, the questions of law as framed must necessary be answered against the appellant in all the cases and we do so….”

Vide the above order, the Hon’ble HC has held that the interest paid to the assessee on its income tax refund is a business income and therefore is taxable at the applicable rate to business profits (which was 48% then)

instead of 15%. Since, the ruling is of Hon'ble jurisdictional HC, the same is applicable to the instant case as nature of income is same.

5.1.5 The second question (B) that comes up for consideration is that whether treatment of interest on refund will change as the year in which the interest has been received, the appellant did not have a PE in India. In this context, we need to refer to the provisions of India Australia DTAA. Article 11 of India Australia DTAA reads as under:

ARTICLE 11-INTEREST

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises, but does not include interest referred to in paragraph (1) of Article 8.

4. The provisions of paragraphs (1) and (2) shall not apply if the person beneficiary entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement."

On going through Clause (4) of Article 11 above it is evident that if the debt-claim in respect of which the interest is paid is effectively connected with such PE, then the interest shall be taxable under Article 7 which relates to business income.

5.1.6 In the instant case, the interest on refund is inextricably linked to business activity carried by the PE in India. Hence, even though the PE no longer exists in the year of receipt, the income remains effectively connected to the erstwhile PE. Accordingly, under the effectively connected clause of Article 11(4) of India Australia DTAA, the interest on refund is liable to be taxed under Article 7 of the DTAA.

5.1.8. In view of the above discussion, I find no infirmity in the order of the AO. The grounds of appeal raised are dismissed."

4. Learned departmental representative draws strong support from the above extracted CIT(A)'s lower appellate discussion rejecting the assessee's claim in light of hon'ble jurisdictional high court judgment (supra). We make it clear that the clinching fact about the assessee not having any PE in India in the year of receipt interest on income tax refund i.e. A.Y. 2022-23 is not in dispute as well. The Revenue's case before us is that since the tax refunds in question pertain to the preceding assessment years 2010-11 and 2014-15 when it indeed had a permanent establishment ("PE") in India, it is not entitled for the impugned relief.

5. We find no merit in the Revenue's foregoing vehement submissions in light of this tribunal's decision dated 08.06.2021 in Dolphin Drilling Ltd. Vs. DCIT ITA Nos. 5219 & 5220/Del/2016 settling the issue that "PE" of a non-rsident assessee has to be seen in the year of receipt of interest income as follows:

> *"12. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that assessee filed its return of income on 27/9/2013 declaring a total income of Rs. 1, 98,44,274/– . During the year the assessee has received interest u/s 244A of the Act amounting to Rs 198,44,274/– and computed the tax thereon at the rate of 40% as applicable to foreign companies as business income. Subsequently in the computation itself assessee has claimed relief under article 12 of the Indo United*

Kingdom Double Taxation Avoidance Agreement of ₹ 5,362,717/– and computed the tax payable at ₹ 29 76,641/– resulting into claim of refund of ₹ 5,363,973/–. It appears that the assessee has claimed income to be taxable under the head income from other sources by computing income at the rate of 15% under article 12 of the Indo UK DTAA. Assessee submitted before the learned assessing officer, that assessee did not carry out any business activity in India during the year; it does not have any PE in India. Therefore, the interest income earned by it cannot be held to be effectively connected with permanent establishment in India. The learned assessing officer held that the assessee had a permanent establishment in India by way of article 5 (1) of the Double Taxation Avoidance Agreement in the form of a project office in India. The AO further held that the interest income u/s 244A of The Income Tax Act is not covered by article 12 (1) & (2) of the Double Taxation Avoidance Agreement. Hence, he rejected contention of the assessee that interest on income tax refund received u/s 244A of the income tax act is not chargeable to tax in India. He relied on the decision of the honourable jurisdictional High Court in case of BJ services company Middle East limited versus Asst Commissioner of income Tax and held that the decision applies to the assessee squarely. Thus, he charged the interest on income tax refund received of Rs 198,44,274/– to tax at the rate of 40%.

13. The learned CIT – A held that it is not denied that the assessee had a project office in India. That project office constituted a permanent establishment of the appellant in India. He further found that such project office established to execute contract relating to projects in India and activities relating to such projects. He further considered the provisions of article 5 (2) of The Double Taxation Avoidance Agreement and held that the 'project office' also constitute a permanent establishment. He further referred to the decision of the coordinate bench in Micoperi SPA Milano [82 ITD 369] wherein it has been held that the 'project office' constitutes a permanent establishment. He further held that the assessee had the project office in the previous years also therefore, it cannot be said that the preparatory or auxiliary services were being carried out from that office. He therefore after considering the all these facts followed the decision of the honourable jurisdictional High Court in BJ services company Middle

East limited to uphold the action of the learned assessing officer.

14. Therefore, now it is required to examine whether assessee has a permanent establishment in India or not. If assessee has a permanent establishment in India, the orders of the lower authorities are required to be upheld. However if the assessee does not have a permanent establishment then the stand taken by the assessee needs to be upheld.

