SECTION 9

Income deemed to accrue or arise in India

EXTRA-TERRITORIAL INCOME

39. *Income-tax authorities in India do not have jurisdiction to bring to tax income arising from extra-territorial source, that is outside India, in respect of business carried on by foreign companies outside India [Assessment years 2008-09 to 2015-16] [In favour of assessee] [Article 12 of OECD Model Convention]*

Vodafone Idea Ltd. *v.* **Dy. DIT, (International Taxation) [2023] 152 taxmann.com 575/457 ITR 189 (Kar.)**

Assessee was an ILD license holder and responsible for providing connectivity to calls originating/terminating outside India. It had entered into an agreement with NTOs for international carriage and connectivity services. Assessee had also entered into a capacity transfer agreement with a Belgium entity (Belgacom) which had certain arrangement with Omantel for utilisation of bandwidth. Assessing Officer passed an assessment order holding assessee as 'defaulter' for failure to deduct TDS while making payments to the said company. Equipments and submarine cables were situated overseas and Belgacom did not have any 'permanent establishment' in India.

Held that the income-tax authorities have no jurisdiction to bring to tax income arising from extra-territorial source. Further, withholding tax liability should not be levied at a higher rate. Since, in the instant case, facilities were situated outside India and agreement was with a Belgium entity which did not have any presence in India, tax authorities in India would have no jurisdiction to bring to tax income arising from extra-territorial source.

Case review : *SLP dismissed in* *Dy. CIT* (*International Taxation*) v. *Vodafone Idea Ltd.* [2025] 173 taxmann.com 695/304 Taxman 594 (SC); *Dy. CIT, International Taxation* v. *Vodafone Idea Ltd.* [2025] 176 taxmann.com 626/306 Taxman 267 (SC)

PERMANENT ESTABLISHMENT (PE) [ARTICLE 5 OF OECD MODEL CONVENTION]

◆ EXISTENCE OF PE IN INDIA

40. *Where Commissioner invoked revisionary proceedings on ground that Assessing Officer had not conducted necessary inquiries to verify claim of assessee, a Singapore based company, that it had no PE in India and to verify whether any commercial substance existed in Singapore, since said tentative opinion that assessee was a conduit company formed to obtain tax benefits of India-Singapore DTAA were not put to assessee and assessee was not given any opportunity of hearing, revisionary order was to be set aside [Assessment year 2017-18] [In favour of assessee] [Article 12 of DTAA between India and Singapore]*

CIT, International Taxation - 3 *v.* **Zebra Technologies Asia Pacific Pet. Ltd. [2024] 169 taxmann.com 187/[2025] 302 Taxman 380/472 ITR 745 (Delhi)**

Assessee, a company incorporated in Singapore, was engaged in the business of wholesale distribution of electronic products as well as services related to after sales, repairs, and technical support services to customers in various parts of world including India. Assessee had received certain amount for rendition of technical support, repair, and maintenance services. Assessee filed its income tax returns for relevant assessment year, *inter alia*, claiming that it had no PE in India and was not liable to pay tax in respect of aforesaid receipts. Assessing Officer accepted assessee's claim. Commissioner opined that Assessing Officer had not verified the relevant details to ascertain whether assessee had a PE in India and to ascertain whether any commercial substance existed in Singapore or assessee was merely a conduit company. Accordingly, Commissioner initiated proceeding under section 263 by issuance of a show cause notice. Tribunal set aside the revisionary order on the ground that assessee was not afforded an opportunity to counter allegation. It was noted that Commissioner had faulted Assessing Officer for not undertaking certain enquiries. However, Commissioner had not put the issue regarding treaty shopping to assessee.

Held that there was no fault with the decision of the Tribunal in setting aside the revisionary order passed by the Commissioner.

Case review : *Zebra Technologies Asia Pacific Pte. Ltd.* v. *CIT* (*International Taxation*) [2023] 150 taxmann.com 467/201 ITD 87 (Delhi - Trib.) ***affirmed***.

