

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No.-3099/Del/2009
(ASSESSMENT YEAR-2005-06)**

ACIT, Circle 2(1), Room No. 414, Drum Shaped Bldg., New Delhi.	vs	Radware Ltd. U & I, Business Centre, F-41, NDSE-1, New Delhi.
Appellant by	Smt. Rasmita Jha, Sr. DR	
Respondent by	Sh. Ved Jain, CA	

Date of Hearing	09.12.2015
Date of Pronouncement	21.01.2016

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

The present appeal has been filed by the Revenue against the order of the ld. CIT(A)'s-XXIX, New Delhi vide his order dated 26/03/2009 for A.Y. 2005-06 on the following grounds:

1. *"On the facts and circumstances of the case and in law, the ld. CIT(A) erred in holding that activities of the assessee in India are of preparatory or auxiliary in nature.*
2. *On the facts and circumstances of the case and in law, the ld. CIT(A) erred in holding that the assessee does not have permanent establishment in India.*

3. The appellant prays to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal.”

2. Brief facts of the case are as under:

The assessee filed its return declaring nil income on 28.12.06. The return was filed in response to the notice u/s 142(1) of the Act on 04.01.06. Accordingly, notices u/s 143(2) of the Act was issued. The assessee is a liaison office in India of company incorporated in Israel. In Israel the company is engaged in the development, manufacture and sale of Internet Traffic Management Solution under the style and name Radware Limited. The ld. AO further noted that in India, the liaison office is undertaking activities and acting as a communication channel between its head office in Israel and parties in India. During the assessment proceedings, it was submitted that the assessee is not carrying out any trading activity, commercial or industrial in nature and does not have any business income arising in India. The ld. AO disregarded the submission made by the assessee and held that the assessee is a permanent establishment and computed the income of the assessee for the year under consideration at Rs. 16,86,375/-.

3. Aggrieved by the order of the ld. AO the assessee preferred an appeal before the ld. CIT(A).

3.1. The ld. CIT(A) considered the provisions of Indo Israel double taxation avoidance agreement and held that the assessee was not a PE but was having activities in nature of proprietary and auxiliary services. The ld. CIT(A) placed its reliance on the decision of the Hon'ble Jurisdictional High Court in the case of UAE Exchange

Centre Limited vs. Union of India and Anr., reported in 313 ITR 94, and deleted the addition made by the AO.

5. Aggrieved by the order of the ld. CIT(A) the Revenue is in appeal before us.

6. The short issue arising before us for consideration is that whether the assessee is a Permanent Establishment(PE) in India, or is only having activities that are proprietary or auxiliary in nature.

6.1 .The ld. AR submitted that the assessee is a liaison office of a company incorporated in India known as Radware Limited which is an Israel Company. In Israel, the company is engaged in the development, manufacture and sale of Internet Traffic Management Solution. The ld. AR further submitted that Indian liaison office is undertaking solely liaison activities, and are acting purely as a communication channel between its head office in Israel, and parties in India. The ld. AR stated across the bar that the assessee is not carrying on any activity of a trading, commercial or industrial in nature, and does not have any business income arising in India.

6.2. The ld. AR further submitted that, it is an undisputed fact that the company from Israel makes all the sales through the distributors directly from Israel as is clear from the diagram which has been reproduced at page 5 of the assessment order. The ld. AR submitted that the only work done by the assessee is servicing the equipments sold by the company directly. The ld. AR submitted that the distributors are independent parties and they remained in contact with Radware Israel themselves, and nowhere they are in any way contacting with the Indian liaison office.

6.3. The ld. AR contended that the activities carried on by the Indian liaison office are covered under article V of the Indo Israel DTAA. The ld. AR has placed his reliance upon the following judgments:

- i. *UAE Exchange Centre Ltd. vs. Union of India & Anr. reported in (2009) 313 ITR 94;*
- ii. *Director of Income Tax (International Taxation) vs. Morgan Stanley & Co. Inc. (2007) 292 ITR 416 (SC);*
- iii. *Mitsui & Co. Ltd. vs. ACIT (International Taxation) (2008) 4 DTR 356;*
- iv. *Western Union Financial Services Inc. vs. ADIT (2007) 104 ITD 34 (Del.);*
- v. *Gutal Trading Est., In RE (2005) 278 ITR 643 (AAR);*
- vi. *Inspecting Asstt. Commissioner vs. Mitsui & Co. Ltd. (1991) 41 TTJ (Del) (Spl. Bench) 569.*

7. The ld. DR on the contrary, submitted that the Indian Office is performing all functions necessary to make sales in India. She submitted that the activities performed by the Indian Office forms an essential and significant part of the business activity of the company as a whole and, therefore, the Indian office amounts to a PE in India.

8. We have perused the paper book, the arguments advanced by both the parties and the judgment of the Hon'ble Delhi High Court relied upon by the ld.AR .

8.1. We observe that the decision of the Jurisdictional High Court in the case of UAE Exchange Centre Limited (supra) covers the issue which needs to be considered in the present appeal. We have observed from the findings of the ld. CIT(A) that the assessee has been involved in supplying the literature relating to marketing and

sales without any participation in actual sales activity. The Israeli company is selling the products to the distributors as per the requirements directly from Israel, and also makes efforts to services and maintain products used within the territory, which are sold directly by the Israeli company. The Israeli company further sells to the distributors within the territory not being the assessee and that these distributors further resale the products to ultimate customers independently.

8.2. The Liaison office only provides certain servicing of the equipments to the distributors for which the expenses are reimbursed by the Israeli company. The Liaison office in India is merely in the nature to facilitate the contract between the distributors and the Israeli company. The distribution contract, *per se* at page ____ of the paper book, do not result into any generation of income and, therefore, the activities of the assessee have to be definitely considered to be proprietary and auxiliary in nature. The ld. AR has brought to our notice RBI approval, at page 10 of the paper book, which has been received by the assessee, for the purposes of undertaking liaison activities and to act as a communication channel between the parties in India and the Israeli company.

8.3. Moreover, the AO has relied upon the judgment of the authorities of advance ruling in the case of UAE Exchange Centre Limited reported in (2004) 268 ITR 9 AAR which has been reversed by the jurisdictional High Court in the case of UAE Exchange Centre Limited (*supra*).

8.4. In view of the foregoing discussion, we conclude that the assessee does amount to a PE in India, and are of the considered opinion that the assessee is a liaison office and are providing services which are proprietary or auxiliary in nature. We, therefore, do not find any infirmity with the findings of the ld. CIT(A).

8.5. Following the ratio laid down by the jurisdictional High Court in the case of UAE Exchange Centre (supra), we dismiss the grounds raised by the Revenue.

9. In the result, the appeal filed by the Revenue stands dismissed.

**The order is pronounced in the open court on
21/01/2016**

Sd/-

(N.K. SAINI)

ACCOUNTANT MEMBER

Dated: 21.01.2016

**Kavita, P.S.*

Sd/-

(BEENA PILLAI)

JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

