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SITG No. 255

ITAT Mumbai Bench 'I' ACIT
v.
Marubeni Corporation

Assessee earned interest income from loans given to Indian parties, which was not attributable to its PE; hence, taxable at 10% under the India-Japan DTAA despite the presence of the PE in India.

26.04.2025

[2025] 173 taxmann.com 441 (Mumbai - Trib.)[19-03-2025]

Jain Shrimal & Co.

Facts of the Case

- The assessee, Marubeni Corporation, is a Japanese company incorporated under the laws of Japan. It is engaged globally in various business activities, including the supply of industrial equipment and machinery.

- During the year under consideration, the assessee received interest income on loans **provided to Indian parties in the form of supplier's credit**. The assessee claimed that the interest income would be taxed at the rate of **10%** as per article **11(2)** of India Japan DTAA.

- Marubeni had no branch, office, or employees in India, nor did it appoint any dependent agent to execute contracts in India.

- The AO, however, was of the view that the assessee had a PE in India and, taxed the same as business income at the rate of **40%**. On appeal, the Commissioner (Appeals) held that the assessee did not have a fixed place PE in India, and, therefore, the interest income was taxable at special rates as per article 11(2).

Assessee's Contention

- The assessee, Marubeni Corporation, contended that it did not have any PE in India as per Article 5 of the India-Japan Double Taxation Avoidance Agreement (DTAA). It had no office, fixed place of business, employees, or dependent agents in India.

- The contracts in question related to offshore supply of equipment, where all key activities such as negotiation, procurement, and execution were carried out entirely from Japan. No part of the contract was performed in India.

- The goods were delivered on a Cost, Insurance and Freight (CIF) basis, and the title and risk in the goods passed to the Indian buyers outside India. Therefore, the income from such supply did not accrue or arise in India.

- In absence of any PE and in view of the contract being executed fully outside India, the assessee contended that no income was taxable in India under Article 7 of the DTAA.

Revenue's Contention

- The Revenue asserted that Marubeni Corporation had a **Permanent Establishment (PE)** in India through project offices, making it liable for taxation beyond the concessional DTAA rate.
- It was contended that the **interest income** earned on supplier's credit was **effectively connected** to Marubeni's PE in India, thus triggering **Article 11(6)** of the India-Japan DTAA.
- Revenue argued that the Indian borrowers were **clients of the Indian PE**, and services or contracts had been executed in India, creating a **functional nexus**.
- Since the interest income was allegedly attributable to the PE, the Revenue maintained it should be taxed as **business profits** under **Article 7**, at the higher **domestic rate of 40%**.
- The AO claimed that the mere existence of a PE was sufficient to **deny concessional 10% taxation** under Article 11(2), even without separately proving direct attribution.

Legal provisions

Article 5 of India-Japan DTAA:

1. *For the purposes of this Convention, the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.*

2. *The term 'permanent establishment' includes especially :*

(a) a place of management ;
(b) a branch ;
(c) an office ;
(d) a factory ;
(e) a workshop ;
(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
(g) a warehouse in relation to a person providing storage facilities for others;
(h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;
(i) a store or other sales outlet ; and
(j) an installation or structure used for the exploration of natural resources, but only if so used for a period of more than six months.

Legal provisions

Article 11 of India-Japan DTAA:

*The term **'interest'** as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.*

Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

*However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed **10 per cent** of the gross amount of the interest.*

Ruling

- Hon'ble Income Tax Appellate Tribunal (ITAT), Mumbai, held that Marubeni Corporation did not have a Permanent Establishment (PE) in India as defined under Article 5 of the India-Japan DTAA.

- The Tribunal held that just having a PE in India does not automatically trigger taxation under Article 11(6). A direct or indirect attribution of the interest income to the PE must be clearly established.

- It was held that the offshore supply contracts were executed entirely outside India, and the title and risk in goods passed to the Indian customers outside India. Therefore, the income from such supply could not be taxed in India.

- The Tribunal ruled that the **interest income continues to fall under Article 11(2)** of the India-Japan DTAA, **taxable at the concessional rate of 10%** on a gross basis.

- Accordingly, Commissioner (Appeals) has rightly followed the decision of the Coordinate Bench referred supra and the addition made by the Assessing Officer was deleted, and the appeal was decided in favour of the assessee.

Our Comments

- This judgment **reaffirms the principle** that **DTAA overrides domestic provisions**, especially where PE is absent.

- Further, even if a company has a Permanent establishment in India the income which is desired to be taxed in India needs to be associated with such PE if it wishes to tax such income as business income in India.

- Also, have group companies or some employees in India does not itself tantamount to having a PE in India as various conditions mentioned in DTAA needs to be fulfilled to check if the PE exists in India.

Section/Article	Article 5 & 11 of Japan DTAA
DTAA/Country	India & Japan
Court	Mumbai – Tribunal
Date of decision	19.03.2025

Note: Case law name in Red- in favor of the revenue, Green-In favor of the Assessee, Orange = Partial

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