आयकर अपीलीय अधिकरण, दिल्ली पीठ, नई दिल्ली
INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES, NEW DELHI

BENCH: D

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

<table>
<tr><td colspan="3">ITA 7011 & 7012/DEL/2019
ITA 179/Del/2021 & ITA 1034/Del/2023
निर्धारण वर्ष/Assessment Year: 2015-16, 2016-17, 2017-18 & 2020-21)</td></tr>
<tr><td>LG ELECTRONICS INC., KOREA
LG Twin Towers (West), 128, YEOUI-DAERO, YEONGDEUNGPO-GU, SEOUL, REPUBLIC OF KOREA 150721</td><td rowspan="2">Vs.</td><td>ASSISTANT/DEPUTY COMMISSIONER OF INCOME TAX INT. TAXATION, CIRCLE 2(2)(1), CIVIC CENTRE, MINTO ROAD
NEW DELHI-110002</td></tr>
<tr><td>अपीलार्थी Appellant</td><td>प्रत्यर्थी Respondent</td></tr>
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<tr><td colspan="2">Permanent Account Number of Assessee:</td><td>AAACL7929E</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="2">अपीलार्थी द्वारा/Appellant represented by:</td><td>Shri Ajay Vohra, Sr. Advocate, S/Shri Ankul Goyal & Adwiteya Grover, Advocates.</td></tr>
<tr><td colspan="2">प्रत्यर्थी द्वारा/Respondent represented by:</td><td>Sh. M.S. Nethrapal, CIT DR</td></tr>
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सुनवाई की तारीख / Date of conclusion of hearing:	**19-May-2026**
घोषणा की तारीख / Date of pronouncement:	**17-August-2026**

आदेश / ORDER

PER VIKAS AWASTHY, JUDICIAL MEMBER:

These four appeals by the assessee for AY 2015-16, 2016-17, 2017-18 & 2020-21 emanate from identical set of facts and the grounds raised in all the appeals are similar. Therefore, these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience, these appeals are taken up in seriatim of assessment year for adjudication. The appeal of assessee in ITA No.7011/Del/2019 for AY 2015-16 is taken up as lead case, hence, facts are narrated from the said appeal.

ITA No.7011/Del/2019 (AY 2015-16)

3. This appeal by the assessee is directed against the order of assessment order dated 29.07.2019 passed u/s.143(3)/144C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2015-16.

4. The assessee in appeal has raised nine grounds. The gist of issues raised in grounds of appeal is as under:

-In ground no. 2 to 6 of appeal the assessee has assailed the assessment order alleging existence of assessee's Permanent Establishment (PE) in India.

-In ground no. 7 of appeal, the assessee has assailed attribution of profits to assessee's alleged PE in India.

-The ground no. 8 of appeal is against charging of interest u/s.234A, 234B and 234C.

-In ground no. 9 of appeal, the assessee has assailed initiation of penalty proceedings u/s.271(1)(c) of the Act.

5. The assessee by way of Application dated 20.12.2021 had raised an additional ground of appeal challenging validity of final assessment order dated 29.07.2019 on the ground of limitation. The said issue emanates from the decision rendered in the case of CIT vs. M/s. Roca Bathroom Products Pvt. Ltd., reported as 140 taxmann.com 304 (Mad.). Subsequently, vide letter dated 08.05.2026, the assessee has withdrawn additional ground of appeal assailing validity of the assessment order on the ground of limitation. Thus, the application of the assessee dated 20.12.2021 for admission of additional ground of appeal is dismissed as not pressed.

6. Shri Ajay Vohra, appearing on behalf of the assessee submits that the assessee is a tax resident of Korea and is engaged in the business of manufacturing and sale of refrigerators, washing machines, air conditioners and other household electronic appliances. The assessee has a subsidiary in India known as LG Electronics India P. Ltd. (LGEIL). During the period relevant to assessment year under appeal, the assessee had entered into several transactions with its Indian subsidiary LGEIL for sale of raw material, finished goods, royalty and fess for technical service (FTS), etc. The assessee in its return of income for AY 2015-16 offered receipts with respect to royalty amounting to Rs.186,68,56,941/- to tax. Further, the receipts from LGEIL with regard to technical fess amounting to Rs.8,31,002/- were also offered to tax. The Transfer

Pricing Officer (TPO) after examining the transactions found the same to be at Arm's Length and proposed no addition.

