

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “D” NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A No.1934/Del/2025  
Assessment Year: 2022-23**

IMAX CORPORATION, 2525, Speakman Drive, Mississauga, Ontario, Canada 999999. PAN No. AACCI5528C	<b>Vs</b>	THE ASSISTANT COMMISSIONER OF INCOME TAX, Circle 2(1)(1), International Taxation Delhi 110002.
<b>Appellant</b>		<b>Respondent</b>

<b>Assessee by</b>	Shri S.K. Aggarwal, CA & Shri Himanshu, CA
<b>Revenue by</b>	Shri M.S. Nethrapal, CIT DR

Date of hearing:	06.05.2026
Pronouncement on	03.06.2026

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present appeal arises from Ld. AO's order dated 27.01.2025, passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereafter as "the Act"), by Ld. CIT(A)-42, Delhi. The impugned order has been passed by the ACIT, Circle-International Tax-2(1)(1), Delhi.

1.1 The assessee is a company incorporated in Canada and is a tax resident of that Country. The assessee is engaged in the business of developing, selling and leasing of large format theater systems globally. Associated with this activity, the assessee also provides installation and related support services to its customers. The assessee has entered into

agreements with Indian customers for sale and related services of theatre systems. Under such agreements the assessee carries out the following broad activities: -

- i. Sale of the theatre system;
- ii. Installation of the system, provision of related services and training services also;
- iii. Grant of license to use the “IMAX” trademark.

1.2 In this case, the AO had proposed to the DRP additions on the basis of an alleged existence of a fixed place Permanent Establishment (hereafter as “the PE”) and installation PE in India, as under:

- i. Sale of theatre system - Rs.353,65,542/-;
- ii. Sale of glasses and others - Rs.34,95,704/-;
- iii. Installation services - Rs.302,42,051/-;
- iv. Theatre Design Services - Rs.38,34,000/-.

The resultant amount of Rs.729,37,297/- was subjected to a profit rate of 25% by invoking Rule 10 of IT Rules, resulting in a proposed addition of Rs.182,34,324/-. However, following the DRP’s directions, the Ld. AO made the following additions in the final assessment order:

- i. \*\*Sale of glasses and others - Rs.34,95,704/- ;
- ii. Installation services - Rs.57,51,000/-;
- iii. Theatre Design Services - Rs.38,34,000/-.

*[\*\* Note: This amount has been considered in the final order inspite of the fact that the DRP in para 8.3 at pages 15 & 16 of that order, has specifically directed that only Installation and Theatre Design Services should be considered for assessing the income. Clearly sale of glasses was to be excluded].*

1.3 Aggrieved with this action, the assessee has approached the ITAT with the following grounds: -

*“Ground No. 1: Allegation of Fixed Place Permanent Establishment (‘PE’) of the Appellant in India.*

*1.1 On the facts and in the circumstances of the case and in law, the Ld. AO and the Ld. DRP have erred in holding that the Appellant had a Fixed Place PE in India without appreciating that the conditions for constituting a Fixed place PE are not satisfied in this case.*

*1.2 On the facts and in the circumstances of the case and in law, the Ld., DRP erred in holding that the multiplex of Indian customers becomes a fixed place of the Appellant, without appreciating the fact that the premises of such Indian customers were not under any circumstance at the disposal of the Appellant.*

*1.3 On facts and circumstances of the case and in law, the Id. AO and id. DRP having failed to appreciate that there was no degree of permanence or continuity in the activities carried on by the Appellant in India as there was only 1 employee visit to India for a very short duration.*

*Ground No. 2: Allegation of Installation/Supervisory PE of the Appellant in India.*

*2.1 On the facts and in the circumstances of the case and in law, the Id. AO grossly erred in holding that the Appellant has an Installation PE in India under Article 5(2)(k) of India-Canada DTAA on the premise that the installation activities commenced in February 2022 and continued till September 2022, thereby breaching the threshold of 120 days without appreciating that no installation activity was carried out during FY 2021-22 and failed to appreciate that the installation activity was carried in September 2022 (i.e. during FY 2022-23).*

*2.2. On the facts and in the circumstances of the case and in law, the id. DRP alleged Supervisory PE of the Appellant in India instead of Installation PE on an assumption that the supervisory activities commenced in February 2022 and completed only in September 2022 without appreciating the submissions of the Appellant.*

2.3 On the facts and in the circumstances of the case and in law, the Id. AO and Id. DRP failed to appreciate that 1 employee of the Appellant visited India in February 2022 for a total of 5 days only for preparatory activities.

