

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“I” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 4769/Mum/2023  
(Assessment Year: 2021-22)**

<b>Oxbow Energy Solutions B.V.</b> 307, block 4 Hiranandani Meadows, Off Pokhran Road No. 2 near Vasant Vihar Thane West, Mumbai 400607  <b>PAN: AAFCS5327N</b>	V s.	<b>The Deputy Commissioner of Income</b> Room No. X, 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai 400021
<b>Appellant)</b>	:	<b>Respondent)</b>

**Assessee by** : Shri Nishant Thakkar, Ms. Jasmin  
Amalsadwala  
**Revenue by** : Shri. Krishna Kumar, Sr. DR  
**Date of Hearing** : 07.10.2025  
**Date of Pronouncement** : 04.11.2025

ORDER

**Per Padmavathy S, AM:**

This appeal by the assessee is against the final order of assessment passed by the Deputy Commissioner of Income tax, International Circle-3(2)(2), Mumbai (in short 'the AO') passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (the 'Act') dated 25.10.2023 for AY 2021-22. The assessee raised the following grounds:

*“1. The Assessing Officer (AO) as well as the Dispute Resolution Panel (DRP) erred in assessing Rs. 37,63,060/- as income liable to tax in India.*

*2. The AO/DRP erred in holding that ASSESSEE has a business connection in India and that income is deemed to accrue to it on account of such business connection.*

*3. The AO/DRP erred in holding that ASSESSEE has a permanent establishment (PE) in India under the India-Netherlands DTAA and that income is attributable to its PE in India.*

*4. The AO/DRP erred in holding that a sum of Rs. 37.63 Lakhs claimed over and above the salary cost would constitute profits attributable to the Permanent Establishment (LO) as per paragraph 7(2) r.w. paragraph 7(3) of the India-Netherlands DTAA and that such, attribution amounting to about 12.27% is just and reasonable.*

*5. The order of the AO/DRP is bad in law inasmuch as the same has been passed on several factually incorrect findings which are perverse and contrary to the facts on record. The true facts are as submitted in the Statement of Facts annexed hereto.*

*6. The order of the AO/DRP is bad in law inasmuch as has been passed on several factually incorrect findings without giving an opportunity to the Assessee to rebut the same.*

*7. The assessment order is bad-in-law as being bared by limitation.*

*8. The Assessing Officer as well as the DRP erred in making assessment under the status of 'non-resident but applying the provisions pertaining to a resident entity*

*9. The case was selected for scrutiny for wrong reasons and the assessment was completed to justify the selection and on the presumption that every scrutiny assessment must result in addition to returned income.*

*Assessee reserves a right to add to, amend, alter, modify or substitute the grounds of appeal."*

2. The assessee is a foreign company having a Liaison Office (LO) in India carrying on limited activities as permitted by the Reserve Bank of India (RBI). The assessee filed the return of income for AY 2021-22 on 27.10.2021 declaring a total income of NIL. The case was selected for scrutiny and the statutory notices where

duly served on the assessee. The assessee submitted before the AO that it is merely a LO in India which incurred expenses only for salaries, officer rent, travel and normal office running expenses. The assessee further submitted that the activity of the LO does not constitute any business connection in India giving rise to Permanent Establishment (PE) in India. The nature of activity carried on by the LO has submitted before the AO are extracted below:

*"The role of the liaison office is to liaise between the Indian parties the group companies. Oxbow group is engaged in international trade mainly of petroleum-coke but occasionally also of coal and metallurgical coke The group sees India as an important player in the global market and considers it necessary to keep track of its market and sources. That is the reason why group has set up a liaison office in India. Petroleum coke is produced in refineries in India such as Reliance, Nayara, Indian Oil, BPCL, HMEL, MRPL, CPCL etc. Petroleum coke is used by cement industry, lime kilns, gasifiers and calciners. Accordingly, Oxbow's liaison office interacts with these refineries and user industries on a regular basis to generally keep track of their production, consumption, requirements, pricing etc and communicates back with the group companies.*

*The liaison office operates from a rented office and employs two persons and one Secretarial staff all of whom are resident Indian citizens. The liaison office does not undertake any business activity and earns no income in India. Its expenses are only for salaries, office rent. travel and normal office running expenses. All the liaison office expenses are met from a single bank account which receives inward remittance from the head office. The liaison office personnel have no role in Oxbow's decision making and have no authority to sign any business documents such as contract or agreements. The liaison office maintains duly audited annual accounts and files income tax returns and is compliant with the local regulations. The liaison office or Oxbow Group do not have any agents in India. It does not hold any stocks or inventory and do not provide any service to customers."*

3. The assessee also submitted that information is gathered from cement manufactures and publications with regard to petroleum-coke and the details of information sought by the LO are:

- (i) Rendered view of the Indian economy

- (ii) What opportunities and threats do they see
- (iii) Their annual plan- how they see the revenue growth
- (iv) Impact on cost- particularly fuel cost, any anticipated changes in fuel mix
- (v) Balance between domestic and imported fuels

