

PE can't be established merely because employees visit India: ITAT Delhi

FCC Co Ltd. (ITA No. 8960/Del/2019)

Facts:

1. The employees of the assessee visited India to assist FRL in relation to supplies made by FRL/FCC Clutch to its customers; resolving problems relating to production, fixing of machines, maintenance of machines; checking safety status at the premises and suggesting ways for enhancing safety; support in quality control; IT related services; support for launch of new segment line; etc.
2. The Revenue was of the view that this is sufficient to establish that the assessee has a supervisory PE in India and demanded tax.

ITAT Delhi held as below:

1. It is a well settled position that in order to constitute a Fixed Place PE, it is a prerequisite that the alleged premise must be at the disposal of the enterprise.
2. Hon SC in the case of Formula One world Championship Vs. CIT [Civil Appeal No. 3849 of 2017] has held that merely giving access to the premise 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.
3. The employees visited India to render certain technical services under the Licence Agreement read with Dispatch of Engineers Agreement which have been duly offered to tax by the assessee as FTS as per the provisions of India-Japan DTAA. None of these activities performed by the employees are in the nature of supervisory functions, supervision being the act of overseeing or watching over someone or something
4. We therefore hold that there is no Supervisory PE of the assessee for the AYs under consideration.