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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC011232342024**

\+ ITA 265/2025

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -1 .....Appellant

Through: Mr. Karan Sachdev SSC, Mr. Anmol Jagga JSC, Mr. Sumit Khadaria, Mr. Abhinav Mishra, Advocates.

versus

BECHTEL LIMITED .....Respondent

Through: Mr. Deepak Chopra, Sr. Adv. with Ms. Priya Tandon, Adv.

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Through: Mr. Deepak Chopra, Sr. Adv.
with Ms. Priya Tandon, Adv.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MS. JUSTICE RENU BHATNAGAR

O R D E R

% 03.11.2026

1. The present Appeals under Section 260A of the Income Tax Act, 1961 (*hereinafter referred to as* 'the IT Act'), are directed against the Order dated 31.01.2024 passed by the learned Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi (*hereinafter referred to as* 'ITAT') in ITA Nos. 8904/DEL/2019 and 795/DEL/2021, and ITA Nos. 8905/DEL/2019 and 796/DEL/2021, pertaining to Assessment Years 2016-17 and 2017-18, whereby the learned ITAT has allowed the Appeals filed by the Respondent herein/Assessee by quashing the final Assessment Orders on the ground that the Assessing Officer had not implemented the directions of the Dispute Resolution Panel (*hereinafter referred to as* 'DRP'), rendering the Assessment Orders without jurisdiction and *void ab initio*.

2. Shorn of unnecessary details, the facts, in brief, leading to the present case are as under:

a. It is stated that in the year 2012, the Respondent herein/Assessee, which is a tax resident of the United Kingdom, entered into an engineering and procurement support services agreement with Reliance Industries Limited (*hereinafter referred to as* 'RIL') in relation to

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the construction of a plant at RIL's refinery complex in Jamnagar Special Economic Zone (*hereinafter referred to as* 'SEZ'). It is stated that under the said agreement, the Assessee was responsible for providing engineering information, engineering services and support services relating to the procurement of machinery and equipment for construction of the plant at RIL's refinery. The services also related to RIL's plant situated in the SEZ and Domestic Tariff Area (*hereinafter referred to as* 'DTA').

b. It is stated that the Assessee filed its return of income for Assessment Years 2016-17 and 2017-18, declaring 'NIL' income. The return was initially processed under Section 143(1) of the IT Act. Subsequently, the case was selected for scrutiny assessment, and a notice under Section 143(2) of the IT Act was issued.

c. It is stated that during the assessment proceedings, the Assessing Officer examined the receipts earned by the Assessee from RIL under the engineering and procurement support services agreement. It is stated that the Assessee contended that the amounts received for services rendered under the agreement did not qualify as Fee for Included Services (*hereinafter referred to as* 'FIS') under Article 13 of the India-UK Double Taxation Avoidance Agreement (*hereinafter referred to as* 'India-UK DTAA') and, therefore, were not taxable in India. It

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is stated that, as the Assessing Officer was not satisfied with the Assessee's submissions, the Assessing Officer proceeded to frame a draft Assessment Order, holding that the receipts were in the nature of Fee for Technical Services (*hereinafter referred to as* 'FTS')/FIS under Article 13 of the India-UK DTAA.

d. Aggrieved by the proposed assessment, the Assessee filed objections before the DRP. It is stated that the DRP examined the terms of the agreement entered into with RIL and observed that RIL was to provide fully furnished office facilities at Mumbai for the personnel of the Assessee and RIL was also to provide staffing plans for various projects at Jamnagar. On this basis, the DRP concluded that the Assessee had a business connection in India as well as a Permanent Establishment (*hereinafter referred to as* 'PE') in India in the form of its employees stationed at RIL's office in Mumbai and the project site at Jamnagar. Accordingly, the DRP directed the Assessing Officer to tax the receipts as 'business income' under the provisions of the IT Act and Articles 6 and 7 of the India-UK DTAA. The DRP further held that the receipts were also in the nature of FTS/FIS under the applicable tax treaty, as the services were technical in nature and the condition of making available technical knowledge, experience, skill, know-how or processes was satisfied. However, in view of the Assessee's business connection

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and PE in India, the DRP held that the FTS/FIS income would be taxable as 'business income' under Section 44DA of the IT Act.

e. Pursuant to the directions of the DRP, the Assessing Officer passed the final Assessment Orders under Sections 147/143(3) read with Section 144C of the IT Act.

f. Aggrieved by the Final Assessment Orders, the Assessee filed Appeals before the learned ITAT challenging the final Assessment Orders. The learned ITAT, *vide* its order dated 31.01.2024, allowed the Appeals and quashed the Assessment Orders.

g. It is this Order which is under challenge in the present Appeal.