7. A survey action on assessee's Associated Enterprise (AE) in India i.e. LGEIL was carried out on 24.06.2010, statements of some of the employees of assessee's AE were recorded. Merely, on the basis of statement of some of the employees of LGEIL, without there being any corroborative documentary evidence, the AO concluded that the assessee has fixed place PE in India. Though, the assessee has been emphatically denying such allegations. The AO after holding that LGEIL constitutes assessee's PE in India attributes 25% of profit to alleged Indian PE of the assessee.

8. The ld. Counsel submits that the solitary reason to hold that LGEIL constitutes assessee's PE in India is that expatriate employees of the assessee working for LGEIL, are working for the assessee under its direct control. The AO issued show cause notice to the assessee dated 14.12.2018. The assessee vide detailed reply dated 21.12.2018 explained that merely on account of presence of expatriate employees in India and on statements of some of the employees recorded during survey action it cannot be held that the assessee has PE in India. The ld. Counsel referred to queries raised in show cause notice and point wise reply of the assessee to said queries reproduced at pages 72 to 74 of the Final Assessment Order. The ld. Counsel submits that the day on which survey action was carried out at the premises of LGEIL, on the same day survey was carried out at the premises of Samsung India Electronics P. Ltd. (SIEL), AE of Samsung Electronics Company Ltd. (Samsung Korea). As is in the case of assessee, on the basis of statements recorded during the course survey from expatriate employees, the AO in the case of Samsung Korea held that it has PE in India within the meaning of Article 5 of India-Korea Double Tax Avoidance Agreement (DTAA). The matter traveled to the Tribunal in ITA No. 65 to 70/Del/2013. The Tribunal vide order dated 22.03.2018 held that employees of Samsung Korea seconded to Indian company are not conducting any activity for Korean Company nor any income was derived through activities of these employees, hence, Samsung Korea has no fixed place PE in India. The Revenue carried the issue in appeal before the Hon'ble Delhi High Court. The High Court in case titled *PCIT vs. Samsung Electronics Company Ltd. reported as 170 taxmann.com 417* upheld the decision of Tribunal and dismissed appeals of the Revenue. The facts in the case of assessee are similar to the facts in the case of Samsung Korea.

9. The ld. Counsel pointed that the sole reason for holding that the assessee has fixed place PE in India is that the assessee is allegedly perusing its business through its expatriate employees posted in Indian subsidiary. The assessee is allegedly monitoring, supervising, undertaking and carrying out functions through long term and short term visiting employees and senior functionary of headquarter. The AO further held that the assessee assumes the risk and employed assets in PE to earn profits. The above findings of the AO are without basis and contrary to documents on record. The ld. Counsel pointed that all expatriate employees of the assessee are in full time employment of LGEIL. LGEIL has entered into an employment agreement with each of the expat employee. He referred to one such sample agreement at page 94 and 95 of the paper book. He pointed that a perusal of employment agreement would show that the employees are subject to service conduct rules of Indian company. The salary of employees is paid in India by the Indian company and all the emoluments of the employees are subject to tax in India. The Indian company is authorized to take disciplinary action against the employees and the employees are answerable for the conduct to Indian company. He further referred to Form 16 at pages 116 to 127 to show that the salaries paid to expatriate employees by LGEIL is subject to TDS provision under the Income Tax Act.