◆ FIXED PLACE PE

● ***Dependant Agent PE (DAPE)***

41. *Where assessee, a foreign company, had established a liaison office in India which was followed by incorporation of a fully owned subsidiary in India, since revenue had abjectly failed to prove that said subsidiary stood conferred with authority to bind or conclude contracts on behalf of assessee, no DAPE could be said to have come into existence and, thus, assessee could not be said to have a fixed place PE in India [Assessment years 1997-98 and 1998-99] [In favour of assessee] [Article 5 of the DTAA between India and Finland]*

CIT, International Taxation *v.* **Nokia Network OY [2025] 171 taxmann.com 757/479 ITR 515 (Delhi)**

Assessee, a foreign company, was engaged in manufacture of advanced telecommunication systems and equipment. It had established a liaison office in India in 1994 which was followed by incorporation of a fully owned subsidiary, NIPL, in India. Assessee filed its return of income taking a position that offshore supplies were not exigible to tax. Assessing Officer held that NIPL was liable to be treated as Dependent Agent Permanent Establishment (DAPE). He further held that 70 per cent of total equipment revenue was attributed towards sale of hardware and 30 per cent of the same was attributed towards supply of software and same was taxed as royalty. It was noted that NIPL was pursuing an independent line of business with Indian telecom operators. Revenue had abjectly failed to prove that NIPL stood conferred with authority to bind or conclude contracts on behalf of assessee. NIPL was not generating any revenue or income for the assessee. Onshore activities of NIPL were totally disconnected with supply contracts of assessee. There was, thus, a clear and discernible distinction between the activities undertaken by NIPL and supply contracts executed by assessee.

Held, on facts, that no DAPE could be said to have come into existence and, thus, assessee could not be said to have a fixed place PE in India. Further, income derived from sale of equipment and licensing of software in India could not be taxed in the hands of assessee.

42. *Where MIPL was not performing additional function, in absence of material, it could not be taken as dependant agency PE to assessee, a non-resident company [Assessment year 2009-10] [In favour of assessee] [Article 5 of DTAA between India and Japan]*

CIT (International Taxation)-2 *v.* **Mitsui and Co. [2025] 170 taxmann.com 827 (Delhi)**

Where MIPL was not performing additional function, in the absence

of material, it could not be taken as dependant agency PE to assessee (a non-resident company) liable to tax in India.

Case review : *Dy. CIT* (*International Taxation*) v. *Mitsui & Co.* [2022] 141 taxmann.com 128/94 ITR(T) 34 (Delhi - Trib.) ***affirmed*** and ***SLP dismissed*** in *CIT International Taxation 2* v. *Mitsui and Co.* [2025] 170 taxmann.com 828/303 Taxman 331 (SC).

43. *Where Assessing Officer initiated reassessment proceedings against assessee, a US based company, on ground that assessee had fixed place PE and dependent agent PE in India and was, therefore liable to pay tax in India, since there was no tangible material to establish existence of a PE in India for relevant assessment years, impugned reassessment proceedings were to be quashed [Assessment years 2013-14 to 2016-17] [In favour of the assessee] [Article 5 of DTAA between India and USA]*

GE Renewables Grid LLC *v.* **Asstt. CIT [2025] 174 taxmann.com 460 (Delhi)**

Assessee, a US-based company, was engaged in development of power grid transmission and distribution management software and engineering services, was issued reassessment notices under section 148 based on survey findings alleging existence of dependent agent PE and fixed place PE in India. It was noted that reasons recorded for reopening did not contain any tangible material to substantiate existence of PE in India for the relevant assessment years.

Held that in the absence of any cogent material to establish existence of PE in India, reassessment proceedings initiated under section 148 were to be quashed.