4. The AO did not accept the submissions of the assessee with regard to existence of PE in India for the reason that the assessee is employed highly qualified people in India and the services cannot be held as merely auxiliary and preparatory work. The AO further held that the assessee did not provide the details of trade carried out with Indian parties and also did not submit details about the engagement of LO with Indian subsidiary. Accordingly, the AO attributed 50% of income/profit to make an addition of Rs. 1,53,22,235/-. Aggrieved, the assessee raised further objections before the DRP. The DRP dismissed the various objections of the assessee but gave partial relief by reducing the attribution percentage to 12.27% whereby the addition was reduced to Rs.37,63,057/-. The assessee is in appeal before the Tribunal against the final order of the assessment passed by the AO pursuant to the directions of the DRP.

5. The Ld. AR submitted that the role of the LO is to liaise between the Indian parties and the Group companies. And that LO does not undertake any business activity earning any income in India. Its expenses are only for salaries, office rent, travel and normal office running expenses. The Ld AR further submitted that though the assessee has employed qualified people in LO the personnel have no role in Oxbow Group's decision making and have no authority to sign any business documents such as contract or agreements. The Ld AR also submitted that during the year under consideration assessee has not done any business in / with India and has neither received any monies from India nor has it entered into any transactions

with any person in India or any other person from whom any income accrues/arises or is deemed to accrue or arise in India. It is submitted that the activity of LO is restricted to gathering and dissemination of information and that the assessee does not have any business activity whatsoever in India. The ld AR argued that the activity carried on by LO are within the scope of what is permitted by RBI to a liaison office in India and it does not amount to Permanent Establishment as per Article 5(4)(e) of DTAA with Netherland. The ld AR further argued that the LO has been filing its returns of income for past many years declaring total income as NIL without claiming any loss on account of expenditure incurred and that the returns have been accepted by the department u/s 143(1). The ld AR also argued that the LO has been complying with all the required statutory filings in India. In summary the ld AR submitted that the LO cannot be held as PE in India.

6. The ld DR on the other hand submitted that the operations of LO i.e. gathering of information and sending reports to parent company, although permitted by RBI, are integral to the trade which is carried out by the parent company and cannot be characterized as being merely 'preparatory or auxiliary' in nature due to which Article 5(4)(e) and 5(4) )f) of DTAA with Netherland are not applicable and LO becomes a fixed place to PE of the foreign company. The ld DR further submitted that the assessee has a business connection in the form of a fixed base that is provided by LO in India, because LO has continued its operations in India for a long period of time. The ld DR also submitted that the operation of LO i.e. gathering of information and sending reports to parent company, is covered under "Business Analytics and Market Research" and hence safe harbour rules prescribed for the said activity can be used to estimate the profit attributable to the

PE using Rule 10. Accordingly the Id DR supported the orders of the lower authorities.

7. We heard the parties and perused the material on record. The assessee is part of the Oxbow group which is engaged in international trade mainly of petroleum-coke but occasionally also of coal and metallurgical coke. Petroleum coke is produced in refineries in India such as Reliance, Nayara, Indian Oil, BPCL, HMEL, MRPL, CPCL etc., and is used by cement industry. The LO interacts with these refineries and user industries on a regular basis to generally keep track of their production, consumption, requirements, pricing etc and communicates back with the group companies. Accordingly it is the contention of the assessee that the role of the LO is to liaise between the Indian parties the group companies and that the LO does not carry on any business activity in India. In this regard it is relevant to look at the definition of LO as per the FEMA regulations as per which –

*'Liaison Office' means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.*

8. During the course of hearing the Id AR drew our attention to the sample report prepared by LO (refer page 14 to 21 of AO's order) to submit that the activity of the LO is to merely collect the statistical information for the purpose of competitive pricing assessment specific to petroleum coke to be shared with group companies, We also notice from the perusal of the materials on record that the assessee is not carrying on any business activity in India. Accordingly there is merit in the claim that the assessee is acting as a channel of communication

between entities in India and its head office / Group without undertaking any commercial/trading/industrial activity in India. The ground on which the revenue has attributed the income is that the assessee is collecting valuable information through employing highly qualified personnel and such services cannot be held as 'preparatory or auxiliary' to fall within the purview of Article 5(4)(e) and 5(4)(f) of DTAA between India and Netherland. It is also the contention of the revenue that gathering of information and sending reports to parent company, is covered under "Business Analytics and Market Research". Since the argument of the revenue is that the activities of LO is not in the nature of preparatory or auxiliary character to be not treated as PE we will examine what activities would be considered as preparatory or auxiliary. As per the Article 5(1) of DTAA between India and Netherlands "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on. Further Article 5(4) read with Paragraph 2 of Article 13 of MLI provides that the term "permanent establishment" shall be deemed not to include the maintenance of fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which had preparatory or auxiliary character, for the enterprise.

9. The OECD BEPS project included Action 7 which recommended the development of changes to the PE definition in Article 5 of the OECD Model Tax Convention (MTC) and these changes were applied under a new treaty or through the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), potentially under an existing treaty. The changes aimed to prevent the artificial avoidance of PE status, including through the specific activity exemptions of Article 5(4) in certain circumstances. The OECD specifically

wanted to clarify that it is not possible to avoid PE status by fragmenting a cohesive operating business into several small operations in order to argue that each part merely is engaged in preparatory or auxiliary activities. A new paragraph is introduced to Article 5 in order to prevent an enterprise or a group of closely related enterprises from fragmenting a cohesive business operation into several small operations in order to argue that each is merely engaged in a preparatory or auxiliary activity. The one of the type of cases to which the newly inserted paragraph would apply is where the non-resident enterprise or a closely related enterprise already has a PE in the source country, and the activities in question constitute complementary functions that are part of a cohesive business operation. OECD (2015) Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report has elaborated the above scenario with an example as given below –

*30.4 The following examples illustrate the application of paragraph 4.1:*

***Example A:*** *RCO, a bank resident of State R, has a number of– branches in State S which constitute permanent establishments. It also has a separate office in State S where a few employees verify information provided by clients that have made loan applications at these different branches. The results of the verifications done by the employees are forwarded to the headquarters of RCO in State R where other employees analyse the information included in the loan applications and provide reports to the branches where the decisions to grant the loans are made. In that case, the exceptions of paragraph 4 will not apply to the office because another place (i.e. any of the other branches where the loan applications are made) constitutes a permanent establishment of RCO in State S and the business activities carried on by RCO at the office and at the relevant branch constitute complementary functions that are part of a cohesive business operation (i.e. providing loans to clients in State S).*

10. In present case though the assessee is having a subsidiary in India, it is submitted that the company is dormant and no activity is carried on. Therefore

unless the revenue is able to establish that the information collected by the LO is used by the subsidiary (which is a PE) and that the LO's activity is a complimentary function that are part of a cohesive business operation in India, the activities of the LO would fall within the exception as provided in Article 5(4) read with the MLI would apply to assessee's case. We also notice that the revenue has held the activities of the assessee as not preparatory or auxiliary on the ground that the LO has been carrying its activities for a long time and that LO is not merely gathering information. This contention in our considered view is not tenable, since neither the LO nor the subsidiary is concluding any business activity in India using the information collected. Further the employees of the LO are not authorised to conclude any business contracts nor have any signing authority. We also notice that the lower authorities have recorded a finding that the assessee failed to furnish details of parties with which business has been conducted in India without considering the submission that the assessee has not conducted any business in India. The requirement as demanded by the revenue would mean substantiating a negative fact which cannot be done and accordingly the conclusion drawn based on the said finding cannot be sustained.

11. The Hon'ble Supreme Court in the case of UOI v. U.A.E. Exchange Center [2020] 116 taxmann.com 379/273 Taxman 122/425 ITR 30 (SC) it is observed that the LO was permitted to undertake only those activities which were specified in the approval granted by the Reserve Bank of India (RBI). It was noted that the said permission contained a clear stipulation prohibiting the LO from rendering any consultancy or other services, either directly or indirectly, and whether for consideration or otherwise. The Court further observed that the activities carried out by the LO in India were confined strictly to the scope of the RBI permission

and were of a preparatory or auxiliary nature. It was, therefore, held that such activities would fall within the ambit of Article 5(3)(e) of the DTAA. Consequently, the fixed place of business used by the assessee as its Liaison Office in India could not be regarded as constituting a Permanent Establishment within the meaning of Articles 5(1) and 5(2) of the DTAA, having regard to the non-obstante and deeming provisions contained in Article 5(3) thereof. During the course of hearing it is submitted that the activities of LO (as listed herein above) are within the scope of what is permitted by RBI to a LO in India and therefore there is merit in the claim that the ratio laid down by the Apex Court in the above case is applicable to the assessee. It is also brought to our attention that the LO of the assessee has been carrying on activity in for a long time (as has been admitted by the revenue) and the returns have been accepted without any adjustment by the revenue till date. Considering the overall facts and circumstances of the cases and the legal position as discussed above, we are of the view that the LO of the assessee cannot be treated as a PE within the meaning of Article 5 of India Netherlands DTAA and accordingly the adhoc addition made in this regard is liable to be deleted.

12. Since we have allowed the appeal considering the merits of the issue the ground raised by the assessee pertaining to the legal contention that the AO's order being barred by limitation, has become academic and left open accordingly.

13. In result the appeal of the assessee is partly allowed.

*Order pronounced in the open court on 04-11-2025.*

*Sd/-*

**(AMIT SHUKLA)**  
**Judicial Member**

*Sd/-*

**(PADMAVATHY S)**  
**Accountant Member**

*Divya R. Nandgaonkar*  
*Stenographer*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**