



\$~39

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

+ ITA 478/2024, CM APPL. 51337/2024 (Interim Relief)

J.M. VOITH SE AND CO. KGAppellant

Through: Mr Sachit Jolly, Ms. Mansha
Anand, Mr. Aditya Rathore,
Mr. Abhyudaya Shankar, Advs.

Versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 3

(1) (1), INTERNATIONAL TAXATION, NEW DELHI

.....Respondent

Through: Mr. Puneet Rai, SSC with Mr.
Ashvini Kumar, Mr. Rishabh
Nangia, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

04.09.2024

%

1. The assessee impugns the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 23 April 2024 and posits the following questions of law for our consideration: -

“A) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the Agreement dated 24.06.2010 with Security Paper Mill (SPMCIL) is a composite indivisible contract for setting up paper mill in India and hence taxable in India?

B) Whether on the facts and in the circumstances of the case in law, the Tribunal erred in holding the Appellant taxable from offshore supply in India without first deciding whether the Appellant has as fixed place PE in India or not?



C) Whether on the facts and in the circumstances of the case in law, the Tribunal erred in holding the Appellant taxable from offshore supply in India without first deciding the applicability of paragraph 7,1(a) and (b) of Protocol to the DTAA?

D) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that revenue from offshore supplies to SPMCIL was taxable in India in total disregard of the various authoritative / binding judicial pronouncements?

E) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in remanding the matter to the Assessing Officer for de novo adjudication on a purely legal issue of applicability of paragraph 7,1(a) and (b) of Protocol to the DTAA which did not require any investigation of fact; back to the file of the Respondent even though the Respondent had already returned its findings on the said issue in the Assessment Order ?

F) Whether on the facts and in the circumstances of the case and in law, the findings of the Tribunal are erroneous as without dealing with the contention that the Appellant does not have any project office in India and, therefore, the question of a fixed place PE does not arise; the Tribunal has held the Appellant to be taxable in India qua the income from offshore supply?"

2. Having heard learned counsels for respective sides, we formally admit this appeal on Questions B and C.

3. On going through the order rendered by the Tribunal, we find that there has been an abject failure to return or record any finding with respect to the existence of a Fixed Place or Supervisory Permanent Establishment. In our considered opinion, the question of taxability could not have possibly been examined unless the aforesaid aspect had been considered and answered. In view of the aforesaid, we find ourselves unable to sustain the order impugned.

4. The appeal is consequently allowed. The questions are answered in favour of the appellant assessee. The order dated 23 April 2024 is hereby quashed and set aside.

5. The matter shall in consequence stand placed before the concerned Tribunal for consideration afresh. All rights and



contentions of respective sides on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 4, 2024*/neha*