

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Vikas Awasthy, Judicial Member
&
Smt. Renu Jauhri, Accountant Member**

ITA No. 2081/Del/2025 : Asstt. Year : 2022-23

Baker Hughes Energy Technology UK Ltd., Stoneywood Park North, Dyce, Aberdeen, United Kingdom, AB217EA	Vs	ACIT, Circle-1(1)(2), International Taxation, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAHCG6037F		

**Assessee by : Sh. Ravi Sharma, Adv.,
Sh. Kshitij Bansal, CA &
Ms. Supriya Mehta, CA
Revenue by : Sh. Rohit Garg, CIT-DR**

Date of Hearing: 25.03.2026	Date of Pronouncement: 27.05.2026
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ORDER

Per Renu Jauhri, Accountant Member:

The above captioned appeal is preferred by the assessee against the Assessment Order passed u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 16.01.2025 for A.Y. 2022-23.

2. The assessee has raised the following grounds of appeal:

Tenability of the impugned Final Assessment Order

"1. On the facts and circumstances of the case & in law, the final assessment order under section 143(3) r.w.s. 1440(13) of the Income-tax Act, 1961 ("the Act") dated 16 January 2025 ('Final Assessment order') passed by the Learned Assessing Officer ('Ld. AO') and directions under section 1440(5) of the Act dated 30 December 2024 ('DRP directions') passed by the Learned

Dispute Resolution Panel ('Ld. DRP') are erroneous and bad in law.

2. *On the facts and circumstances of the case & in law, the Ld. AO grossly erred in assessing the total income of the Appellant for the relevant AY at INR 1,02,73,52,436 as against the returned income of INR 3,22,67,490.*

3. *On the facts and circumstances of the case & in law, the Final Assessment Order passed by the Ld. AO is contrary to the principles of natural justice, in absence of proper opportunity of being heard and accordingly, the order is void-ab-initio, a nullity in the eyes of law and is liable to be set aside.*

Impugned Final Assessment Order is barred by limitation

4. *On the facts and circumstances of the case & in law, the Final Assessment Order passed by the Ld. AO and DRP directions issued by the Ld. DRP are barred by limitation in view of the provisions of section 153 of the Act, making it illegal, void-ab-initio and, thus liable to be quashed.*

Supply of Goods from outside India not taxable under the Act and India-UK Tax Treaty ('Tax Treaty')

5. *On the facts and circumstances of the case & in law, the Ld. AO/Ld. DRP grossly erred in taxing the consideration from supply of goods in relation to contract no. EOA/MM/SURF-SPS/KO7NL17002 dated November 05, 2018, under the Tax Treaty read with the provisions of the Act without appreciating that the Appellant has not carried out any substantive activity in India in relation to such supply of goods and the same was not taxable in India either under the Tax Treaty or the Act.*

Fixed Place Permanent Establishment ('PE') and Deemed PE under Article 5 of the Tax Treaty

6. *On the facts and circumstances of the case & in law, the Ld. AO/Ld. DRP grossly erred in holding that Project Office ('PO') of the Appellant is a fixed place PE of the Appellant in India under Article 5 of the Tax Treaty by relying on the factually incorrect findings.*

7. *On the facts and circumstances of the case & in law, the Ld. AO/ Ld. DRP grossly erred in holding that*

the Appellant has a deemed PE in India as per the proviso to Article 5(2) of the Tax Treaty.

8. Without prejudice to the above, on the facts and circumstances of the case & in law, the Ld. AO/ Ld. DRP grossly erred in holding that the alleged servicing/ repair function is an integral part of the contract awarded to the Appellant and carried out by its PO which cannot be claimed as auxiliary or miscellaneous work under Article 5(3) of the Tax Treaty.

Attribution of receipts from supply of goods from outside India - Applicability of Section 44BB of the Act

9. Without prejudice to the above, on the facts and circumstances of the case & in law, the Ld. AO/ Ld. DRP grossly erred in covering supply of equipment from outside India made by the Appellant under section 44BB of the Act and attribute 10% of the supply of goods from outside India to alleged Fixed Place PE and Deemed PE of the Appellant in India without elaborating how supply of goods from outside India would be covered under the provisions of section 44BB of the Act.