10. The ld. Counsel further referred to the statements of various employees at pages 286 to 345 of the paper book that were recorded during survey action on LGEIL. The ld. Counsel submits that the AO merely on the basis of some excerpts from said statements holds that expatriate employees of the assessee are working for the assessee. Whereas, a complete reading of the statements would show otherwise. The ld. Counsel further referred to order of Tribunal in the case of LGEIL in ITA No.755/Del/2015 for AY 2010-11 decided on 16.08.2022 wherein in para 111 of the order there was discussion with regard to expatriate employees. The ld. Counsel pointed that the Tribunal has given a categoric finding after examining the employment agreement that expatriates were wholly and exclusively working for the business interest/benefits of the assessee (LGEIL) and were not entitled to render service of any nature whatsoever to any other person. He further referred to the order of Tribunal in the case of LGEIL dated 15.10.2025, common for AY 2005-06, 2006-07, 2011-12 to 2014-15, wherein one of the issue was disallowance of salary paid to expatriate u/s.37(1) of the Act. The Tribunal following the order of Coordinate Bench for AY 2010-11 dated 16.08.2022 (supra) held that the salary paid to the expatriates is allowable expenditure in the hands of LGEIL. The ld. Counsel thus prayed for reversing findings given in the assessment order with respect to assessee having PE in India and consequent attribution of profits to the alleged assessee's PE in India.

11. Per contra, Shri M.S. Nethrapal, representing the department vehemently defended the impugned assessment order. The ld. DR submits that final show cause notice dated 19.12.2018 served on the assessee contained relevant excerpts from the statements of various expatriate employees of LGEIL recorded during the course of survey. A bare reading of statements would show that employees of the assessee who have been expatriated to India and were working with assessee's AE, LGEIL were in fact working under the command and control of assessee. Some of the employees who were working with the assessee were transferred to LGEIL and it is not a case where the employees had left the service of the assessee and had taken a fresh employment with the LGEIL. The ld. DR pointed that statement of Shri M.B Shin at page 286 of the paper book would show that he was transferred from Korea to India. He has not taken fresh appointment with LGEIL. He is reporting to management in Korea his salary was decided by assessee and not LGEIL. He further referred to the statement of Mr. H. C Moon at page 297 to state that he was working under the control of assessee and not LGEIL. The ld. DR further asserted that one Mr. Woddy Nam visited LGEIL to review business performance, this fact has been admitted by M. B Shin in his statement. The ld. DR filed written submissions to further augment his submissions. The ld. DR placed reliance on para 5 to 8 of his written submissions, the same are reproduced herein under:-

> *"5. The entire process of employment of expat personnel with LGEIL can be summed up on the basis of the above statements by the expats themselves as under-*
>
> *a. LGEIL intimates its need for expat employees to LGEK*
>
> *b. LGEK selects the expat employee to be deputed to LGEIL*
>
> *c. LGEK informs LGEIL the (cannot be less than salary to be paid to the expat the salary earlier drawn)*
>
> *d. The position of the expat in his/ her (cannot be posted new employment remains unchanged to a lower post)*
>
> *e. Interview by the LGEIL is not mandatory*
>
> *f. The expat need not resign from his earlier post it is a 'transfer of position from Korea to India')*
>
> *g. Letter communicating the transfer and posting with LGEIL may be issued by LGEK*
>
> *h. The expat's promotion to a senior position is decided by LGEK*
>
> *i. The next posting after completion of the 'tenure of the expat in LGEIL is decided by GEK.*
>
> *j. Expats may report directly to LGEK or seek assistance from LGEK or visit LGEK for discussion and directions.*
>
> *It is therefore submitted that above flow-chart clearly establishes the reality that the expats working with LGEIL are the employees of LGEK who are seconded/deputed by LGEK and whose terms of employment is controlled by LGEK only. Such employees continue to have a lien over their employment with LGEK. Moreover, in view of the system of "parallel reporting" to LGEIL as well as to LGEK by such employees, and*

their functional independence vis-à-vis LGEIL management, it cannot be said that such employees are working 'exclusively' for LGEIL only.

6. The Revenue's assertion that LG Electronics Inc., Korea (LGK) maintains a Permanent Establishment in India is not a speculative inference but a conclusion derived from the granular operational data collected during the survey under Section 133A conducted at the premises of LG Electronics India Private Limited (LGEIL). This survey, which involved the recording of statements from key expatriate and Indian officials, revealed a sophisticated architecture of control that transcends the standard shareholder-subsidiary relationship.

