

Issue of existence of LG's PE in India remanded to DRP for examination and decision: ITAT

Summary – The Delhi ITAT in a recent case of LG Electronics Inc., (the Assessee) held that Issue of existence of LG's PE in India remanded to DRP for examination and decision

Facts

- The assessee, South Korean company, engaged in manufacture of household appliances, has entered into several transactions relating to sale of raw materials and finished goods with its wholly owned subsidiary 'LG India' but no tax was deducted by LG India, the payer, on offshore supplies since no portion of income arising from such supplies arose in India.
- Assessing Officer held that assessee has a business connection in India as 'LG India' was legally and economically dependent on assessee and that assessee exercised total control over 'LG India' and attributed an income in addition to the returned income as income allocable to the assessee's PE in India.
- The DRP without considering the profit attribution by the Assessing Officer directed him to take the profit attribution at 20 per cent of profit margin.

Held

- The Tribunal observed that Dispute Resolution Panel has gone under the presumption that assessee has conceded the aspect of the existence of its permanent establishment in India but assessee denies the said fact and says that it has never considered the issue of the existence of the permanent establishment.
- The appeals of the assessee are hence remitted back to the file of the Dispute Resolution Panel to decide the issue of existence of the permanent establishment and consequent profit attribution thereto.