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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 04.12.2023*

+ **ITA 681/2023 & CM No.62184/2023**

COMMISSIONER OF INCOME TAX (INTERNATIONAL  
TAXATION)-3 ..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing  
Counsel.

versus

RICARDO U.K. LIMITED ..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

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

**RAJIV SHAKDHER, J. (ORAL):**

1. This appeal concerns Assessment Year (AY) 2016-17.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 17.02.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. To adjudicate upon the instant appeal, the following broad facts are required to be noticed:
4. The respondent/assessee is a company which was incorporated under the laws of United Kingdom (UK). The respondent/assessee is a tax resident of UK, in terms of Article 4 of the India and UK Double Taxation Avoidance Agreement [in short, "DTAA"].
5. The core business of the respondent/assessee concerns providing testing services to its clients, concerning transmission systems designed for



automobiles at its centers located in U.K.

6. In the period in issue, the respondent/assessee had filed its Return of Income (ROI) in which it declared its income as “nil”. The stand taken by the respondent/assessee was that the income earned by it from customers located in India was not taxable.

7. The record shows that the Assessing Officer (AO) concluded that the respondent/assessee had a Permanent Establishment (PE) in India in the form of its subsidiary, i.e., Ricardo India Pvt. Ltd. [hereafter referred to as “Ricardo India”].

8. Based on this, the AO proceeded to attribute 50% of the business profits by applying the global profit ratio.

9. The respondent/assessee being aggrieved, carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”]. The CIT(A), however, sustained the view taken by the AO.

10. It is in this background that the respondent/assessee preferred an appeal with the Tribunal. Before the Tribunal, the respondent/assessee had, *inter alia*, expanded two submissions.

10. First, that the attribution of profits at the rate of 50% to the India centre was unreasonable and excessive.

11. Second [which was an alternative plea made without prejudice to the first submission] that the respondent/assessee had been adequately compensated/remunerated on an Arm’s Length basis.

11.1 In other words, the argument was that if the commission/remuneration paid to the assessee is reduced from the profits attributed to the PE, no further attribution could be made.

11.2 In support of this plea, reference was, *inter alia*, made to the following judgments:



- (i) *DIT v. Morgan Stanley & Co. Inc.*, 292 ITR 416 (SC).
- (ii) *E-Funds IT Solution Inc. v. DIT*, 399 ITR 34 (SC).
- (iii) *DIT v. Honda Motors Co. Ltd.*, 255 taxman 72 (SC).

12. As far as the second issue is concerned, the Tribunal made note of the following information furnished on behalf of the respondent/assessee with regard to the profits attributed to the PE in the AY in issue and those that preceded the same and the commission/remuneration paid to it on Arm's Length basis:

<b>Assessment Year</b>	<b>Profits attributed to PE (A)</b>	<b>Commission/remuneration paid on arm's length basis (B)</b>
2009-10	1,46,24,821/-	3,31,16,923
2010-11	38,97,594/-	3,36,21,632
2011-12	63,30,619/-	4,00,05,437
2012-13	1,00,91,845/-	4,09,81,100
2013-14	1,21,89,053/-	4,10,77,874
2014-15	91,24,923/-	4,28,58,978
2015-16	90,02,297/-	5,69,29,447
2016-17	4,50,38,195/-	6,80,06,297

13. The record shows that the Tribunal has returned a finding of fact that the respondent/assessee does not dispute that it had a fixed place PE in India in the form of Ricardo India.

14. *Inter alia*, what persuaded the Tribunal to rule in favour of the respondent/assessee is the other aspect which was that if the commission/remuneration paid to Ricardo India was reduced from the profit attributed to the PE, then no further attribution could have been made.

14.1 In this regard, the following finding of fact returned by the Tribunal being apposite is extracted hereafter:

*"15. So, we are of the considered view that when we deduct commission/remuneration from, the RIPL from the profits attributed to the*



*PE, no taxable income left in the hands of PE. Consequently, addition made by the AO/CIT (A) is not sustainable in the eyes of law.*

16. *Decision rendered by the coordinate Bench of the Tribunal in case of **Amadeus Global Travel Distribution S.A.** (supra), affirmed by the Hon'ble Delhi High Court, by relying upon the decision in case of **DIT vs. Galileo International Inc.** (supra) has been further followed by the coordinate Bench of the Tribunal in assessee's own case bearing **ITA No.4906/Del/2010 for AY 2007-08 vide order dated 26.10.2020.***

17. *In view of what has been discussed above, we are of the considered view that when RIPL, a domestic subsidiary company, has already been remunerated at arm's length no further attribution of profit to PE would be warranted. Even otherwise by following the order passed by the coordinate Bench of the Tribunal in assessee's own case for AY 2007-08 (supra), when we deduct the remuneration/commission paid to RIPL from the amounts of profit attributed to the PE as detailed in para 11 of this order, no taxable income left in the hands of the PE. Consequently, additions made by the AO and confirmed by ld. CIT(A) are ordered to be deleted being not sustainable in the eyes of law. Consequently, all the appeals filed by the assessee are hereby allowed."*

15. Given the finding of fact returned by the Tribunal that no further profit could be attributed if commission/remuneration paid to Ricardo India is adjusted against the profit attributed to the PE, we are not inclined to interfere with the impugned order.

16. According to us, no substantial question of law arises for our consideration.

17. The appeal is, accordingly, closed.

18. Consequently, the pending application shall also

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**DECEMBER 4, 2023**

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