

## **ITAT directs admission of additional evidence by assessee to prove that its liaison office in India wasn't its PE**

**Summary – The Delhi ITAT in a recent case of Sagem Defence Securite SA India Liaison Office, (the Assessee) held that where Assessing officer treated liaison office of assessee as PE, in view of fact that assessee had not been provided with reasonable and sufficient opportunity to represent its case, additional evidence filed by assessee was required to be admitted as per principles of natural justice**

### **Facts**

- The assessee was tax resident of France and was engaged in the business of manufacturing and sale of Helicopter Flight Controls, Military Aircraft Systems, Inertial Navigation Systems. It had a liaison office in India.
- The Assessing Officer required assessee to explain as to why activities of Liaison Office may not be treated as business activity and income attributable to Indian sales may not be taxed accordingly.
- The assessee stated that requisite information could not be provided due to Christmas & New Year's holidays. However, the Assessing Officer treated liaison office of assessee as PE and assessed the assessee accordingly.
- On appeal, the DRP refused to admit the additional evidence submitted by the assessee.
- On second appeal :

### **Held**

- It has been demonstrated by the assessee that assessee was not provided with reasonable opportunity by Assessing Officer as show-cause notice was issued by the Assessing Officer only on 24-12-2009. Relevant details could not be obtained due to Christmas holidays and New Year holidays. Assessee was not provided with reasonable opportunity to present its case.
- In any case, assessment going to be time barred was to be framed by the Assessing Officer and, accordingly, draft order was prepared on 29-12-2009.
- When all relevant facts were submitted to DRP with request to admit evidence which could not be produced by the assessee for want of lack of opportunity, the DRP should have admitted that evidence which was not done.
- It was fit case where additional evidence filed by assessee was required to be admitted and the assessee needed to be provided with reasonable opportunity of hearing and placing all material on record of the Assessing Officer.
- To grant such opportunity, the Tribunal restored Appeal to file of Assessing Officer with direction to allow assessee a reasonable opportunity of hearing and also to place all material on record to represent the case of the assessee.