44. *Where Assessing Officer initiated reassessment proceedings against assessee, a foreign company, on ground that assessee had fixed place and dependent agent PE in India and, thus, it was liable to pay tax in India, since reasons as recorded in support of formation of opinion that income had escaped assessment had not alluded to any facts specific to assessment years 2013-14 to 2017-18, impugned reassessment proceedings were to be quashed [Assessment years 2013-14 to 2017-18] [In favour of assessee] [Article 5 of DTAA between India and Finland]*

Grid Solutions OY (Ltd.) *v.* **Asstt. CIT, International Taxation [2025] 170 taxmann.com 498/303 Taxman 288/477 ITR 698 (Delhi)**

Assessee, a foreign company, was engaged in the business of manufacturing products for efficient power transmission, reactive power compensation and harmonic filtering, as well as related project engineering. Assessee had been awarded a contract by Indian company to supply equipments from outside India. Assessee claimed to have received payment of only 10 per cent advance during the year from

Indian company and, accordingly, had shown *nil* income. Assessment was completed under section 143(3) accepting income as shown by assessee. Subsequently, a survey under section 133A(2A) was conducted upon GE group which had taken over grid business of assessee in the year 2015. Based on the said survey, impugned reassessment proceedings were initiated against the assessee on the ground that the nature of activities by assessee would establish that assessee had fixed place and dependent agent permanent establishment in India and, thus, it was liable to pay tax in India on income earned from the said contract. It was noted that the Assessing Officer had merely proceeded to adopt and reiterate what was found in the course of survey.

Held that since reasons as recorded in support of formation of opinion that income had escaped assessment had not alluded to any facts specific to assessment years 2013-14 to 2017-18, impugned reassessment proceedings were to be quashed.

45. *Where Assessing Officer issued reopening notice against assessee, a foreign company, on ground that a survey conducted on a company revealed that assessee had fixed place and dependent agent PE in India and, thus, it was liable to pay tax in India, since revenue had woefully failed to establish that formation of opinion was based on any independent inquiry or material that Assessing Officer might had collated for purposes of forming an opinion as to whether income in relevant AYs had escaped assessment, impugned reassessment notice was to be set aside [Assessment years 2013-14 to 2017-18] [In favour of assessee] [Article 5 of DTAA between India and Switzerland]*

GE Grid (Switzerland) GMBH *v.* **Asstt. CIT [2025] 172 taxmann.com 227 (Delhi)**

Assessee-company was incorporated and registered under the laws of Switzerland. It was engaged in the business of supplying equipments and spares to Indian entities. A survey was conducted upon company GE in June, 2019 which revealed that assessee had a business connection as per the Income-tax Act as well as a PE in India as per India-Switzerland DTAA and, thus, a part of its business profits arising from India was to be taxed in India as income of PE. Accordingly, Assessing Officer issued a reassessment notice. It was noted that revenue had woefully failed to establish that formation of opinion was based on any independent inquiry or material that Assessing Officer might had collated for the purposes of forming an opinion as to whether income in AYs 2013-14 to 2017-18 had escaped assessment. As was *ex facie* evident from a reading of reasons which stood assigned for invoking section 148, solitary basis was survey conducted in June 2019.

Held, on facts, that the impugned reassessment notice issued against the assessee was to be set aside.

• *Liaison office*

46. *Where assessee, a US based company, engaged in business of rendering money transfer services, established a liaison office (LO) in India, since activities undertaken by LO were merely preparatory or auxiliary in character and far removed from core business of assessee, LO would not constitute a PE [Assessment years 2001-02 to 2004-05, 2006-07, 2007-08, 2011-12, 2013-14 and 2015-16] [In favour of assessee] [Article 5 of the DTAA between India and USA]*

DIT (International Taxation) *v.* **Western Union Financial Services Inc. [2024] 169 taxmann.com 461/[2025] 472 ITR 220 (Delhi)**

Assessee, a US-based company, was engaged in the business of rendering money transfer services. For the said purpose, it had entered into agreements appointing agents in India. In terms of agency agreements, assessee had established a liaison office (LO) in India. Assessing Officer opined that assessee had a fixed place of business which constituted a 'Fixed Place' PE. Tribunal held that the activities undertaken by LO were merely preparatory or auxiliary in character and, thus, it would not constitute a PE.

