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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 811/2023**

**THE COMMISSIONER OF INCOME TAX –
INTERNATIONAL TAXATION -3**

..... Appellant

Through: Mr Ruchir Bhatia, Senior Standing
Counsel.

versus

SMITH DETECTION ASIA PTE LTD.

..... Respondent

Through: Mr Vishal Kalra, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

22.12.2023

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[Physical Hearing/Hybrid Hearing (as per request)]

1. This appeal concerns Assessment Year (AY) 2019-20.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 22.02.2023, passed by the Income Tax Appellate Tribunal [in short “Tribunal”].
3. The only point according to Mr Ruchir Bhatia, learned senior standing counsel, appearing on behalf of the appellant/revenue, which arises for consideration is: Whether the Tribunal was right in deleting the addition made amounting to Rs.104,55,60,800/- concerning the supply of off-shore equipment?
4. The record shows that the respondent/assessee had received monies from the following entities:
 - (i) Cochin International Airport Ltd.
 - (ii) Smith’s Detection Systems Pvt. Ltd.
 - (iii) Airport Authority of India, and
 - (iv) Chandigarh International Airport Ltd.

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5. Insofar as monies received from Cochin International Airport Ltd. was concerned, the respondent/assessee offered the same for levy of tax by treating them as business receipts.

5.1 Likewise, money received from Smith's Detection Systems Pvt. Ltd. was offered for imposition of tax by treating the same as royalty/fee from Technical Services.

5.2 Insofar as receipts from Airport Authority of India and Chandigarh International Airport Ltd were concerned, which cumulatively amounted to Rs. 104,55,60,800/-, the respondent/assessee did not offer the said amount for levy of tax as according to it, it did not have a Permanent Establishment (PE) in India.

6. Besides this, as stated above, there was a small amount which was received as interest from Canara Bank. The record discloses that the Assessing Officer (AO) added Rs. 8,57,074/- towards interest received from Canara Bank.

6.1 The addition made in that behalf has been confirmed by the Tribunal. The respondent/assessee has not filed any appeal *qua* the said addition.

7. Therefore, as indicated above, the only aspect which the Court is required to examine is the addition made with regard to monies received from Airport Authority of India and Chandigarh International Airport Ltd. against off-shore supplies.

8. Mr Bhatia says that the Project Office located in Cochin helped in progressing the off-shore supplies. In this context, Mr Bhatia has drawn our attention to the following observations made in the order dated 07.06.2022 passed by the DRP:

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“Objections no. 2 and 3 are taken up together. During the year, assessee had receipts from M/s Cochin International Airport Ltd. which have been offered to tax as business receipts. Thus, the assessee has submitted that it has PE in existence in India. However, the assessee has contended that its operations pertaining to Airport Authority of India and Chandigarh international Airport Ltd. are not connected with the PE. AO in its order has argued that assessee has business activities in India as against business with in India, as assessee has regular and continuous business activities in India. From the documents supplied by the assessee during the DRP proceedings it has been observed from page 369 that the communication with M/s Chandigarh International Airport Ltd. is in person. Same is also observed from page 377 of the paper book. This shows that the local office was involved in the contract pertaining to CIAL and was continuously pursuing the contract. This clearly negates a contention of the assessee that the PE was not involved in the operations for CIAL. Accordingly it is observed that the PE in India is involved in all the contracts in the country. These grounds are dismissed.”

9. Since, the documents referred to in the aforesaid extract of the DRP’s order have not been placed on record, Mr Bhatia seeks accommodation in that behalf.

9.1 Leave is granted to Mr Bhatia to place the relevant documents, including those mentioned in the DRP’s order, on record.

10. List the above-mentioned appeal on 02.02.2024.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 22, 2023

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[Click here to check corrigendum, if any](#)

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