15. Even at the cost of repetition, the facts need to be re-stated. Assessee had entered into a contract with reliance industries Ltd on 29th of March 2006. Assessee was required to provide and eventually moored semisubmersible deepwater drilling rig. The ring was intended to be used for exploratory and redevelopment using subsea completion. The scope of work includes drilling, sidetracking, testing, completing and abandoning wildcat/exploratory; /appraisal/development wells as well intentionally drilled deviated wells. At the time of entering the contract with reliance, the drilling rig was undergoing up gradation in Rotterdam. The upgraded the rig was to be ready for voyage from Rotterdam by 31 August 2007 for commencement of work under the contract. The contract work was scheduled to commence after November 2007 for 36 months post mobilization of the rig. However, the commencement of execution was delayed. In between reliance permitted the assessee to executed contracts with other companies for undertaking the drilling operations outside India. Thus assessee entered into a tripartite agreement on 23 July 2009 with reliance and others whereby reliance assigned its rights and obligations Under the drilling contract reliance exploration and production for drilling a well in Oman stop the assessee received a letter of intent from Maersk oil Brazil limited for a bareboat charter agreement and service agreement for the employment of the rig in Brazil. Reliance industries Ltd allowed the assessee to enter into a contract with that company and suspended its original agreement by a suspension agreement entered into on 11 June 2010. Consequent to it, the drilling rig started its movement to leave Indian waters on 2 June 2010. It received a port clearance, rivers, and certificate on 5 June 2010. On completion of the contract with Brazil Company, RILL indicated its interest to bring the contract to an early termination and agreed to pay compensation to the assessee for early

termination of the contract, which was entered into on 28th of November 2011. Thus, the permanent establishment of the assessee seized to exist in India from the date on which the drilling rig moved out of India i.e. 5 June 2010. Therefore, there is no activity carried on by the assessee during the financial year 2012 – 2013 in India. Even the assessment order also does not have any income of the assessee chargeable to tax in India except interest on income tax refund received by the assessee. However, orders of lower authorities show that assessee has a project office in India. This was also not denied by the assessee as it is evident from paragraph number 5.5 of the order of the learned CIT – A. Now the question arises that whether the project office in itself can be said to be a permanent establishment of assessee in India through which the business of the assessee is being carried on. It is for the learned assessing officer to bring on record certain evidences to show that assessee has a permanent establishment in India. The AO has to show that assessee is carrying on any business through that place of business i.e. project office income of which is chargeable to tax in India. No evidences have been brought on record by AO. Against this, the assessee has shown that its rig moved out of India in earlier years, there is no income of the project office as there is no business being carried out in India through that project office. In fact, no activities are carried out from that project office. Thus the issue squarely covered in favour of the assessee by the decision of the honourable Supreme Court in DIT versus Samsung heavy industries Ltd [2020] 117 taxmann.com 870 (SC)/ [2020] 272 Taxman 377 (SC).This is also gathered from the assessment order itself where except the interest on income tax refund, there is no other income chargeable to tax in India of the assessee. Thus, merely having a project office in India cannot result into a permanent establishment of the assessee in India. Therefore, it is now apparent that assessee does not have a permanent establishment in India. In absence of permanent establishment, the decision of the honourable High Court in BJ Services Company Middle East limited versus Asst Commissioner of income tax (supra) does not apply. The honourable High Court in 268 CTR 467 in Director Of Income Tax versus Pride Foramer in paragraph number two after reading article 12 in case of India France Double Taxation Avoidance Agreement held that plain reading of the provisions of the Double Taxation

Avoidance Agreement makes it absolutely clear that some articles (1) and (2) will apply interalia when the recipient of interest does not have a permanent establishment in the country where he has received the interest. Therefore, in the present case the assessee is entitled to take the benefit of article 12 of the Double Taxation Avoidance Agreement, as there is no permanent establishment in India. The article 12 of DTAA provides that,

> *1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
>
> *2. However, such interest may also be taxed in the Contracting State in which it arises and accordingly to the law of that State, provided that where the resident of the other Contracting State is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest."*

6. The Revenue could hardly dispute that the learned co-ordinate bench has already considered both hon'ble apex court landmark decision in DDIT Vs. Samsung Heavy Industries Ltd. (2020) 117 taxmann.com 870 (SC) as well as that of hon'ble jurisdictional high court in BJ Services Company Middle East Ltd. Vs ACIT (supra). We thus find merit in the assessee's instant sole substantive ground and accept the same in very terms.

7. No other ground or argument has been pressed before us.

8. This assessee's appeal is allowed in above terms.

Order Pronounced in the Open Court on 30/01/2026.

Sd/-	Sd/-
(Manish Agarwal)	**(Satbeer Singh Godara)**
Accountant Member	**Judicial Member**

Dated: 30/01/2026

Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR