IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'I' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President),
and Anikesh Banerjee (Judicial Member)]

ITA No. 6935/Mum/2018
Assessment year: 2015-16

RGA International Reinsurance Company Ltd **…….……Appellant**
c/o SRBC & Associates LLP, 14th floor, The Ruby
29, Senapati Bapat Marg, Dadar (West)
Mumbai 400 028 [PAN: AADCR1226K]

Vs

Assistant Commissioner of Income Tax
International Taxation 4(1)(1), Mumbai **……Respondent**

Appearances by
P J Pardiwalla, *along with* **Jasmin Amalsadvala and Anish Thakkar** *for the appellant*
Sunil Umap *for the respondent*

Date of concluding the hearing : August 02, 2022
Date of pronouncing the order : October 31,2022

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 8th October 2018 in the matter of assessment under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961, for the assessment year 2015-16.

2. Grievances raised before us are as follows:

1. Ground 1

The learned AO has, on the facts and circumstances of the case in law, and based on the directions of the Hon'ble DRP, erred in concluding that the Appellant has a business

connection in India as per the provisions of section 9(1)(i) of the Act on the basis that the Appellant is earning income from India on a regular and continuous basis.

2. Ground 2

The learned AO has, on the facts and circumstances of the case in law, and based on the directions of the Hon'ble DRP, erred in concluding that the Appellant has a fixed place permanent establishment (PE) in India as per Article 5(1) of the India-Ireland Double Taxation Avoidance Agreement (India-Ireland tax treaty).

While concluding a fixed place PE, the learned AO erred in holding that

2.1 RGA Services India Private Limited (RGA Services) provides technical and core reinsurance business services in the form of actuarial, underwriting and risk assessment services which are crucial in performance of the Appellant's reinsurance business in India.

2.2 In alleging that the Appellant has developed a standardised software called Automated Underwriting and Risk Analysis (AURA), and once the draft underwriting proposal is generated with the help of AURA software, there is very little decision making left to be done in Ireland.

3. Ground 3

The learned AO has, on the facts and circumstances of the case in law, and based on the directions of the Hon'ble DRP, erred in concluding that RGA Services acts as a Dependent Agent PE of the Appellant in India as per Article 5(6) of the India-Ireland tax treaty.

The learned AO erred in holding that

3.1 RGA Services habitually secures orders for and on behalf of the Appellant. Further, the relationship between RGA Services and the Appellant is that of principal and agent and not that of principal to principal.

3.2 In holding that the employees of RGA Services perform functions like de facto employees of the Appellant. The learned AO also held that even though the employees remain on the payroll of RGA Services the domain and control over the functioning of such employees is of the Appellant.

3.3 In holding that RGA Services exercises the authority to significantly influence the decisions leading to signing of the contract by the Appellant outside India without requiring any further substantial inputs from outside India.

4. Ground 4

The learned AO has, on the facts and circumstances of the case in law, and based on the directions of the Hon'ble DRP, erred in concluding that the support services performed by

RGA Services are not in the nature of preparatory or auxiliary services but are core and crucial business activities in relation to reinsurance business.

5. Ground 5

The learned AO has, on the facts and circumstances of the case and in law, and based on the directions of the Hon'ble DRP, erred in not considering the Appellant's claim that no further income can be attributed to the Appellant's alleged PE, on the fact that remuneration paid to RGA Services is at arm's length price.

Ground 6

The learned AO has on an adhoc basis held 50 percent of gross premium received to be attributable to the Indian operations.

7. Ground 7

The learned AO has erred in using Rule 10 of the Income-tax Rules, 1962 while attributing profits to the alleged PE of the Appellant in India.

8. Ground 8

The learned AO has, on the facts and circumstances of the case and in law, and based on the directions of the Hon'ble DRP, erred in applying a tax rate of 40 per cent instead of 12.5 per cent (plus applicable surcharge and education cess) in case of life reinsurance business as per section 115B of the Act.

9. Ground 9

The learned AO has, on the facts and circumstances of the case and in law, and based on the directions of the Hon'ble DRP, erred in levying interest under section 234B of the Act.

