

In case where no PE in India, sum received for supply of equipment and its installation are not taxable as FTS

Summary – The Delhi ITAT in a recent case of Sumitomo Corporation, (the Assessee) held In case where no PE in India, sum received for supply of equipment and its installation taxable as FTS

Facts

- The assessee foreign company supplied equipments and spare parts worth Rs. 19.14 crores to an Indian-company.
- The Assessing Officer held that the assessee had Permanent Establishment (PE) in India as a fixed place of business in India and concluded that same would be taxable at the rate of 20 per cent on gross benefit in terms of section 44D read with section 115A.
- On appeal, the Commissioner (Appeals) held that the assessee did not have PE in relation to the various contracts for supplies and services executed in India. Further, that no operations in relation to the supplies of equipments to MUL were undertaken in India and, thus, no portion of the assessee's income from the activity of supplies of equipments was taxable in India.
- On the revenue's appeal before the Tribunal.

Held

- The ITAT stated that based on review of the documents on record, the assessee did not have PE in India. The goods were sold from outside India and no transaction took place in India. Hence, applying the ration of SC in the case of *Ishikawajima Harima Heavy Industries Ltd. v. DIT* [\[2007\] 158 Taxman 259/288 ITR 408 \(SC\)](#) the grounds of the revenue's appeal are dismissed.