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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 186/2018

THE COMMISSIONER OF INCOME TAX-INTERNATIONAL TAXATION-2 ..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

versus

MITSUI & COMPANY LTD. ..... Respondent

Through: Mr. Pranjal Srivastava and Ms. Devina Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% 16.02.2018

Admit.

The question urged in this appeal for consideration is:-

> *"(1) Whether the assessee has constituted the permanent establishment (PE) so as to attract the provisions of Section 9 of the Income Tax Act, 1961?"*

The impugned order itself discloses that the Income Tax Appellate Tribunal (ITAT) has followed its previous decisions of other years. One of those decisions was carried in an appeal in this Court by the Revenue in the case of *Director of Income Tax vs. Mitsui & Co. Ltd.*, ITA 902 of 2009 (for A.Y. 2001-02). The facts are not different.

This Court in the said judgment dated 12.10.2017 (ITA 902 of 2009) has upheld the decision of the ITAT (which had based its decision on a Special Bench of ITAT's judgment, applicable for A.Y. 1980-81 and 1981-82). The Court in its order dated 12.10.2017 (ITA 902 of 2009) held as follows:-

> *"18. Mr. Asheesh Jain, the learned Senior Standing Counsel for the Revenue, has placed before the Court the remand report dated 31st January 2005 prepared by the AO for submission to the CIT (A) in the course of the appellate proceedings. The Court has also been taken through the statement recorded by Mr. Yuki Morata and the answers given by him to specific queries. The Court is unable to be persuaded that the ITAT erred in its conclusion that the evidence produced by the AO does not show that the LOs of the Assessee carried on any activity which was not incidental and auxiliary in nature.*
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> *19. It is urged by Mr. Jain that the ITAT had merely gone by the fact that the Reserve Bank of India ("RBI") had not found the Assessee to be in violation of any of the conditions subject to which it was permitted to operate its LOs in India. The Court finds that, independent of the above factor, the ITAT has in fact examined in detail all the materials referred to by the AO in its remand report as well as the order of the CIT (A) and has given detailed reasons why none of these materials establish that the LOs were used by the Assessee to carry on any business or trading activity in India. The said factual finding by the ITAT has not been shown to be perverse.*
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> *20. The Court further notes that there was no basis for the AO to conclude that the Special Bench of the ITAT had erred in its conclusion in favour of the Assessee that the LOs were not carrying on any activity which was either incidental and auxiliary in nature. With the*

> *consistent position in this regard continuing since 1977-78, in the absence of any evidence to suggest a change in the circumstances, there was no warrant for the AO and the CIT (A) to take a different view of the matter."*

Following the above decision, this Court is of the opinion that no question of law arises as the ITAT merely followed the decisions of the previous years, which have been affirmed by the Special Bench of the ITAT and subsequently by other Benches.

The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 16, 2018
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