10. Ground 10

The learned AO has, on the facts and circumstances of the case and in law, and based on the directions of the Hon'ble DRP, erred in initiating penalty proceedings under section 271(1)(c) of the Act.

The above grounds of objections are all independent and without prejudice to one another.

3. The assessee before us, RGA International Reinsurance Company (RIRC, in short), is a company incorporated in and fiscally domiciled in Ireland and is admittedly entitled to the benefits of the India Ireland Double Taxation Avoidance Agreement [(2002) 254 ITR (Stat)

245; Indo-Irish tax treaty, in short]. The assessee is engaged in the business of providing reinsurance services, amongst others, to its clients in India, and during the relevant previous year, the assessee has earned the reinsurance commission of Rs 504,37,83,613 from India. What is in dispute before us is the tax implications of the income embedded in these receipts, in India. As we proceed to deal with the tax implications, in India, of the assessee's business of reinsurance, it will be useful to begin by taking a quick look at the nature of the reinsurance business.

4. Reinsurance is an insurance cover for insurance companies, and it constitutes insurance of the risk liability that an insurer has undertaken under a contract of insurance. Under a reinsurance arrangement, the reinsurer assumes, of course, for consideration (i.e. reinsurance premium), the risk, as a whole or in part, covered under a policy issued by an insurance company. The fundamental presumption under which the insurance business functions is that only a fraction of the policies issued would result in claims and the premiums collected on all the insurance policies by an insurance company will be far in excess of such claims, and it is this fundamental presumption because of which the total sum insured by an insurance company is often several times the capacity of the insurance company to pay, and even far in excess of the net worth of the insurance companies. Presumptions, no matter how valid and how realistic, are presumptions nevertheless, and there is a possibility that in a bad year, such a presumption will turn out to be incorrect and the total value of insurance claims may be much more than the premium collected, and if the losses are of a very large magnitude, even the net worth of the company would be wiped out. That is the risk that reinsurance contracts cover, but there can also be situations in which the insurance companies take the support of reinsurers when they do not have the capacity, or the inclination, to provide an insurance cover entirely on their own. The persons taking such reinsurance are called cedants. The reinsurance of the former category, broadly speaking, is treaty reinsurance, and the reinsurance of the latter category is generally referred to as facultative reinsurance. To protect the interests of the end consumers taking insurance covers from the insurance companies, the regulatory bodies, such as the Insurance Regulatory and Development Authority of India (IDRA), put certain conditions with respect to taking, in a timely and organized manner, such reinsurance coverage, and that is what offers a market to the reinsurance companies in a jurisdiction like India.

5. The short case of the assessee is that since it does not have any permanent establishment in India, and, therefore, in terms of the provisions of Indo-Irish tax treaty, its business profits, embedded in the reinsurance premium received from Indian entities, are not taxable in India. That claim, however, has not found favour with the authorities below. The Assessing Officer has noted that the assessee company has a group entity in India by the name of RGA India Services Pvt Ltd (**RGA-India**, in short), which is a subsidiary of the Reinsurance Group of America, and that RGA-India has provided a spectrum of vital and primary business functions, i.e. actuarial and underwriting services, which are key functions in the insurance business. It was also noted that the draft underwriting proposal is generated by the RGA India and that there is little decision-making involved post such underwriting activity. It was also noted that RGA India is performing all critical support activities, including marketing support services, claims support services, data synopsis services and other administrative services, and as such RGA India constitutes the fixed place permanent establishment of the assessee company. While the Assessing Officer also held that the RGA India constitutes a dependent agent permanent establishment of the assessee, we need not, for the reasons we will set out in a short while, go into that aspect of the matter in detail. Coming back to the fixed place permanent establishment case of the Assessing Officer, as put to the assessee in the draft assessment order, the assessee raised objection before the Dispute Resolution Panel. It was submitted by the assessee that the assessee does not have any place of business operations in India and that the assessee does not have any premises at its disposal. It was also pointed out that RGA India is a separate legal entity having its own personnel, and the services rendered by RGA India are preparatory and auxiliary in nature, rather than core reinsurance services. It was also pointed out that whatever services are rendered by RGA India to the assessee have been remunerated at an arm's length price as such, and that position has been accepted in the transfer pricing assessment. It was also explained that the services rendered by the RGA India and the assessee company are distinct in nature inasmuch as while the former renders support services, the later provides reinsurance services. As regards the software said to be generating a reinsurance proposal, it was explained by the assessee that the assessee does not own that software, nor is its server even located in India. The assessee also placed its reliance on a number of judicial precedents, including E Funds IT Solutions Inc Vs ADIT [(2017) 86 Taxman 240 (SC)], Formulae One World Championship Ltd Vs CIT [(2017) 394 ITR 80 (SC)] Abode Systems

Inc Vs ADIT [(2016) 69 taxmann.com 228 (Del)] and DITV s Galileo International Inc [(2009) 336 ITR 264 (Del)]. None of these submissions, however, impressed the Dispute Resolution Panel which confirmed the stand of the Assessing Officer by observing as follows:

> *6.1 We have considered the facts of the case, the written submissions and arguments of the assessee. The assessee submitted that it does not have a PE in India and the assessee is eligible for beneficial treatment under the IR Treaty. However, on perusal of the facts and circumstances of the case, it emerges that the arguments of the assessee are not tenable on account of the following reasons:*
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> > *• The reinsurance contract is an agreement between the insurer (i.e. Indian cedent) and the re-insurer, whereby a part of the risk gets transferred from one party to another. The party accepting the risk is termed as the reinsurer and the party transferring the risk is termed as the reinsured/ reassured or cedent.*
> >
> > *• The income of the assessee is being earned from India on a regular and continuous basis since it has entered into contracts with the Indian cedents that are likely to continue for several years. In view of this, there is a clear cut business connection and the income of the Assessee is taxable in India in terms of section 9(1)(i) of the Act.*
> >
> > *• Further, the assessee is having a regular flow of income from India which further strength the argument that the Assessee has a clear-cut business connection in India. Accordingly, the arguments of the Assessee on this account are flawed.*
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> *In such a scenario, the contention that the assessee does not have any operations in India, is not correct since the business of the assessee is to provide reinsurance service to the Indian cedents.*
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> *6.2 Further, based on the facts of the case, it is seen that RGA Services performs a spectrum of crucial business activities such as marketing support services, customer relationship management, claims support services, data synopsis services and other administrative support and ancillary services. These services are core business activities in the reinsurance business which gets substantially performed in India itself and thereafter, not*

much critical functions/ activities remain to be performed outside India except for just signing of the contract. Accordingly, given that core business activities of reinsurance business of the assessee in connection to Indian region are performed through the premises of RGA Services, RGA Services constitute a Fixed Place PE of the Assessee as per Article 5(1) of the IR Treaty.

In view of the above, the objection of assessee is rejected.

6. It is thus the view of the Assessing Officer, which has been approved by the Dispute Resolution Panel, that this subsidiary constitutes a dependent agency permanent establishment (DA-PE) as also fixed place permanent establishment (FP-PE) of the assessee in India. Consequently, in the view of the authorities below, the assessee is liable to be taxed in respect of the business profits, arising out of the reinsurance premium received from the Indian insurance companies, in India. The Assessing Officer has computed 50% of the reinsurance revenue so generated as attributable to the operations in India, and treated its taxability @ 10% of the gross reinsurance revenue. The action so taken by the Assessing Officer has also been confirmed by the DRP, and, accordingly, the Assessing Officer has proceeded to bring the reinsurance revenues to tax in India as business income. The assessee is aggrieved and is in appeal before us.

7. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

8. So far as the fixed place PE is concerned, the case of the Assessing Officer hinges on whether the operations carried out by the RGA India can constitute the assessee's permanent establishment in India. It is not even the case of the Assessing Officer, however, that any premises in India, whether of the RGA or otherwise, was at the disposal of the assessee. It is in this backdrop that we may take note of the following observations made by Hon'ble Supreme Court in the case of **E-Funds IT Solutions Inc** *(supra):*

11. Since the Revenue originally relied on fixed place of business PE, this will be tackled first. **Under Article 5(1), a PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on**. What is a "fixed place of business" is no longer *res integra.* In Formula One World Championship Ltd. (supra), this Court, after setting out Article 5 of the DTAA, held as follows:

> '32. The principal test, in order to ascertain as to whether an establishment has a fixed place of business or not, is that such physically located premises have to be 'at the disposal' of the enterprise. For this purpose, it is not necessary that the premises are owned or even rented by the enterprise. It will be sufficient if the premises are put at the disposal of the enterprise. However, merely giving access to such a place to the enterprise for the purposes of the project would not suffice. The place would be treated as 'at the disposal' of the enterprise when the enterprise has right to use the said place and has control thereupon.
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> ** ** **
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> 34. According to Philip Baker, the aforesaid illustrations confirm that the fixed place of business need not be owned or leased by the foreign enterprise, provided that is at the disposal of the enterprise in the sense of having some right to use the premises for the purposes of its business and not solely for the purposes of the project undertaken on behalf of the owner of the premises.
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> 35. Interpreting the OECD Article 5 pertaining to PE, Klaus Vogel has remarked that insofar as the term 'business' is concerned, it is broad, vague and of little relevance for the PE definition. According to him, the crucial element is the term 'place'. Importance of the term 'place' is explained by him in the following manner:
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> "In conjunction with the attribute 'fixed', the requirement of a place reflects the strong link between the land and the taxing powers of the State. This territorial link serves as the basis not only for the distributive rules which are tied to the existence of PE but also for a considerable number of other distributive rules and, above all, for the assignment of a person to either Contracting State on

the basis of residence (Article 1, read in conjunction with Article 4 OECD and UN MC)."

36. We would also like to extract below the definition to the expression 'place' by Vogel, which is as under:

"A place is a certain amount of space within the soil or on the soil. This understanding of place as a three-dimensional zone rather than a single point on the earth can be derived from the French Version ('installation fixe') as well as the term 'establishment'. As a rule, this zone is based on a certain area in, on, or above the surface of the earth. Rooms or technical equipment above the soil may qualify as a PE only if they are fixed on the soil. This requirement, however, stems from the term 'fixed' rather than the term 'place', given that a place (or space) does not necessarily consist of a piece of land. On the contrary, the term 'establishment' makes clear that it is not the soil as such which is the PE but that the PE is constituted by a tangible facility as distinct from the soil. This is particularly evident from the French version of Article 5(1) OECD MC which uses the term 'installation' instead of 'place'.

The term 'place' is used to define the term 'establishment'. Therefore, 'place' includes all tangible assets used for carrying on the business, but one such tangible asset can be sufficient. The characterization of such assets under private law as real property rather than personal property (in common law countries) or immovable rather than movable property (in civil law countries) is not authoritative. It is rather the context (including, above all, the terms 'fixed'/'fixe'), as well as the object and purpose of Article 5 OECD and UN MC itself, in the light of which the term 'place' needs to be interpreted. This approach, which follows from the general rules on treaty interpretation, gives a certain leeway for including movable property in the understanding of 'place' and, therefore, we assume a PE once such property has been 'fixed' to the soil.

For example, a work bench in a caravan, restaurants on permanently anchored river boats, steady oil rigs, or a transformator or generator on board a former railway wagon qualify as places (and may also be 'fixed').

In contrast, purely intangible property cannot qualify in any case. In particular, rights such as participations in a corporation, claims, bundles of claims (like bank accounts), any other type of intangible property (patents, software, trademarks etc.) or intangible economic assets (a regular clientele or the goodwill of an enterprise) do not in themselves constitute a PE. They can only form part of PE constituted otherwise. Likewise, an internet website (being a combination of software and other electronic data) does not constitute tangible property and, therefore, does not constitute a PE.