10. On the facts and circumstances of the case & in law, the Ld. AO/ Ld. DRP grossly erred in applying an adhoc rate of 10% of the total revenues as alleged profit of the Appellant in India, which is highly arbitrary, unjustified and without any sound supporting basis considering the specific facts of the Appellant.

11. On the facts and circumstances of the case & in law, the Ld. AO/Ld. DRP grossly erred in not applying any specific attribution for the alleged functions being performed in India and instead considering the entire alleged profits of the Appellant as attributable in India, which is highly arbitrary, unjustified and without any basis.

Hon'ble Tribunal Orders in Appellant own case for AY 2020-21 and AY 2021-22 not followed

12. On the facts and circumstances of the case & in law, the Ld. AO/ Ld. DRP grossly erred in not following the order of Hon'ble Delhi ITAT in its own case for AY 2020-21 and AY 2021-22 wherein the addition made on account of alleged PE and taxability of income under section 44BB of the Act was deleted by ITAT.

Ld. DRP's specific directions not followed in final AO order

13. *On the facts and circumstances of the case & in law, the Final Assessment Order has been passed without complying with the specific binding mandates and directions issued by Ld. DRP, is erroneous, without jurisdiction and deserves to be held as null and void-ab-initio.*

PO already remunerated at Arm length price; no further attribution warranted

14. *Without prejudice to the contention of the Appellant that it has no PE in India, on the facts and in the circumstances of the case & in law, the Ld. AO/ Hon'ble DRP grossly erred in not appreciating that no further income is attributable to the Appellant on account of activities carried out by PO for which it has been adequately remunerated as per the arm's length basis.*

Miscellaneous Grounds

15. *Without prejudice to the above, on the facts and circumstances of the case & in law, the Ld. AO/ Ld. DRP grossly erred in not allowing the deduction of the arm's length remuneration which has already been offered to tax in the hands of Appellant's PO in India while calculating the total assessed income of the Appellant during the instant year under consideration.*

16. *On the facts and circumstances of the case & in law, the Ld. AO grossly erred in levying interest under section 234B of the Act.*

17. *On the facts and circumstances of the case & in law, the Ld. AO grossly erred in initiating the penalty proceedings under section 274 r.w.s. 270A of the Act for underreporting of income in consequence of misreporting of income.*

That the above grounds of appeal are independent and without prejudice to each other."

3. At the outset, Id. AR has submitted that ground no. 4 relating to limitation issue is not being pressed. Although the assessee has raised multiple grounds in his appeal, the sole substantive issue involved is regarding existence of PE and attribution of profits which is a legacy issue.

3.1 Brief facts are that the assessee, a UK based company, had entered into a contract with ONGC, alongwith other consortium members for offshore supply of goods. For A.Y. 2022-23, the assessee filed its return on 31.12.2022 declaring income of Rs.3,22,67,490/-. The case was selected for scrutiny and after considering assessee's submissions, Id. AO concluded as under:

"9.1 To conclude, the assessee has a fixed place PE in India in the form of its declared project office. The same is established for executing the contract awarded to the assessee by ONGC. The sale of goods to ONGC, for which logistic support is provided by the PO, is thereby attributable to the PE.

9.2 Further, the assessee has a deemed PE owing to the proviso to Article 5(2), and the services provided by it linked to the prospecting, exploration, and extraction of mineral oil.

9.3 Under the provisions of Section 44BB, an amount of 10% of Rs. 9950849464/-, that is Rs. 995084946/- becomes the profit of the assessee chargeable to tax in India."

3.2 Accordingly draft assessment order was passed on 26.03.2024 proposing to add Rs.99,50,84,946/- on a/c of business income of the PE of the assessee in India.

