Income from offshore supply of cables couldn't be attributed to PE of NR in India, says ITAT

Summary – The Hyderabad ITAT in a recent case of Prysmian Cavi e Sistemi SRL., (the Assessee) held that where offshore contract was only for procurement of cables that too outside India, no part of income could be said to be attributable to assessee's PE in India.

Facts

- The assessee an Italian company entered into three different contracts with Power Grid Corporation of India Limited (PGCI) for setting up a Fiber Optic system for Southern Region and obtained requisite permission from RBI for execution of onshore supply contract and onshore services contract with PGCI.
- The assessee offered income only from two contracts relating to onshore supplies and onshore services contract while maintaining that the income from offshore contract was not taxable in India.
- Commissioner issued a show cause notice to the assessee as to why the receipts on off-shore contracts should not be brought to tax.
- After considering the detailed submissions of the assessee and analyzing the terms of agreement, Commissioner held that the income as was reasonably attributable to the operations carried out in India relatable to the offshore contract was liable to tax in India. The Assessing Officer was directed to ascertain the actual income which was taxable in India on the offshore contract receipts in accordance with law by resorting to the provisions of rule 10 of the Income Tax Rules, if necessary.
- On appeal:

Held

- The issue of taxability of off shore contracts was elaborately discussed in the earlier assessment year 2000-01 in *Pirelli Cavi e Sistemi Telecom S.P.A.* v. *Asstt. CIT* [2014] 46 taxmann.com 216 (Hyderabad - Trib.)*vide* order dated 28-5-2014 wherein similar issue was raised by the Assessing Officer consequent to the orders under section 263 by the Commissioner in this year. The Tribunal considered the issue elaborately and decided in favour of the assessee, holding that since offshore contract was only for procurement of cables that too outside India, no part of income could be said to be attributable to assessee's PE in India and hence the impugned addition deserved to be set aside.
- Respectfully following the above, since this year is later to the issue already decided as above, the principles laid down therein are equally applicable to the appeal in the impugned assessment year 2001-02. Accordingly, the contention of the assessee was upheld and order of the Commissioner was set aside. In fact, the Commissioner passed her findings purely on the basis of the judgment of Authority for Advanced Rulings in the case of *Ishikawajima Harima Heavy Industries Co. Ltd.* [2004] 271 ITR 193/141 Taxman 669 (AAR-New Delhi) which was reversed by the Supreme Court. In view of

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that also, the order of the Commissioner cannot be sustained. Assessee's grounds are accordingly allowed.

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