Neither does the mere incorporation of a company in a Contracting State in itself constitute a PE of the company in that State. Where a company has its seat, according to its by-laws and/or registration, in State A while the POEM is situated in State B, this company will usually be liable to tax on the basis of its worldwide income in both Contracting States under their respective domestic tax law. Under the A-B treaty, however, the company will be regarded as a resident of State B only (Article 4(3) OECD and UN MC). In the absence of both actual facilities and a dependent agent in State A, income of this company will be taxable only in State B under the 1st sentence of Article 7(1) OECD and UN MC.

There is no minimum size of the piece of land. Where the qualifying business activities consist (in full or in part) of human activities by the taxpayer, his employees or representatives, the mere space needed for the physical presence of these individuals is not sufficient (if it were sufficient, Article 5(5) OECD MC and Article 5(5)(a) UN MC and the notion of agent PEs were superfluous). This can be illustrated by the example of a salesman who regularly visits a major customer to take orders, and conducts meetings in the purchasing director's office. The OECD MC Comm. has convincingly denied the existence of a PE, based on the implicit understanding that the relevant

geographical unit is not just the chair where the salesman sits, but the entire office of the customer, and the office is not at the disposal of the enterprise for which the salesman is working."

37. Taking cue from the word 'through' in the Article, Vogel has also emphasised that the place of business qualifies only if the place is 'at the disposal' of the enterprise. According to him, the enterprise will not be able to use the place of business as an instrument for carrying on its business unless it controls the place of business to a considerable extent. He hastens to add that there are no absolute standards for the modalities and intensity of control. Rather, the standards depend on the type of business activity at issue. According to him, 'disposal' is the power (or a certain fraction thereof) to use the place of business directly. Some of the instances given by Vogel in this behalf, of relative standards of control, are as under:

"The degree of control depends on the type of business activity that the taxpayer carries on. It is therefore not necessary that the taxpayer is able to exclude others from entering or using the POB.

The painter example in the OECD MC Comm. (no. 4.5 OECD MC Comm. on Article 5) (however questionable it might be with regard to the functional integration test) suggests that the type and extent of control need not exceed the level of what is required for the specific type of activity which is determined by the concrete business.

By contrast, in the case of a self-employed engineer who had free access to his customer's premises to perform the services required by his contract, the Canadian Federal Court of Appeal ruled that the engineer had no control because he had access only during the customer's regular office hours and was not entitled to carry on businesses of his own on the premises.

Similarly, a Special Bench of Delhi's Income Tax Appellate Tribunal denied the existence of a PE in the case of Ericsson. The Tribunal held that it was not

sufficient that Ericsson's employees had access to the premises of Indian mobile phone providers to deliver the hardware, software and know-how required for operating a network. By contrast, in the case of a competing enterprise, the Bench did assume an Indian PE because the employees of that enterprise (unlike Ericsson's) had exercised other businesses of their employer.

The OECD view can hardly be reconciled with the two court cases. All three examples do indeed shed some light onto the method how the relative standards for the control threshold should be designed. While the OECD MC Comm. suggests that it is sufficient to require not more than the type and extent of control necessary for the specific business activity which the taxpayer wants to exercise in the source State, the Canadian and Indian decisions advocate for stricter standards for the control threshold.
‘

The OECD MC shows a paramount tendency (though no strict rule) that PEs should be treated like subsidiaries (cf. Article 24(3) OECD and UN MC), and that facilities of a subsidiary would rarely been unusable outside the office hours of one of its customers (i.e. a third person), the view of the two courts is still more convincing.
Along these lines, a POB will usually exist only where the taxpayer is free to use the POB:

- at any time of his own choice;
- for work relating to more than one customer; and
- for his internal administrative and bureaucratic work.

In all, the taxpayer will usually be regarded as controlling the POB only where he can employ it at his discretion. This does not imply that the standards of the control test should not be flexible and adaptive. Generally, the less invasive the activities are, and the more they allow a parallel use of the same POB by other persons, the lower are the requirements under the control test. There are, however, a number of traditional PEs which by their nature require an exclusive use of the POB by only one taxpayer and/or his personnel. A small workshop (cf. Article 5(2)(e) OECD and UN MC) of 10 or 12 square meters

can hardly be used by more than one person. The same holds true for a room where the taxpayer runs a noisy machine."