Held that the permission granted by RBI proscribed LO from undertaking any commercial, trading or industrial activity in India and since activities undertaken by LO were far removed from core business of assessee, tests of 'preparatory' and 'auxiliary' as embodied in Article 5(3)(*e*) stood satisfied and, thus, LO would not constitute a PE. Further, since LO did not have any authority to conclude contracts, it could not be classified as a DAPE. Furthermore, since software merely constituted a medium of communication which enabled Indian agents to talk and communicate with servers of assessee housed in USA, deployment of software would not result in creation of a PE.

47. *Where Liaison Office (LO) of assessee in India did not finalize and transact a business deal on its own or in name of head office, activities carried out by LO could not be said to be preparatory or auxiliary in nature and, thus, LO did not constitute Permanent Establishment of assessee [Assessment year 2009-10] [In favour of assessee] [Article 5 of DTAA between India and Japan]*

CIT (International Taxation)-2 *v.* **Mitsui and Co. [2025] 170 taxmann.com 827 (Delhi)**

Where liaison office of assessee, a Japanese company, in India did not finalize and transact a business deal on its own or in the name of head

office, activities carried out by LO could not be said to be preparatory or auxiliary in nature and, thus, LO did not constitute Permanent Establishment, liable to tax in India.

Case review : *Dy. CIT* (*International Taxation*) v. *Mitsui & Co.* [2022] 141 taxmann.com 128/94 ITR(T) 34 (Delhi - Trib.) ***affirmed*** and ***SLP dismissed*** in *CIT International Taxation 2* v. *Mitsui and Co.* [2025] 170 taxmann.com 828/303 Taxman 331 (SC).

48. *Where Assessing Officer issued reopening notice based on materials gathered during survey conducted for earlier assessment years at Indian LO of non-resident assessee, and held that LO constituted a fixed place PE of assessee in India and income attributable to such PE was taxable in India, since assessee did not assert that facts in relevant assessment year were distinct from those which had fallen for detailed examination of revenue and had ultimately culminated in passing of a judgment by High Court in earlier assessment years, impugned reassessment proceedings were justified [Assessment year 2009-10] [In favour of revenue] [Articles 5 and 7 of DTAA between India and Italy]*

GE Nuovo Pignone S.P.A *v.* **CIT (International Taxation) [2024] 167 taxmann.com 351/[2025] 477 ITR 659 (Delhi)**

Assessee was a non-resident company incorporated in Italy and part of GE group. A survey was conducted at LO of assessee's group company and based on material gathered in the course thereof, notices under section 148 came to be issued to various entities of GE Group including assessee for assessment years 2001-02 to 2008-09. Thereafter, Assessing Officer issued reopening notice for the relevant assessment year on the ground that LO constituted a fixed place PE of assessee in India and income attributable to such PE was taxable in India. Assessee contended that the entire reassessment action was based upon the survey report and material which had been gathered and collated for assessment years other than the relevant assessment year and could not have justifiably formed the basis for invocation of section 148. It was noted that assessee did not assert that the facts in the relevant assessment year were distinct or distinguishable from those which had fallen for detailed examination of revenue in litigation which had ensued and had ultimately culminated in passing of a judgment by the High Court in earlier assessment years holding that assessee had a PE in India.

Held that the impugned reassessment proceedings were justified.

Case review : *GE Nuovo Pignone SPA* v. *Deputy CIT* (*IT*) [2019] 101 taxmann.com 402 (Delhi - Trib.) ***affirmed***.

• *Secondment of employees*

49. *Where assessee, a South Korean company, had seconded employees in India, however, those employees were not discharging functions or performing activities connected with global enterprise of assessee and their placement in India was with objective of facilitating activities of Indian subsidiary, those employees would not meet qualifying benchmarks of a PE [Assessment years 2007-08 to 2009-10, 2011-12 to 2015-16 and 2017-18] [In favour of assessee] [Article 5 of DTAA between India and South Korea]*

Pr. CIT, International Taxation *v.* **Samsung Electronics Co. Ltd. [2025] 170 taxmann.com 417/303 Taxman 212/478 ITR 271 (Delhi)**

Assessee, a South Korean company, was engaged in manufacturing and sale of electronic goods. It had two wholly owned subsidiaries in India. Assessing Officer held that Indian subsidiary was liable to be considered as a PE *per se*. He also held that the said subsidiary met tests of DAPE as well as service PE. Tribunal noted that seconded employees were not discharging functions or performing activities connected with the global enterprise of assessee. Their placement in India was with the objective of facilitating activities of Indian subsidiary and, thus, collection of market information, collation of data for development of products, market trend studies or exchange of information would not meet the qualifying benchmarks of a PE.