7. One of the most compelling pieces of evidence regarding the "virtual projection" of LGK onto Indian soil is the management structure of LGEIL. The testimony of Mr. M.B. Shin, who served as the Managing Director of LGEIL, serves as a primary exhibit for the Revenue's argument. Mr. Shin admitted that before joining the Indian subsidiary, he was the global head of marketing at the Korean headquarters (HQ). His transition to the Indian role was not an independent recruitment by LGEIL but a directive issued by the HQ. Crucially, his salary and promotion were determined by the HQ in Korea, establishing a continuing "lien" on his employment with the parent company. This pattern of "parallel reporting" and HQ-directed personnel management was confirmed across various departments. Mr. H.D. Rew, the Director of Manufacturing, testified that while he functionally reports to the MD in India, he maintains a direct reporting line to the HQ in Korea to "enhance manufacturing capability" and receive "technical support". From the Revenue's perspective, this indicates that the manufacturing processes of the Indian subsidiary are not merely assisted by the parent but are an extension of the parent's global manufacturing apparatus.

Official Involved	*Testimony regarding Reporting and Control*	*Paper Book*
Mr. M.B. Shin (AID)	*HQ decided the posting and controls the salary; reports to Global CEO.*	*286*
Mr. H.D. Rew (Director Mfg)	*Reporting to HQ Korea for manufacturing performance and technical know-how.*	*312*
Mr. Chang Sil Lee (CFO)	*Financial statements and results sent to Global CFO; HQ decides next position.*	*338*
Mr. Gilbert Ahn (VP Marketing)	*Coordination of marketing inputs between India and Korea for implementation.*	*340*
Mr. U.K. Dhall (Head HR)	*Requirement for Korean expats is communicated to Korea; HQ proposes candidates.*	*335*

The above statements clearly shows that the activities were much more than the stewardship activities or preparatory or auxiliary in nature.

8. Mr Arif M Kootiyat (page 342) who was the AGM Product Planning clearly mentioned that LGEIL does not have the autonomy to develop its own product lines for the Indian market.1 Instead, LG Global maintains a "Menu Card" or PRM for all subsidiaries. LGEIL is restricted to shortlisting models from this pre-determined menu.

"Ans: LG Global has its own set of PRM (Product Road Map - Menu card) which is for all the countries in which they bave a subsidiary. We in LG India re introduced to this Menu card, and offered a choice to select from these products. Here we take our pick of the products based on the market dynamics and Indian consumer preferences. This is based on various consumer facing researches which we keep doing time and

again. About selection of product — our choice is limited to the offering made as per the menu card and cannot choose any other besides that."

This is also confirmed by Vipin Gupta's statement on page 345, who has stated that the detailed process involved in manufacturing, sales and supply which clearly shows that the involvement of expats, Korean office in all aspects of the work. The following are clear from his statement

a. The process starts with a technology developed in Korea which can be customised to Indian needs

b. Survey of Indian market is done by experts by Korea and experts from India. It's 'a joint exercise.

c. Specification generated by Indian market, Korea decides whether the existing technology will work or some changes are required

d. Development agreement is made between India and Korea

e. Prototype making and product verification is undertaken - This is done by Korea. The drawings and quality specifications and manufacturing standards are delivered by Korea to India, Foreign expatraites visit during this time

f. Product quality verification and mass production is taken

g. At the time of Product verification, Korea makes bill of material which comes to the sourcing department who is headed by Mr Kwon, GM Sourcing.

h. In order to maintain quality and security, nobody is allowed to enter without a gate pass.

This restriction signifies that the core business decisions-what to manufacture and sell are centralized at the Korean HQ. The manufacturing process itself is a four-step cycle (Prototype, Product Verification, Quality Verification, and Mass Production) where the first two critical steps are conducted in Korea.1 LGEIL coordinates with LGK to define these processes, and the parent company charges a bill of material at the verification stage, effectively controlling the subsidiary's cost structure and product output. This level of operational enmeshment satisfies the "through which" test under Article 5(1) of the DAA, as the parent is carrying on its business of global electronic manufacturing through the Indian facility. The assessee in its submission quoted on page 6 of the assessment order clearly relied upon Motorola Inc Delhi High court, Eriesson AB Delhi High Court and EFunds IT Solution Delhi High Court judgement which have been distinguished in the latest supreme court decision of Hyatt International South west Asia Ltd. All the judgements quoted by the assessee in the page 6 to 9 are distinguished in this judgement."

