

## **'Liaison Office' of 'Kawasaki' didn't constitute its PE in India as it wasn't involved in core business activity**

**Summary – The Delhi ITAT in a recent case of Kawasaki Heavy Industries Ltd., (the Assessee) held that where assessee, a Japan based company, engaged in business of manufacturing consumer products, opened a liaison office in India, since power of attorney did not authorise employee of LO to do core business activity or to sign and execute contracts etc., on behalf of assessee, it could not be regarded as assessee's PE in India**

### **Facts**

- The assessee-company was engaged in diversified business of ship building, consumer product such as motor cycles and all-terrain vehicles.
- It had two subsidiaries in India by the name of 'W' Ltd. and 'K' Ltd. The assessee had also opened a Liaison Office (LO) in India.
- The Assessing Officer in view of various clauses of power of attorney granted by the assessee to the person in charge of LO, concluded that said LO constituted assessee's PE in India.
- The DRP upheld the order of Assessing Officer.
- On appeal:

### **Held**

- A perusal of the orders of the Assessing Officer as well as the DRP shows that the sole basis on which they had come to a conclusion that the assessee had a P.E. in India, is the clauses in power of attorney executed by the head office in favour of its employee in the LO in India. Reliance was also placed on the permission granted by the RBI to the assessee for setting up the LO.
- A plain reading of the various clauses in the power of attorney takes one to a conclusion that the powers given therein are LO specific. The Assessing Officer's conclusion that the power of attorney granted unfettered powers to its LO employee, to do all or any acts for and on behalf of the assessee, is incorrect. The finding of the Assessing Officer that the power of attorney is an open ended document, which is clearly outside the scope of initial permission granted by the RBI is also perverse.
- No doubt the Assessing Officer can investigate, call for evidence and come to a conclusion where any income earning activity has been carried out by the LO so as to construe it as fixed PE but, it is beyond the jurisdiction of the Assessing Officer to adjudicate and conclude that the assessee has filed false declarations before the RBI. At best, he can bring his findings to the notice of the RBI which may consider the same in accordance with law. The RBI has not found any violation of conditions laid down by it while permitting the assessee to have a L.O. In such circumstances, no adverse inference can be drawn.

- Having come to conclusion that *prima facie* a reading of the power of attorney did not demonstrate that the employee of the assessee at the L.O. was authorised to do core business activity or to sign and execute contracts *etc.*, it has to be examined whether the Assessing Officer has brought out any documentary evidence in support of his contention that the assessee has a PE in India.
- The assessee has furnished before the Assessing Officer as well as before the DRP numerous documents, in support of its contention that all purchase orders would be raised directly by the Indian customers on the Head Office of the assessee and that the Head Office had directly sent quotations/invoices to its Indian customers and that those were signed and executed directly by the Head Office, without any involvement whatsoever by the LO in India.
- The Assessing Officer has not given any adverse finding on the evidences filed before him nor did he point out from the evidences filed, as to why the claim of the assessee is not acceptable. There is no adverse comment by the revenue on these voluminous evidences filed by the assessee to demonstrate that it does not have a P.E. in India.
- The Assessing Officer has also not brought on record any material, other than his interpretation of the terms of the power of attorney, to demonstrate that the L.O. is carrying on core business activity warranting his conclusion that the assessee has a P.E. in India. Thus neither the documents produced by the assessee are rebutted by the revenue, nor the revenue has brought on record any evidence in support of its contention.
- Thus it has to be necessarily held that the revenue could not demonstrate that the assessee has a PE in India. Hence, the assessee's appeal is allowed.