Held that the Tribunal was justified in interfering with the opinion formed by DRP which had spoken of a deemed PE having come into being merely on account of secondment of employees.

Case review : *Samsung Electronics Co. Ltd.* v. *Dy. CIT* (Int. Taxation) [2018] 92 taxmann.com 171/64 ITR(T) 99 (Delhi - Trib.) ***affirmed***.

• *Strategic oversight services agreement*

50. *Where assessee, a Dubai based company, entered into an agreement with Indian hotel to provide strategic planning and 'know-how' to ensure that hotel was developed and operated efficiently, since assessee exercised pervasive and enforceable control over hotel's strategic, operational, and financial dimensions, hotel premises satisfied criteria required to be classified as a "fixed place of business" or PE within meaning of article 5(1) of DTAA and, thus, income received under SOSA was attributable to such PE and was taxable in India [Assessment years 2009-10 to 2017-18] [In favour of revenue] [Articles 5 and 7 of the DTAA between India and UAE]*

Hyatt International Southwest Asia Ltd. *v.* **Addl. DIT [2025] 176 taxmann.com 783/306 Taxman 241/478 ITR 238 (SC)**

Assessee, a company incorporated in Dubai, entered into two Strategic Oversight Services Agreements (SOSA) with ASL, India. Under the

said agreement, assessee agreed to provide strategic planning and 'know-how' to ensure that hotel was developed and operated efficiently. Assessing Officer passed assessment orders taxing hotel related services rendered by assessee, *inter alia*, on the ground that assessee had a PE in India in form of place of business under article 5(1) of DTAA. High Court upheld the order passed by the Assessing Officer. It was noted from contractual provisions detailed in SOSA that assessee exercised pervasive and enforceable control over hotel's strategic, operational, and financial dimensions. It was also noted that assessee's executives and employees made frequent and regular visits to India to oversee operations and implement SOSA.

Held that the 20-year duration of SOSA, coupled with assessee's continuous and functional presence, satisfied the tests of stability, productivity and dependence and, thus, hotel premises clearly satisfied the criteria required to be classified as a "fixed place of business" or PE. Furthermore, assessee's ability to enforce compliance, oversee operations, and derive profit-linked fees from hotel's earnings demonstrated a clear and continuous commercial nexus and control with hotel's core functions which satisfied conditions necessary for constitution of a fixed place PE under Article 5(1) of India-UAE DTAA. Thus, assessee had a fixed place PE in India within the meaning of article 5(1) of DTAA and income received under SOSA was attributable to such PE and taxable in India.

Case review : *Hyatt International-Southwest Asia Ltd.* v. *Addl. DIT* [2024] 158 taxmann.com 136/297 Taxman 497/464 ITR 508 (Delhi) ***affirmed***.

◆ INSURANCE PE

51. *Where assessee, an insurance company, made payments towards reinsurance premium to Non-Resident Reinsurers (NRRs) without deducting tax at source, since brokers were acting as independent entities merely playing role of facilitators, no tax at source was to be deducted on these payments, thus, impugned payments made by assessee to NRRs could not be disallowed under section 40(*a*)(*i*) [Assessment years 2005-06 to 2010-11, 2013-14 and 2014-15] [In favour of assessee] [Article 5 of the DTAA between India and Switzerland]*

Pr. CIT - 4 *v.* **Cholamandalam MS General Insurance Company Ltd. [2025] 175 taxmann.com 452 (Mad.)**

Assessee was an insurance company carrying on reinsurance business. It made payments towards reinsurance premium to non-resident reinsurers (NRRs) without deducting tax at source. Assessing Officer disallowed such payments under section 40(*a*)(*i*) for non-deduction of TDS under section 195. It was noted that the discussion in the order

of Tribunal sat out the relevant facts making it clear that brokers were acting as independent entities merely playing the role of facilitators. Tribunal, thus, concluded that brokers did not either constitute a business connection in terms of *Explanation 2* to section 9(1)(*i*) or a Permanent Establishment in terms of article 5 of relevant DTAAs.