The ld. DR submits that on perusal of statements of expatriate employees working with LGEIL it would be clear that the assessee has complete control over LGEIL. The assessee decided the product line, marketing strategy, etc. In support of his submissions that the assessee has PE in India the ld. DR placed reliance on the decision in the case of Hyatt International *South West Asia Ltd. vs. Additional Director of Income Tax reported as 176 taxmann.com 783 (SC).*

12. Rebutting the submissions made on behalf of the Department, the ld. Counsel for the assessee submits that that the Revenue is placing reliance on some parts of the statements of Expatriate employees recorded during the course of survey. He submits that on perusal of the entire statement it would be evident that the assessee is in no manner controlling its Indian AE. Referring to the Employment Agreement, he contended that all employees whether expatriate employees or Indian employees are regulated by service regulations of the Indian entity. The employment conditions are same for all the employees. The ld. Counsel referred to the statement of Shri Umesh Kumar Dhal, Head (HR) at page 335 and 336 of the paper book to contend that man power plan for every year is based on skill required and depending upon the requirement it is decided whether the position is to be filed from India or is to be communicated to the Korea. A list of eligible and suitable employees is forwarded by Korea to LGEIL, from where the suitable candidate is selected after interview on video conferencing. The ld. Counsel further submitted that the AO in the impugned order has not specified nature of assessee's PE in India. He contended that where the assessment order is bereft of facts and lack of reasons for forming an opinion, the same is liable to be quashed. In support of his argument, the ld. Counsel placed reliance on the decision in the case of *Grid Solutions OY Ltd. vs. ACIT reported as 170 taxmann.com 498 (Delhi).*

13. We have heard the submissions made by rival sides at length, examined the orders of lower authorities and have considered the decision and the documents referred to during the course of hearing of the appeals. The AO primarily on the basis of statements recorded during the course of survey on LGEIL concluded that the assessee is perusing its business in India through expatriate employees posted in Indian subsidiary i.e. LGEIL. The assessee is allegedly monitoring, supervising, undertaking and carrying out functions through its visiting employees and senior functionaries of headquarters in India. Before, proceeding further it would be imperative to examine the statements of various expatriate employees and also the employment agreement between expat employees and LGEIL.

14. The ld. DR has placed heavy reliance on the statement of Mr. M. B Shin recorded u/s.133A of the Act. The relevant excerpts from the statement of Mr. M B Shin on which DR has placed reliance is extracted herein below:

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(1)

Statement on oath of Mr. M.B. Shin S/o I.K. Shin R/o. Shantiniketan 1/21 New Delhi recorded during the course of Survey opration u/s 133A of the Income Tax Act 1961. at the business premises of L.G. Electronics Greater. Noida on 24/06/2010.

Oath administered. Oath taken

(Deepti Chandolа.) 24/6/10
ADIT (Intl. Tax)

(M.B. Shin) 24th-JUNE 10

Q1. Please identify Yourself?

Ans. My name is M.B. Shin, managing director of L.G. Electronics India Pvt. Ltd.

Q.2 Since when are you working with L.G.EIL

Ans. Jan 2005. I was the head of Marketing that is the official Title given by the HQ before Joining LGEIL in Jan 2005 I was working in Seol, South Koria. with. LG Electronics Koria. I was looking after the overseas Market globlely. the headqurter of. LG. Electronics Koria dicided to send to me. here as head of marketing of LGEIL in 2007 the. head quarter in Koria Promoted me as MD LGEIL

Q3. who do you report to?

I Sometime report to Woody Nam CEO of the Product Companys. & Sometime to Sometimes to Global CEO.

24/6/10 24th Jun

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(2)

Q.4. Please give details about your Salary how Much Salary do you draw, who desides it, and from where do you draw it?

Ans. My Salary I desided by Headquarter of LG Global in Koria it is Paid by LGEIL I get Paid approxmalley 1 Crore P.A.

15. The ld. DR has also placed reliance on the statements of Mr. H.C Moon, the relevant excerpts from the statement is as under:-

Q. Since when you are working here and prior to it where you were working and give the detail of your educational qualification with salary being received presently and in the past?