3.3 Aggrieved, the assessee filed objection before the Dispute Resolution Panel (DRP) which issued the following directions vide order dated 30.12.2024:

"8.3 The factual matrix is similar to the preceding years, therefore, the Panel hereby rejects objections for AY 2021-22 as well. With regard to the orders of the DRP for previous year's, assessee has submitted that the addition

covered in these objections has been considered by the Hon'ble ITAT for earlier years and similar addition has been deleted. The assessee has further submitted that no further appeal has been filed by the Department. Being a factual issue, the AO is hereby directed to verify the contention of the assessee. If no further appeal has been preferred by the Department on merits of the case against order of the Hon'ble Tribunal, then, addition proposed in these grounds of objection shall not be made. If not, then, the addition shall stand confirmed. The Panel directs accordingly."

3.4 In the final order, Id. AO while giving effect to the directions of the DRP, noted that the revenue is in appeal before the Hon'ble High court against the orders passed by the ITAT in immediately preceding years. He, therefore, proceeded to finalize the assessment as under:

18.1. The findings of the current year can be summarized as below:

- a. The assessee' Project Office constitutes a Fixed place PE of the assessee in India, as it is providing services and facilities which are non-auxiliary in nature.*
- b. By virtue of providing services and facilities in connection with the prospecting, extraction, and production of mineral oil in India, the proviso to Article 5 of the India-UK DTAA will deem a PE in the case of the assessee in India.*
- c. Section 44BB of the Act will be applied in the case of the assessee.*
- d. The assessee's reliance on E-funds Vs ADIT and Morgan Stanley and Co. Inc. judgements is erroneous*

18.2 Detailed findings vis-à-vis each of these points are a part of the draft assessment order, upheld by the DRP, and not reproduced for the sake of brevity.

18.3 These facts and findings are distinguishable from the findings of the previous years, wherein the Hon'ble ITAT had categorically held that Section 44BB of the Act cannot be invoked in absence of a PE in India, and that the AO has failed to establish the existence of PE in India.

19. To conclude, the assessee has a fixed place PE in India in the form of its declared project office. The same is established for executing the contract awarded to the assessee by ONGC. The sale of goods to ONGC, for which logistic support is provided by the PO, is thereby attributable to the PE.

Further, the assessee has a deemed PE owing to the proviso to Article 5(2) of the India-UK DTAA to which the said income is attributable in the same manner.

20.1 Under the provisions of Section 44BB of the Act, an amount of 10% of Rs. 9,95,08,49,464/- that is Rs.99,50,84,946/- becomes the profit of the assessee chargeable to tax in India."

3.5 Assessment was accordingly finalized u/s 143(3) r.w.s. 144C(13) at an income of Rs.1,02,73,52,436/- vide order dated 16.01.2025. Aggrieved with the order of the AO, the assessee is in appeal before the Tribunal.

4. Before us, Id. AR has contended that the issue is covered in favour of the assessee by the order of the co-ordinate bench for A.Y. 2021-22. The facts and circumstances in this year remain unchanged and this fact has been categorically recorded by the DRP in its order in para 8.3 (reproduced hereinbefore). He has therefore submitted that the issue stands decided in favour of the assessee vide the order dated 05.02.2024 of the co-ordinate bench in ITA No.3279/Del/2023 for A.Y. 2021-22.

4.1 On the other hand, Id. DR has strongly relied on the order of the Id. AO wherein he has sought to distinguish the facts of the assessment year from the earlier years to hold the

existence of PE in India. He has specifically placed reliance in paras 18 & 19 (reproduced hereinbefore) of the order wherein Id. AO has recorded his findings.

5. We have heard the rival submissions and perused the material placed on record. We note that the issue regarding existence of PE is a legacy issue in this case. The fact that there is no change in facts and circumstances for earlier years, has been categorically mentioned by the DRP. We further note that the issue has been decided by the co-ordinate bench for A.Y. 2021-22 in assessee's favour and the relevant portion of the order is reproduced below:

"10. We have considered rival submissions and perused material on record. The allegation of the Assessing Officer in the show-cause notice issued to the assessee was, the project office of the assessee in India has to be considered as fixed placed PE in terms of Article - 5 of the India - UK DTAA. He has further observed that the gas well of ONGC in Krishna Godavari basin has to be considered as installation of PE of the assessee as the assessee has carried out installation activities. However, while concluding, the Assessing Officer has observed that the consortium member is working on behalf of the assessee, hence, constitutes PE. Unfortunately, learned DRP has not given any finding on existence or otherwise of PE by holding that the issue is academic as existence of PE is not relevant for applicability of section 44BB of the Act.

