



Global Business Tax Alert

Sharp Insights

The Delhi Tribunal, in the case of GE Energy Parts Inc. v. ADIT (78 taxmann.com 2), held that liaison office of one of the group entity constituted taxpayer's as well as other GE overseas entities fixed place permanent establishment ("PE") and that GE India comprising of expatriates deputed to India and employees of Indian entity constituted dependent agency PE. The Tribunal further upheld the reassessment proceedings initiated by the Assessing Officer.

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Background

- The taxpayer is a company incorporated in the United States of America ("USA") and is also a tax resident of the USA.
- The taxpayer is a part of the GE Group, which provides equipments to the customers in India relating to oil and gas business, energy business, transportation business and aviation business.
- No return of income was filed by the taxpayer. A survey under section 133A of the Income-tax Act, 1961 ("ITA") was conducted at the premises of the Liaison office ("LO") of another group company General Electric International Operations Company Inc., USA ("GEIOC").
- The Assessing Officer ("AO") issued notices under section 148 of the ITA to 24 entities of the GE Group incorporated in UK, Japan, USA, Germany, Canada, Italy, Mauritius, Singapore, etc. for different years, including the taxpayer.
- In the reassessment proceedings, the AO held that the taxpayer had, *inter alia*, a fixed place PE as well as a dependent agent PE in India. The AO deemed 10% of the value of supplies made to the customers in India as the profits arising from such supplies and 35% of such profit was attributed to the PE in India.
- There were a batch of 139 appeals by the GE group overseas entities under consideration. The GE group has chosen the taxpayer's case as the lead case and the assessment year is 2001-02.

Ruling of the Delhi Tribunal

Reassessment

The Tribunal held that the AO was justified in initiating reassessment proceedings on account of the following-

- Survey and post-survey enquiries conducted by the AO before issue of notice under section 148 of the ITA gave sufficient material for the formation of a prima facie belief that the income of the taxpayer had escaped assessment.
- The fact that the sales were made by GE overseas entities in India through GE India (expatriate employees of GE International Inc. ("GEII") located in India and employees of Indian entity, GE India Industrial Pvt. Ltd. ("GEI IPL"), engaged in providing marketing support services for offshore sales into India) there was income of the taxpayer chargeable to tax in India for which the return of income ought to have filed.

Permanent Establishment

- The Tribunal held that the taxpayer had a fixed place PE and agency PE which is discussed below:

Fixed place PE

- The premises of the LO of GEIOC were at the constant disposal of the expats, who, though on the payroll of GEII, were working in India under the direct control and supervision of GE overseas entities.
- From the Job descriptions, self-appraisals and manager assessment etc. it is evident that the expats were India Country heads or working at the top positions and GE India was conducting business of GE overseas entities in India and was directly and wholly involved in negotiating and finalizing the contracts.

- The nature of activities done by GE overseas entities and GE India, it surfaces that GE India was doing core marketing and sales activity and GE overseas entities was doing only auxiliary activities, in aid and support of the activities of the marketing activities carried out by GE India.
- The activities carried on by GE India from premises of LO were of substantial and core and not merely preparatory or auxiliary.

Agency PE

- Expats of GEII and employees of GEIPL were appointed to act as agent of multiple GE overseas entities. Although, each of them looked after more than one GE overseas entities, the fact that such entities were in one of the three broader lines of businesses of GE group, makes them dependent agents.
- The nature of activities done by GE India, which are of core nature and not merely preparatory or auxiliary, indicates its authority to conclude contracts on behalf of GE overseas entities. Thus GE India constituted agency PE of all the GE overseas entities in India.

Attribution of income

- The Tribunal accepted the attribution done by the AO of 10% of the value of supplies made to the customers in India as the profits arising from such supplies. However, attribution of 35% of such profit to the PE in India was not accepted, instead 26% of total profit in India was held as attributable holding that the activities by GE overseas entities in making sales in India is roughly one fourth of the total marketing effort.

The Tribunal held that the decision taken on all the above issues will apply to the remaining 138 appeals to the relevant extent.

Conclusion

The Tribunal held that activities carried on by the expatriates of overseas entities under supervision and control of various entities, from the premises of LO were substantial and core and thus constituted GEPI's fixed place PE. Further, GE India comprising of expatriates deputed to India and employees of Indian entity, constituted dependent agency PE even though they were negotiating and concluding contracts for several group entities.

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