2.4 On the facts and in the circumstances of the case and in law, the Id. AO has erred in proposing and the DRP has further erred in upholding/ confirming the date (i.e. February 2022) of visit of employee for preparatory activities which included inspection of the Theatre to ensure optimum design of theatre prior to import of theatre system as the date for commencement for computing the threshold period of Installation/Supervisory PE instead of September 2022 when the installation of Theatre system was executed.

2.5 On the facts and in the circumstances of the case and in law, the Id. AO and Id. DRP have has erred considering the date (i.e. February 2022) of visit of employee for preparatory activities as the date for commencement for computing the threshold period of Installation / Supervisory PE without appreciating the fact that the Theatre system arrived in India on 02 April 2022, hence the installation/supervision of such Theatre system was not possible at all during the year under consideration.

2.6 On the facts and in the circumstances of the case and in law, on a without prejudice, even in al scenario where the number of days i.e. 17 days (13 September 2022 to 28 September 2022) of installation activity performed in AY 2023-24 is considered, the threshold of 120 days for constitution of Installation PE/Supervisory PE under India-Canada DTAA has not been breached.

Ground No. 3: Incorrect amount of addition of INR 1,82,34,324 considered in the computation sheet attached to the Final Assessment Order instead of INR 16,35,088.

3.1 On the facts and in the circumstances of the case, the L.d. AO while computing the tax liability in the computation sheet attached to Final Assessment order, has incorrectly considered an amount of INR 1,82,34,324 as income attributed to the PE instead of INR 16,35,088 as per the Final assessment order, hence, consequently computing an incorrect tax liability on the Appellant.

Ground No. 4: Attribution of profits to alleged PE of the Appellant in India.

4.1 Without prejudice to the fact that the appellant does not have a PE in India, the Ld. AO and 1.4. DRP, have grossly erred in attributing entire revenue from Installation service and Theatre design services to the alleged PE in India on ad hoc basis,

4.2 On the facts and in the circumstances of the case, the Ld. AO and Ld. DRP, have grossly erred in attributing the revenue from Sale of glasses and other related goods in the alleged PE in India on ad hoc basis.

4.3 On the facts and in the circumstances of the case, the Ld. AO and Ld. DRP, grossly erred in applying the profit rate of a group entity ie., IMAX China on the income attributed to alleged PE to determine profit in India without considering the consolidated financial statements of the Appellant wherein it is clear that the Appellant has incurred losses at global level for the year under consideration.

*5. That on the facts and in the circumstances of the case and in law, the Id. AO erred in levying the interest amounting to INR 24,14,986 under section 234B of the Act by considering an incorrect amount of addition and consequently computing incorrect tax liability.*

*6. That on the facts and in the circumstances of the case and in law, the Id. AO erred in initiating the penalty proceedings under section 270A of the Act on account of underreporting of income by way of misreporting.*

*7 The above grounds of appeal are independent and without prejudice to one another.*

*8 That the Appellant reserves its right to add, alter, amend and/or modify any ground of appeal before or at the time of hearing of this appeal.”*

1.4 The assessee also filed additional grounds of appeal vide letter dated 17.09.2025, but decided not to press the same. This fact has been clearly recorded in the order-sheet entry dated 2.4.2026. Accordingly, the same are dismissed as not pressed.

2. Before us the Ld. AR argued with the help of extensive paper books and written submissions. The Ld. AR requested that his arguments may be considered on the basis of themes in the grounds of appeal pertaining to fixed place PE, installation/supervisory PE and the attribution of profits on these alleged PEs. It was argued by the Ld. AR that the allegation of a fixed place PE in India was made on the premise that the installation activities at the multiplex sites are being carried out under the instructions and supervision of the assessee. It was the submission that this was factually incorrect. The Ld. AR drew our attention to the internal pages 6 & 7 of the DRP's directions and pointed out that the DRP misdirected itself in assuming that the sale of theatre system, its installation, commissioning and training of the personnel handling that theatre system are consolidated activities and therefore the multiplex itself becomes a fixed place PE in India. The Ld.