3. In the present appeal, it is the contention of the Appellant/Revenue that the learned ITAT erred in quashing the Assessment Order without appreciating that the DRP had issued twin directions in respect of the same underlying receipts, namely, taxation as 'business income' in view of the Assessee's PE in India and taxation as FTS/FIS under the applicable tax treaty. It is further contended that the learned ITAT failed to resolve the divergent directions of the DRP and determine the appropriate methodology for taxation of the receipts, particularly whether the same were taxable as FTS or as business income under Section 44DA of the IT Act. It is further contended that the learned ITAT failed to consider the

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observations of the DRP regarding the Assessee's PE in India, the provision of furnished office facilities at Mumbai, deployment of personnel at the Jamnagar project site and the continuous rendering of engineering, procurement and project management services for a period of 32 months. According to the Appellant/Revenue, the learned ITAT ought to have examined the existence of the Assessee's PE in India and determined the taxability of the receipts on merits or, alternatively, remanded the matter to the Assessing Officer or the DRP for determination of the appropriate methodology of taxation, instead of quashing the Assessment Order on a technical ground.

4. Heard the learned Counsels for the parties and perused the material on record.

5. The relevant portion of the Report of the DRP which has not been complied with by the Assessing Officer reads as under:

3. The present report is being given after considering the submission dated 16.09.2019 filed during assessment proceedings and the synopsis dated 01.10.2020 before the Hon'ble Panel.

S.No.	Nature of Permanent Establishment	Assessee's Submission/ arguments	Comments of the undersigned
1.	Fixed Place PE [Article 5(1)]	• All the business activities for the said project were carried out from outside	• It is an admitted fact by the assessee that its employees had visited India.

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		India. • The employees of the assessee did not have any premises at their disposal from where they rendered services in relation to its project with RIL.	• The presence of employees in India will per se constitute the fact that assessee has a Fixed Place PE in India. • Further, the details of visit of employees to India is discussed in detail in the comments for 'Service PE' below.
2.	Construction/Installation/ Assembly/Supervisory PE [Article 5(2)(j)]	• The assessee was responsible for providing engineering services & other ancillary support services in relation to refinery plant being constructed by RIL in India. • As per the scope of services the work/ deliverable of the assessee did not qualify as construction or supervision services. • Also, the same was the RIL's sole responsibility.	• The Contract between the assessee and RIL has been considered at length. • The services rendered by the assessee comprise the following: (a) Engineering Services, including basic and detailed engineering, including process design. (b) Procurement Support Services, including technical documentation required for procurement, management of vendors, coordination and expediting. (c) Construction Support Services, including preparing

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			documentation related to construction schedule, and preparation and evaluation of technical bidding documents for appointing construction contractors. As per Article 13 of India-UK tax treaty, the term "fees for technical services" means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which make available technical knowledge, experience, skill know-how or process or consist of the development and transfer of a technical plan or technical design. In this case assessee received revenue for technical services and made available technical knowledge to the customer in India and technical plan or design have been developed and transferred by the assessee to the customer.

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			In the view of the undersigned, the said services does not qualify under exception under exception provided in Explantion-2 of the Section 9(1)(vii) of the Income Tax Act, 1961
3.	Service Place PE [Article 5(2)(k)]	• Assessee has submitted that all the services have been rendered from outside India to RIL, as per Article II of the said contract with RIL. • 2 employees of assessee has visited India for the purpose of oversight and quality control of services being rendered by its affiliate in India to the assessee. • The details of visit of employees is as follows: (a) Antonino Nicotra-19 days in Nov 2016. Total -19 days (b) Pragnesh Chaturbhai Patel- 3 days in Oct 2016, 30 days in Nov 2016 and 28 in Dec 2016. Total-61 days The employees were present in India below	• During the proceedings before the Hon'ble Panel, it had stated that total period of stay was for 61 solar days. However, the man days for the employees translates into 77 days. The fact of 77 days can be clearly ascertained form the air tickets submitted by it. • The same should not be accepted as the assessee did not furnish the same during assessment proceedings and no resonable cause proved by the assessee otherwise. • Selected airlines ticket provided by the assessee before the Hon'ble DRP will not be sufficient to conclude that activities of above mentioned nature continued within the state for a period or periods aggregating

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Secretariat, DRP-I, New Delhi

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		the threshold limit of 90 days. • Since, the presence of employees is less than 90 days, Service PE cannot be triggered in its case for the subject year.	less than 90 days within any twelve month period. • The same may be decided on merits as per records available.

4. In the draft assessment order, the revenue had taxed the said receipts as FTS under the Act as well as under the DTAA. However, based on the additional evidences (air tickets as 2 employees), the assessee's case for taxability now may/can also be examined from the PE perspective. The assessee clearly has a Fixed Place PE in India during the year and therefore, the recepits will be taxable as per Article 7 of the DTAA.

The DRP has examined the matter and is in agreement with the assessing officer that the assessee has a Fixed Place PE in India. As regards the claim that two employees of the assessee have stayed in India for 61 solar days (77 days as per report of the assessing officer), the assessee has only submitted air tickets of the visit of these employees to India. In the absence of Passports, the stay of these employees cannot be ascertained, as per the details earlier filed before the assessing officer, it was claimed that these two employees had stayed in India for 16 days. The assessee has not filed any conclusive evidence regarding period of stay of its employees. Therefore, the assessee had service PE as well as Fixed Place PE.

In view of the matter, the DRP upholds findings of the assessing officer with regard to PE and assessee's objections are rejected.