11. Be that as it may, it is necessary to examine whether the assessee had any kind of PE in India. From the submissions of the assessee made before the Assessing Officer it becomes very much clear that the assessee has very clearly and categorically stated that neither it had any project office in India nor had carried out any installation activity at the gas well of ONGC at Krishna Godavari Basin. The scope of work as per the MOU with ONGC and particularly Annexure - 1 & 2 of MOU reproduced in paragraph - 6 of final assessment order

clearly indicates that the only work assigned to the assessee under the contract is manufacturing and supply of Subsea Production System (SPS) components including Subsea Trees, Manifolds and Subsea and Topside Control System. All other activities such as Project Management and Design and Engineering, Procurement, construction, fabrication, transportation, testing, support and SPS Services, Onshore fabrication, procurement of line pipes, life and field support etc. are to be undertaken by other consortium members.

12. In fact, the information given by ONGC in pursuance to notice under section 133(6) of the Act makes it very clear that the assessee was only engaged in manufacturing and supply and support of components including manufacture and supply of subsea and top side control system. Thus the material on record clearly indicate that the assessee was not in any way involved in onshore activities including installation at the site of ONGC. It appears, just to show that facts in the impugned assessment year are different from A.Y. 2020-21, the Assessing Officer has attempted to project the facts in a different manner. In the process, has completely misconceived the facts. Not a single piece of evidence has been brought on record by the Assessing Officer to establish that the assessee had any kind of PE in India in the year under consideration.

13. In fact, while dealing with identical nature of dispute in assessee's case in A.Y. 2020-21, the Co-ordinate Bench having examined the relevant facts including the terms and conditions of contract with ONGC has concluded that section 44BB will not be applicable in absence of PE. Further, the Coordinate Bench has held that the Assessing Officer has failed to specify how the PE came into existence and made the offshore supply of components attributable to PE. The Co-ordinate Bench has further held that the Assessing Officer has failed to establish how the consortium member constitutes PE in India. Referring to the decision of the Hon'ble Supreme Court in the case of ADIT vs. E-Funds (2018) 13 SCC 294, the Coordinate Bench has further held that burden of establishing existence of PE is on the Revenue, which has not been discharged. Thus ultimately, Coordinate Bench has held that since there is no PE of the assessee in India, section 44BB of the Act would not apply.

14. In our considered opinion, the facts involved relating to the issue in disputes are more or less identical to A.Y. 2020-21. In fact, DRP has merely relied upon the directions issued in A.Y. 2020-21. Since, the issue has been decided in favour of the assessee by Tribunal in

A.Y. 2020-21 vide ITA No.521/Del/2023 dated 06.06.2023 and there is no discernible factual difference in the assessment year under dispute, we are inclined to follow the decision of the Co-ordinate Bench in assessee's own case (supra) and hold that section 44BB of the Act cannot be invoked to tax the receipts from offshore supply on presumptive basis as the Revenue has failed to establish existence of PE in India. Assessing Officer is directed to delete the addition."

5.1 In view of the above, respectfully following the decision of the co-ordinate bench for earlier year, we hereby hold that the assessee does not have a PE in India and accordingly the addition of Rs.99,50,84,946/- is hereby deleted.

6. Ground Nos. 16 & 17 relating to interest u/s 234B and initiation of penalty proceeding is consequential and needs no adjudication.

7. In the result, the assessee's appeal is allowed.

Order Pronounced in the Open Court on 27/05/2026.

Sd/-

(Vikas Awasthy)
Judicial Member

Dated: 27/05/2026

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Renu Jauhri)
Accountant Member

ASSISTANT REGISTRAR