AR referred to the theatre system sale agreement and read out clause 5.02 which indicates that the client was supposed to provide a substantially complete theatre ready for the installation of the IMAX system. It was pointed out that it was the clients' responsibility to construct the building in which the system sold by IMAX would be installed. It was pointed out that the assessee is maintaining books on mercantile system of accounting and thus, the invoice in relation to installation services amounting to Rs.57,51,000/-, was raised on the client in accordance with the terms of agreement dated 11.10.2021. Thus, the revenue was booked in the year under consideration even though the actual installation of the theatre system took place in AY 2023-24, and not the present year. The Ld. AR drew our attention to the fact that the theatre system arrived in India on 2.4.2022 and before the arrival of such system in India one employee of the assessee visited India between 28.2.2022 to 4.3.2022, for inspecting the customer's site. It was emphasized by the Ld. AR that during the year under consideration this was the only visit to the site of the customer by any representative of the assessee. It was the submission that the actual installation of the theatre system was carried out between 13.9.2022 to 28.9.2022, i.e. in the AY 2023-24. The Ld. AR pointed out that the certificate of acceptance and a declaration from the client about one Mr. Jim Krimbalis visiting the theatre site between 28.2.2022 to 4.3.2022 was placed on record; and thereafter a certificate has been given that one Mr. Neil Robbins from Entertainment Services Project Management Pty. Ltd. Also

visited in connection with the installation of the system [as per the passport details filed on page 724 of the PB it is seen that his date of entry in India was 13.9.2022 and exit was 5.10.2022]. Thereafter, the Ld. AR briefly took us through the chronology of events with their start point being 11.10.2021 (signing of agreement) and culminating in the installation of theatre system [between 13.9.2022 to 29.2.2022]. It was stressed by the Ld. AR that the DRP's finding that installation related activities continued for a number of months was not borne out by the facts on record. Thereafter, the Ld. AR provided counter-points to the AO's contention that the four essential tests for determining a PE could be attributed to the assessee. It was stated that "place of business test" was not fulfilled since the assessee did not have any place of business (owned or leased in India). It was stated that the title of ownership of the theatre system is transferred to the customers and remains with them. Regarding the "disposal test" it was stated that the theatre system is not at the disposal of the assessee and there are no rights or control over the premises by the assessee. The owners/clients provide access to the assessee for installation related services only and at no stage are such premises at the disposal of the assessee. The Ld. AR argued that the "permanence test" is also not fulfilled in the assessee's case since there is neither any fixed place in India nor are the premises of Indian customers at the disposal of the assessee. It was the further submission in this regard that during the year under consideration one employee (Jim Krimbalis) visited India for five days only, leading to the conclusion that there was no

continuity of business in India. It was submitted by the Ld. AR that the “business activity test” was also not fulfilled in this case as the assessee was not undertaking any business activity through the theatre system installed by them. It was clarified by the Ld. AR that the theatre system once installed was entirely the responsibility of the clients of the assessee, where there was absolutely no supervision or control exerted by the assessee. Thus, this test also was not satisfied. The Ld. AR pointed out that the finding of the Ld. AO that all these four tests are satisfied in the case of the assessee (pages 140 to 142 of the impugned order) was not borne out by the facts on record. The Ld. AR thereafter relied on the case of Formula One World Championship Ltd. reported in 394 ITR 80 (SC). Para 27 of this judgment was read out as under: -

*“27. The principal test, in order to ascertain as to whether an establishment has a fixed place of business or not, is that such physically located premises have to be at the disposal of the enterprise. For this purpose, it is not necessary that the premises are owned or even rented by the enterprise. It will be sufficient if the premises are put at the disposal of the enterprise. However, merely giving access to such a place to the enterprise for the purposes of the project would not suffice. The place would be treated as of the disposal of the enterprise when the enterprise has right to use the said place and has control thereupon.”*

Finally, it was stated that theatre system is being used and operated by the Indian customers for their business activities (i.e. for exhibition of movies in the theatres). The Indian customers are carrying on their businesses through direct access to the system rather than IMAX Corporation (assessee). Therefore, there was no fixed place PE in India.

2.1 Regarding the existence of an alleged installation/supervisory PE, our attention was drawn to Article 5(2)(k) of the India - Canada DTAA where the activities of installation, assembly or other supervisory activities need to continue for a period of more than 120 days in any 12 month period. The Ld. AR pointed out that since the Revenue was booked on mercantile basis in the assessment year under consideration but actually the supply and installation happened only in AY 2023-24. Thus, on this basis alone there could be no installation/supervisory PE in India in the year under consideration. It was the submission that the 120 days have been computed from the first visit of employee between 28.2.2022 and thereafter considering September, 2022 as the end period for this activity. It was the submission that the theatre system arrived in India only on 2.4.2022 and it was installed between 13.9.2022 to 29.9.2022. As a further fact it was pointed out that one Mr. Neil Robbins, an employee of the Australian Vendor-ESPM installed the theatre system between the period 13.9.2022 to 28.9.2022. In support of this contention a number of documents, including the passport of Mr. Neil Robbins, were pointed out to the Bench. It was the submission that by no stretch of imagination was the 120 days threshold breached in this case. The Ld. AR relied on a number of orders of coordinate benches of ITAT to canvass the point that the number of days of stay of employees counted together should be more than the threshold period for there to be a supervisory/installation PE. In this case, it was demonstrable

that whichever yardstick was used to compute the number of days, they still would not cross the figure of 120 days.