5. Directions under section 144C of the Income Tax Act

The Assessing Officer is directed to complete the assessment as per the above directions of the Dispute Resolution Panel. The Assessing Officer shall place a copy

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of these directions as annexure to the final order, to be read as a part of the order. While passing the final order, the Assessing Officer shall incorporate the reasons given by the Dispute Resolution Panel in respect of various objections, at appropriate places. The Grounds of Objections are decided as above.

6. While allowing the Appeals filed by the Assessee, the learned ITAT has held that the Assessing Officer had failed to implement the directions issued by the DRP under Section 144C of the IT Act, wherein the DRP had directed that the receipts from RIL be treated as 'business income' attributable to the PE in India under Articles 6 and 7 of the India-UK DTAA, while the treatment as FTS was to be adopted only protectively. The learned ITAT further held that despite reproducing the DRP's directions, the Assessing Officer passed the final Assessment Orders by reiterating the substantive addition of the receipts as FTS, without implementing the directions in their letter and spirit. The learned ITAT observed that under Sections 144C(10) read with 144C(13) of the IT Act, the directions of the DRP are binding upon the Assessing Officer and the final assessment must be completed in conformity therewith. Relying upon the judgment of the Co-ordinate Bench of this Court in ESPN Star Sports Mauritius S.N.C. v. Union of India, **(2016) 388 ITR 383**, the learned ITAT held that non-compliance with the DRP's binding directions renders the final Assessment Order without jurisdiction and *void ab initio*. Accordingly, the learned ITAT quashed the Assessment Orders.

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7. As rightly noticed by the learned ITAT, the present case is squarely covered by the Judgment passed by the Co-ordinate Bench of this Court in ESPN Star Sports Mauritius S.N.C (supra) wherein it has held as under:

> "***29***. *The above submissions have been considered. In the first place the court would like to observe that this is an instance of blatant disregard by the Assessing Officer of the order of the Dispute Resolution Panel notwithstanding that the Dispute Resolution Panel had categorically held that the two petitioners do not satisfy the conditions of an "eligible assessee" in terms of section 144(15)(b)(ii) of the Act. As already noticed under section 144C(10) of the Act the Assessing Officer had no option but to comply with the order of the Dispute Resolution Panel. Even if no direction was issued by the Dispute Resolution Panel under section 144C(5) of the Act, the fact that the Dispute Resolution Panel held that both the petitioners were not "eligible assessees" could not have been ignored by the Assessing Officer.*
>
> ***30***. *It appears to the court that it is plain that under section 144C, the Assessing Officer should have proceeded to pass an order under section 143(3) of the Act. Instead the Assessing Officer confirmed the draft assessment order passed under section 144C(1) of the Act. This, therefore, vitiated the entire exercise. The court has no hesitation in holding that the final assessment order dated January 28, 2015, is without jurisdiction and null and void. The draft assessment order dated March 28 2014, having been passed in respect of entities which were not "eligible assessees", is also held to be invalid.*"

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8. In the said Judgment, the Division Bench has further placed reliance on the judgment of the High Court of Andhra Pradesh in Zuari Cement Limited v. Asst. CIT decision dated 21.02.2013 in **W.P. (C) No. 5557 of 2012**; decision of the High Court of Judicature at Bombay in International Air Transport Association v. Deputy CIT dated 18.02.2016 in **W.P. (L) No. 351 of 2016**; decision of this Court in Honda Cars India Ltd. v. Deputy CIT dated 17.02.2016 in **W.P. (C) No. 4262 of 2015**; decision of High Court of Judicature at Madras in Vijay Television P. Ltd. v. Dispute Resolution Panel **(2014) 369 ITR 113 (Mad);** and decision of High Court of Gujarat in Pankaj Extrusion Ltd. v. Asst. CIT, **(2011) 241 CTR (Guj) 390**, and has held as under:

> "*41. The language used in the present case by the Assessing Officer while disagreeing with the binding order of the Dispute Resolution Panel is wholly unacceptable. In the final assessment order dated January 28, 2015, the Assessing Officer while discussing the order of the Dispute Resolution Panel observed inter alia in para 4.2 that : "The Dispute Resolution Panel has not acted in accordance with the provisions of the Act while passing this order which is grossly illegal, against the intent of the Legislature, without following the basic principles of natural justice and adopting very narrow interpretation of the provisions of the Act".*"

9. Though the learned Counsel appearing for the Revenue has placed reliance on another Judgment passed by a co-ordinate Bench of this Court in Anand NVH Products (P) Ltd. v. NEAC, **2021 SCC**

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OnLine Del 3944, but, in the opinion of this Court, the facts of that case are entirely different from the facts of the present case, as in that case the final decision was passed on the directions of the DRP, unlike the present case where the Assessing Officer has not followed the directions of the DRP.

10. In view of the fact that the present case is squarely covered by the Judgment passed by the co-ordinate Bench of this Court in ESPN Star Sports Mauritius S.N.C (*supra*), which has been rightly referred to by the learned ITAT, this Court is not inclined to admit the appeals.

11. Accordingly, the Appeals are dismissed. Pending application(s), if any, are also dismissed.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

NOVEMBER 03, 2026
Rahul

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