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Mr Ye Moon

-2-

Ans: I am working here in this Company at Greater Noida since Jan 2008, prior to it I was working in this same company at Korea. I am MBA (Accounts & Finance) from America. Presently I am getting Rs. 3.50 Lacs approximately (Indian Rupees) (gross salary). I donot remember what deductions are from my salary but net salary is being credited in my SF A/c with ICICI Bank at Greater Noida. I dont remember my Bank A/c no. House rent which is on a/c of my house is being paid by the Company directly to the House Owner after deducting it from my Salary.

Q. What is the set up of this Company at Greater Noida with the company's Main office at South Korea?

Ans: I am providing organisational set up copy of LG India. I am not a responsible person for it and therefore I have no much knowledge about it.

Q: What is your tax status where are u filing your IT Returns?

Yes. I enjoy RNOR status and am filing my IT Returns at New Delhi.

Office of The Income Tax Officer Noida Int. Taxation

21/6/10

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Mr Hc Moon

-3-

Q: How u joined this company after your employment in South Korea in LG HQs.

Ans: I was transferred from the HQrs to this place by the LG Electronics South Korea.

16. The ld. DR has also placed reliance on the statements of Mr. Jae Gye Cho, the relevant excerpts from the statement is as under:-

Q. 3. before. joining. L-G. India Pvt. Ltd. give. the. detail where. you were working

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(1)

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L-G. Korea. 23 years. and. I was transfered L-G. Korea. from India. L-G. Electronics. Pvt. Ltd. by. a. Letter. issued. by our. Head. Quarter. ~~S.E~~ Seoul South. Korea.

Q. what is your. salary and. Perks. which. are. you. drawn.

Ans. I. am getting. Montly Salary. of. Approx. 2. Lac. I. am. getting. 80%. reimbursment for. House. alcommodation. ~~fees~~ and. Car. which ~~car~~ Company. Paid. for 80% reimbursment. Madical. reimmusment. on. actual. basis. Subject to. Company Condition.

Q. Have. you. ~~visited~~ gone. outside. India in Connection. with. your. work.

Ans. yes. I was visted China Thiland. South. Korea. in connection. with my work

17. The above statements have been referred by the DR, to support the findings of AO that that the assessee is asserting control over Indian AE. However, from reading of above statements it does not emanate that these employees are under the direct control and employment of the assessee. Merely, for the reason that any of employee was working with assessee and now he is in employment of Indian AE cannot ipso facto be a reason to believe that such an expat is still working for and on behalf of the assessee. The ld. DR during the course of submissions has laid to much stress on statements of Mr. M.B Shin where he has stated that he is reporting to Mr. Woddy Nam. During the course of survey action statement of Mr. Woddy Nam was also recorded. He is President of LG Electronics Korea Asia Region and is based in Singapore. Merely, for the reason that the Managing Director of LGEIL, is reporting to CEO of Asia Region based in Singapore, cannot be a basis to conclude that expatriate employees are working for the assessee. It is an undisputed fact that LGEIL is a subsidiary of assessee. The subsidiary of a company would not be working in isolation and has to work in tandem with product/marketing policy of its holding company. Here it would be relevant to refer the provision of Article 5 of India-Korea DTAA that defines 'Permanent Establishment' the same is reproduced herein under:-

"1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- *(a) a place of management;*
- *(b) a branch;*
- *(c) an office;*
- *(d) a factory;*
- *(e) a workshop;*
- *(f) a sales outlet;*
- *(g) a warehouse in relation to a person providing storage facilities for others;*
- *(h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and*
- *(i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.*

3. The term "permanent establishment" also encompasses:

- *(a) a building site or construction, installation or assembly project or supervisory activities in connection therewith, only if such site, project or activities last more than 183 days;*
- *(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than 183 days within any 12-month period.*

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) 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) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself."

After examining above statements juxtapose to provisions of Article 5 (supra), we are of considered view that the necessary conditions set out in Article 5 of India-Korea DTAA to constitute fixed place PE in India are not satisfied.