2.2 Regarding the addition on account of theatre Design Services, it was mentioned that such services are provided remotely by the assessee and no person visited India for providing such services.

2.3 The ld. AR also argued on the alleged fallacy committed by the Ld. AO in terms of attributing income to the said PEs. It was also pointed out that the sale of glasses was directed to be excluded from the computation of income but the Ld. AO had inspite of such directions, added the relevant component of receipts in the hands of the assessee.

3. The Ld. DR, on the other hand, relied extensively on the findings given in the impugned order and the directions of the DRP. It was argued that an overall analysis reveals that the contracts related to sales, installation and maintenance are composite contracts, even though they have been entered into to give an appearance of being different and unconnected to each other. It was pointed out that certain agreements have been signed on the same date and by the same individuals, leading to the conclusion that such composite contracts have been artificially split. It was the submission that while the sale has been affected outside India but the service component has been affected inside India. The Ld. DR pointed out that there was a detailed finding of fact through which the place of business test, disposal test and business activity test have been demonstrated to be fulfilled in the

case of the assessee through findings given on pages 140 to 142 of the impugned order. It was the submission that once the existence of a PE is established then some income needed to be attributed to such PE and the same was directed to be done by the DRP, whereby 12.5% of the receipts on account of certain items of receipts had been correctly assessed by the Ld. AO as additional income of the assessee.

4. We have carefully considered the submissions of Ld. AR/DR and have gone through the documents before us. We are inclined to agree with the Ld. AR that none of the tests provided for indicating the existence of a fixed place PE - place of business test, disposal test, permanence test and business activity test, are found to be fulfilled in this case. It is not deemed necessary to reiterate the non-applicability of such tests to the case under consideration since the arguments of the Ld. AR have been extensively recorded (supra). Thus, it deserves to be held that there is no fixed place PE under Article 5(1) of the Indo- Canadian DTAA.

4.1 Regarding the allegation of a supervisory PE existing in India it is appreciated that firstly, the only activity attributable during the present assessment year was the visit of Mr. Jim Krimbalis for inspection of the premises of the client between 28.2.2022 to 4.3.2022 (five days). Thereafter, all other contractual obligations have been fulfilled between the assessee and his client in FY 2022-23, culminating in the installation of the theatre system on 29.09.2022. Thus, it deserves to be repeated that during

the year under consideration there is only a five day visit by an employee of the assessee, however, even in the subsequent financial year the installation process lasted only for 17 days. Thus, whichever way one needs to consider this issue, it turns out that the 120 days threshold for considering an installation PE under the Indo-Canadian DTAA is not fulfilled. Thus, there is no installation or supervisory PE in India.

4.2 Once the allegation of PE in India is held to be invalid then there can be no question of attributing any income to the said PEs.

4.3 Accordingly, we do not deem it fit to delve into the additions made on the presumption of PEs' existence and hence, we do not propose to adjudicate on the individual additions.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 03.06.2026

**Sd/-**  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(SANJAY AWASTHI)**  
**ACCOUNTANT MEMBER**

Dated: 03.06.2026

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

Sr. No.	Particulars	Date
1	<i>Date of dictation of Tribunal Order</i>	21.05.2026
2	<i>Date on which typed draft Tribunal Order is placed before the Dictation Member</i>	22.05.2026
3	<i>Date on which typed draft Tribunal Order is placed before the other Member (in the case of DB)</i>	03.06.2026
4	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S. /P.S.</i>	03.06.2026
5	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for sign</i>	03.06.2026
6	<i>Date on which the fair Order is placed before the other Member for sign (in the case of DB)</i>	03.06.2026
7	<i>Date on which the signed order comes back to the Sr. P.S. /P.S for uploading on ITAT website</i>	03.06.2026
8	<i>Date of uploading, if not, reason for not uploading</i>	03.06.2026
9	<i>Date on which the file goes to the Bench Clerk</i>	03.06.2026
10	<i>Date on which order goes for xerox</i>	
11	<i>Date on which the file goes for endorsement</i>	
12	<i>Date on which the file goes to the Superintendent/O.S. for checking</i>	
13	<i>Date on which the file goes to the Assistant Registrar for signature on the order</i>	
14	<i>Date on which the file goes to dispatch section for dispatch the Tribunal Order</i>	
15	<i>Date of dispatch of order</i>	
16	<i>Date on which file goes to Record Room after dispatch the order</i>	