



KANU DOSHI GROUP

Knowledge Dedication Assured



TAX UPDATES

PERMANENT ESTABLISHMENT ('PE') – FIXED PLACE PE / AGENCY PE UNDER DOUBLE TAXATION AVOIDANCE AGREEMENT ('DTAA')

INTRODUCTION:

In accordance with the Article 5 of the Double Taxation Avoidance Agreement, the term 'Permanent Establishment' means **Fixed Place** of business through which the business of the enterprise is wholly or partly carried on. The term "permanent establishment" includes especially, a place of management, a branch, an office, a factory, a workshop, a warehouse in relation to a person providing storage facilities for others.... etc.

DTAA also specifies the concept of **Agency PE**, where a person - other than an agent of an independent status is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if –

- a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise.

CASE:

Where non-resident assessee company entered into Annual Maintenance Contract with an Indian company, and did not utilize the premises of Indian company either as warehouse for storage of its products or as a sales outlet for soliciting/procuring orders from Indian customers and further, there was no cogent material on record to demonstrate that Indian company habitually exercised authority to conclude contracts on behalf of non-resident assessee, none of ingredients of article 5 having been satisfied, terms of agreement as well as conduct of parties did not make out a case for revenue that premises of Indian company would constitute either a fixed place PE or agency PE.

REFERENCE:

AB Sciex Pte Ltd. vs. Assistant Commissioner of India Tax, Circle –Intl. Tax -1(1)(1), Delhi, ITA No.514/Del/2021, ITAT Delhi. Date of pronouncement – 29.04.2022