38. OECD commentary on Model Tax Convention mentions that a general definition of the term 'PE' brings out its essential characteristics, i.e. a distinct "situs", a "fixed place of business". This definition, therefore, contains the following conditions:

- the existence of a "place of business", i.e. a facility such as premises or, in certain instances, machinery or equipment;
- this place of business must be "fixed", i.e. it must be established at a distinct place with a certain degree of permanence;
- the carrying on of the business of the enterprise through this fixed place of business. This means usually that persons who, in one way or another, are dependent on the enterprise (personnel) conduct the business of the enterprise in the State in which the fixed place is situated.'

12. Thus, **it is clear that there must exist a fixed place of business in India, which is at the disposal of the US companies, through which they carry on their own business.** There is, in fact, no specific finding in the assessment order or the appellate orders that applying the aforesaid tests, any fixed place of business has been put at the disposal of these companies

9. In the present case also, it has not even been the case of any of the authorities below that any particular premises were at the disposal of the assessee. The DRP has referred to the existence of business connection under section 9(1) of the Indian Income Tax Act 1961, but then that aspect of the matter is wholly irrelevant because in a case in which a double taxation avoidance agreement comes into play, as admittedly, in this case, the provisions of the Income Tax Act 1961 cannot be pressed into service unless these provisions are more beneficial to the assessee. The DRP has simply observed that since the core business activities are conducted by RGA India, RGA India constitutes the fixed place PE. As we we have seen above, unless a particular place is at the disposal of the assessee, that place cannot

be said to constitute the PE of the assessee. In any case, the core reinsurance activity is the assumption of risk, and that assumption of risk has been done outside India. There is thus no occasion to attribute reinsurance profit attribution to RGA India. Whatever activities are carried out by RGA India have been duly paid for by the asseseee, and the transfer pricing assessment has accepted that position. Once that position is accepted, there cannot be any further profit attribution for services rendered by the RGA. In view of these discussions, and bearing in mind the entirety of the case, we disapprove the stand of the authorities below, and hold that there was no fixed place permanent establishment on the facts of this case. As regards the existence of the dependent agency permanent establishment, that aspect of the matter, in the light of the coordinate bench decision in the case of **ADIT Vs Asia Today Ltd [(2021) 129 taxmann.com 35 (Mum)],** is wholly tax-neutral and does not, therefore, need our adjudication. In the said case, we have, *inter alia*, observed as follows:

> **13. In the light of Hon'ble jurisdictional High Court's judgment in the case of *Set Satellite* (*supra*), so far as profit attribution of a DAPE is concerned, the legal position is that as long as an agent is paid an arm's length remuneration for the services rendered, nothing survives for taxation in the hands of the dependent agency permanent establishment. Viewed thus, the existence of a dependent agency permanent establishment is wholly tax neutral.**
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> **14. An interesting offshoot of this legal position is that, as on now, existence of dependent agency permanent establishment is of no tax consequence. Whether there is a DAPE or not, the taxation is only of the agent's remuneration which is taxed anyway *de hors* the existence of a DAPE. Such an approach may sound somewhat incongruous from an academic point of view inasmuch as what was considered to be a threshold limit for source taxation ceases to have any relevance for source taxation, and as, on a conceptual note, PE, whether a fixed base PE, DAPE or any other type of PE, provides for threshold limits to trigger taxation in the source state, but then if as a result of a DAPE, no additional profits, other than agent's remuneration in the source country - which is taxable in the source state anyway *de hors* the existence of PE, become taxable in the source state, the very approach to the DAPE profit attribution may seem incompatible with the underlying scheme of taxation of cross border business**

