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% 24.01.2011

Present: Mr. Ajay Vohra with Ms. Somnath Shukla and Mr. Somnath Shukla, Advocates for the assessee/appellant.
Mr. Sanjeev Sabharwal, Sr. Standing Counsel for the Revenue/respondent.

(COMMON ORDER**)**

+**ITA Nos.1040, 1041/2009**
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The only issue raised in these appeals which are filed by the same assessee but for the different assessment years is as to whether the assessee is running permanent establishment in India or not. We find that all the Authorities below, after considering various facts, have arrived at the finding of fact that the assessee is having permanent establishment in India.

However, limited grievance of the learned counsel for the appellant is that even when the Income Tax Appellate Tribunal has accepted that the income chargeable to tax shall be 15% of the income earned in India, in Para 6 of the impugned order, the ITAT has sent the matter back to the Assessing Officer to consider the question of apportionment of the expenses. Para 6 reads as under:

> "6. Apropos the other issue i.e. estimates about expenditure of profits of PE in India, we are unable to accept the contention of learned counsel that the issue is covered in its favour, inasmuch as the Tribunal gave above decision on the peculiar facts of that year. Looking at the globalization, the share of Indian travelers in terms of booking has increased considerably besides the extent of assessee's expenses is not known, it has been informed that such expenditure cannot be apportioned summarily. In view thereof, we are inclined to set aside the issue

about estimate of taxability of Indian PE back to the file of Assessing Officer to consider our observations and above ITAT and High Court judgment to decide the same afresh in accordance with law and above observations after giving the assessee an opportunity of being heard."

It is not in dispute that as per the judgment of this Court in the case of ***Director of Income Tax*** Vs. ***Galileo International Inc.*** [**224 CTR 251**], the income to the extent of 15% of the revenues in India is be charged to tax. This income is subject to the deduction of expenditure. We clarify that it is that expenditure which the Tribunal has referred to and not the issue of 15% chargeable to tax.

With the aforesaid clarifications, these appeals are disposed of.

A.K. SIKRI, J.

M.L. MEHTA, J.

JANUARY 24, 2011
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