Held that no material was produced by the Department before the court to dislodge factual findings rendered by the Tribunal. Thus, the impugned payments made by assessee to NRRs could not be disallowed under section 40(*a*)(*i*).

◆ REASSESSMENT

52. *Where reassessment proceedings were initiated against assessee on ground that non-resident parent company and its affiliates had a business connection and a PE in India and, thus, assessee was liable to deduct tax under section 195 on payments made by it to them, since subsequent order passed under section 201(1) found that except for one, all other affiliates did not have a PE in India, impugned reassessment proceedings were to be quashed [Assessment years 2006-07 and 2007-08] [In favour of assessee] [Article 5 of OECD Model Convention]*

Honda Cars India Ltd. *v.* **Dy. CIT [2024] 166 taxmann.com 623/301 Taxman 653 (Delhi)**

Assessee-company was engaged in the business of manufacturing and selling of cars in India. It filed its return of income which was accepted and an assessment order was passed. Subsequently, a survey was conducted upon assessee and on the basis of same, reassessment proceedings were initiated against the assessee on the ground that non-resident parent company and its affiliates had a business connection and a PE in India and, thus, assessee was liable to deduct tax under section 195 on payments made by it to them and since assessee had failed to do so, provisions of section 40(*a*)(*i*) were attracted and amount claimed as expenditure was liable to be disallowed under section 40(*a*)(*i*). Assessee submitted that subsequent order dated 10-12-2018 passed under section 201(1) found that except for one, all other affiliates did not have a PE in India.

Held, on facts, that the impugned reassessment proceedings initiated against the assessee were to be quashed.

BUSINESS PROFITS [ARTICLE 7 OF OECD MODEL CONVENTION]

◆ PROFITS ATTRIBUTABLE TO PE, COMPUTATION OF

53. *Where issue regarding attribution of profit to AE on merits already stood concluded in favour of assessee by Court in earlier year, questions raised in Revenue's appeal having become academic, appeal under section 260A was not maintainable [Assessment year 2011-12] [In favour of assessee]*

CIT, International Taxation-3 *v.* **Travelport LP [2025] 179 taxmann.com 613 (Delhi)**

Assessing Officer held that assessee had a PE in India and profit of 100% was attributed to the assessee. Tribunal, however, held that the provisions of section 144C with all its sub-section did not apply to assessee, and so assessment order was void *ab initio*. Tribunal also held that even on the merits of the case, assessee had to succeed inasmuch as findings given by the Assessing Officer was totally based upon findings given in earlier assessment years and assessee was not responsible to explain recipients of receipts shown in Form No. 26AS. It was noted that in assessee's case for earlier AYs, namely, *CIT, International Taxation* v. *Travelport L.P. USA* [2024] 158 taxmann.com 351 (Delhi), it was held that since assessee had not deployed any assets in India and major part of business activities took place in USA, Appellate Authority was justified in holding that 15 per cent of assessee's profit was to be attributed to India.

Held that since the issue on merits already stood concluded in favour of assessee by Court in earlier year, questions raised in Revenue's appeal having become academic, appeal under section 260A was not maintainable.

• *Global net loss*

54. *For computing profits attributable to Indian PE of assessee, net profit margins of assessee were to be applied and since assessee recorded a global net loss in relevant assessment year, no profit/income would be attributable to PE [In favour of assessee] [Articles 5 and 7 of the India-Finland DTAA]*

CIT (International Taxation) *v.* **Nokia Solutions and Networks OY [2023] 147 taxmann.com 165/455 ITR 157 (Delhi)**

For computing the profits attributable to Indian PE of assessee, a Finland based company, net profit margins of assessee were to be applied and since assessee recorded a global net loss in the relevant assessment year, no profit/income would be attributable to PE.