profits under the tax treaties, but that cannot come in the way of the binding force of judicial precedents from Hon'ble Courts above. The SLP against this decision is said to pending before Hon'ble Supreme Court but that does not, in any way, dilute binding nature of this binding judicial precedent. In all fairness to the learned Departmental Representative, however, we may take refer to observations in another coordinate bench decision in the case of *Delmas France* v. *ADIT* [(2012) 17 taxmann.com 91 (Mum)], to the effect, "Similarly, before accepting DAPE profit neutrality theory, we will still have to deal with learned Departmental Representative's plea that as per the law laid down by Hon'ble Supreme Court in the case of *DIT* v. *Morgan Stanley & Co Inc.* [2007] 162 Taxman 165 (SC), the arm's length remuneration paid to the PE must take into account 'all the risks of the foreign enterprise as assumed by the PE', but then in an agency PE situation, unlike a service PE situation which was the case before the Hon'ble Supreme Court, a DAPE assumes the entrepreneurship risk in respect of which agent can never be compensated because even as DAPE inherently assumes the entrepreneurship risk, an agent cannot assume that entrepreneurship risk. To this extent, there may clearly be a subtle line of demarcation between the dependent agent and the dependent agency permanent establishment. The tax neutrality theory, on account of existence of DAPE, may not indeed be wholly unqualified- at least on a conceptual note". However, in the present case, successive coordinate benches in assessee's own case for different assessment years have upheld the contentions of the assessee and held that once an arm's length remuneration is paid to the agent, nothing further survives for taxation in the hands of the DAPE which, at best, can be brought to tax in the hands of the assessee. In any event, whatever be the academic justification for an alternative approach to the issue, the law laid down by Hon'ble Courts above is to be deeply respected and loyally followed. Respectfully following the law laid down by Hon'ble Courts above and consistent with the stand of the coordinate bench decisions, we uphold the plea of the assessee for the present years as well. We, therefore, hold that even if there is held to be a dependent agency permanent establishment on the facts of this case, as at best the case of the Assessing Officer is, it is wholly tax neutral inasmuch as the Indian agents have

been paid arm's length remuneration, and nothing further can, therefore, be taxed in the hands of the assessee.

15. It has not been the case of the revenue authorities at any stage that the remuneration paid to the Indian agent is not an arm's length remuneration for the services rendered by the agents concerned. There is no material whatsoever before us to show, or even indicate, that the remuneration paid to the agents is not arm's length remuneration. Under these circumstances, we see no reasons to remit the matter to the file of the Assessing Officer, for fresh round of ALP ascertainment proceedings, as prayed by the learned Departmental Representative. The plea of the assessee, as raised in the cross objections, therefore, merits acceptance. Whether there is a DAPE or not, there are no additional profits to be brought to tax as a result of the existence of the DAPE, and, therefore, the question about existence of a DAPE on the facts of this case is wholly academic.

16. Once we hold, as we have held above, that in the light of the present legal position, existence of dependent agency permanent establishment in wholly tax neutral, unless it is shown that the agent has not been paid an arm's length remuneration, and when it is not the case of the Assessing Officer, as we have noted earlier, that the agents have not been paid an arm's length remuneration, the question regarding existence of dependent agency permanent establishment, *i.e.* under article 5(4), is a wholly academic question. We humbly bow to the law laid down by Hon'ble Courts above. The limited argument before us is that here is a case of dependent agency permanent establishment, and existence of a DAPE, in the light of these discussions, is wholly tax neutral- particularly in the light of the legal position regarding profit attribution to the DAPE. We need not, therefore, deal with the question about existence of a DAPE, as it is an academic exercise with no tax effect involved. The related grounds of appeal are thus infructuous.

10. In view of these discussions, we hold that the assessee did not have a fixed place permanent establishment in India, that the question of assessee having a dependent agency PE

is wholly academic in the sense that, as the law stands now, the existence of the DAPE is wholly tax neutral in India. Accordingly, the business profits earned by the assessee on account of the reinsurance business have no tax implications in India. In view of these findings, all other issues raised in the appeal are academic and call for no adjudication as of now.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 31st day of October 2022.

Sd/-	Sd/-
Anikesh Banerjee	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 31st day of October, 2022

Copies to:	*(1)*	*The appellant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai