

ITAT Delhi rejects the allegation of constitution of Permanent Establishment of foreign enterprise having subsidiaries in India sans satisfaction of disposal test

The Delhi Bench of Income tax Appellate Tribunal (“Tribunal”), in its recent ruling¹, allowed the appeal of the foreign company (“taxpayer”) thereby rejecting the allegation of tax authorities on the issue of constitution of Permanent Establishment (“PE”) in India, which will have significant bearing on the tax positions taken by multinational companies having subsidiaries in India.

The taxpayer, a Chinese company, made offshore sales/ supply of goods to its step-down subsidiary in India², which is engaged in the business of production and sales of passenger cars. The Indian subsidiary (“MG”), at its manufacturing plant located in Gujarat, assembled the cars and sold to customers in India.

The taxpayer also seconded some of its employees to MG who were working solely and exclusively for MG as their employees and under the guidance and supervision of MG. The tax authorities contended that the taxpayer has (i) Supervisory PE, alleging that the seconded employees were engaged in supervisory activities of MG’s business and (ii) Fixed Placed PE alleging that the manufacturing plant of MG was at the disposal of the taxpayer, in India.

On the question of constitution of Supervisory PE, the Tribunal observed that the tax authorities erred in alleging the taxpayer through its employees is supervising the activities of MG in India, merely for the reason that highly skilled employees have been deputed/ seconded by the taxpayer to its step-down subsidiary. The Tribunal relying upon the decision³ of Delhi High Court observed that since the deputed employees were on the payrolls of MG and were working solely and exclusively for MG, the said employees does not constitute supervisory PE of the taxpayer in India.

¹ SAIC Motor Corporation Limited v. ACIT: ITA No. 1191/Del/2025

² MG Motor India Private Limited

³ PCIT vs Samsung Electronics CO. Ltd. 170 taxmann.com 417 (Del.)

On the question of constitution of Fixed place PE, the Tribunal observed that satisfaction of the test laid down by the Supreme Court⁴ i.e. the disposal test is imperative to establish that an enterprise has a fixed place PE in India. On facts, it was observed that the taxpayer supplied goods to MG in knocked down condition which is assembled in India by MG and sold to the Indian customers. It was categorically held by the Tribunal such an arrangement cannot be termed as a Fixed place PE unless it is established by the tax authorities that the taxpayer has a place of business in India which is at its disposal and the taxpayer has the right to use the said place and has control thereupon.

The Tribunal further held that tax authorities failed to bring substantial evidence on record to establish that the taxpayer had access to the manufacturing plant of MG, from where the business of taxpayer had been carried out. The Tribunal most importantly observed that in case the view of tax authorities is to be accepted i.e., if the assembly unit/ manufacturing plant of the subsidiary is treated as fixed place PE of the taxpayer, it would create huge disruptions in taxability of the income of the foreign entities operating in a multinational set-up.

The matter was successfully argued by Mr. Ajay Vohra, Sr. Advocate, along with Vaish team – Mr. Neeraj K Jain, Mr. Kunal Pandey, Advocates and Mr. Girish Sonthlia CA.

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⁴ Formula One World Championship Ltd vs CIT (International Taxation): 394 ITR 80 (SC)



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