18. The expatriate employees from Korea enter into Employment Agreement with LGEIL under which expatriates from the assessee are engaged by Indian AE. One sample employment agreement between the AE of the assessee i.e. LGEIL and the expat employee is extracted herein under:

Life's Good LG

Employment Agreement

Dear Mr. Beom Seok Kang,

We welcome you to LG Electronics India Private Limited (hereafter the "Company") to join us as **General Manager (Mfg. Innovation Team)** with effect from any day In July 2009, on the following terms and conditions:

1. In consideration of your services, you shall be paid compensation of INR 2,469,300/- p.a. (Rupees Twenty Four Lacs Sixty Nine Thousand Three Hundred only). The salary will be paid upon on your arrival and joining our Company at Greater Noida (India).
2. The Company will arrange accommodation during your stay in India with family on co-terminus basis;
3. The salary shall be subject to any deduction or withholding as may be required under the law of India. The payment so made after all such deductions shall be deemed to be the full and complete payment of the consideration as aforesaid.
4. You shall carry out all duties as **General Manager (Mfg. Innovation Team)** as will be assigned by the company, from the date of joining in India.
5. You will abide by the Company Rules and Regulations that may be in force at the time during your appointment and as may be prevalent thereafter from time to time. This appointment is subject to a probationary period of three months, which at the discretion of the management or senior personnel may be extended, depending upon your performance. During the period of probation or extended probationary period, your service are liable to be terminated at any time without any notice and/or without LG Electronics India Private Limited assigning any reason therefore;
6. You will be bounded by all the rules and regulations lay down by the company. All the matters relating to conditions of your employment with the company including but not limited to conduct, discipline, leave, and holidays and binding on other employees of the company shall be applicable in the same manner to you. You will carry out your duties and responsibility with the framework of the organization structure and policies and directions as may be laid down by the company from time to time;
7. Your services will be computed from the date of your joining our organization. The contract of service may be terminated by either party at any time by giving two month notice or payment of two months consolidated basis salary and other admissible allowances in lieu o notice. If you should leave the company without notice, without prejudice to the Company's right to you for damages, the Company shall be entitled to recover gross cost to the company i.e. basic salary, all admissible allowances and other benefits, etc;
8. Notwithstanding what has been stated in Para 6 above, if at any time, you are found guilty or misconduct or misdemeanor your services shall be terminated forthwith without notice of payment in lieu of notice;

Contd.p2

-2-

9. You will devote your efforts solely and wholly to the business of the Company. While in the service of the Company, you will not undertake indulge in or concern yourself directly or indirectly with any other duties or outside work or additional employment either part time or full time without express written permission of the company.

10. You will disclosed at the time of your appointment and thereafter, any business interest you have or hereafter acquire to enable the company to evaluate its effect on the business of the company and your employment with the Company. The Company's decision in this regard shall be binding;

11. You will not divulge to any person by word of mouth or otherwise, any particulars or details of design(s), manufacturing process(es) of our production, tooling and machinery, technical know-how, administrative organization/financial matters or confidential and secret nature which may be your personnel privilege to know or has otherwise come to your knowledge by virtue of your employment with the Company;

12. Your employment with the company is on as exclusive basis and during the terms of the said employment, you shall not render services of any nature, whatsoever, to any other person, whether for a consideration or on a gratuitous basis without the prior written consent of the company;

We welcome you to our Company. We hope you will go a long way in making a career with us. Please confirm on the attached copy that you accept your employment on the terms and conditions stated in this letter of appointment and return a copy to us confirming your acceptance.

Yours sincerely,

For LG Electronics India Private Ltd

(SUMAN PARASHAR)
DY. GENERAL MANAGER (HR&MS)

N.B - Any change in residence address and/or acquisition of additional qualification shall be informed to us to keep our record up to date.

I hereby confirm that I accept employment on the terms and conditions stated in this letter of appointment and agree to abide by them.

Date: June 17, 2009

Signature

BEOM SEOK KANG

From bare reading of Employment Agreement it is discernable that:-

(i) The payments of salary made by LGEIL to the expat employee is subject to withholding tax under the provisions of laws of India;

(ii) The Company Rules and Regulations enforce as on the date of joining shall apply to the expat employees as well;

(iii) During the period of probation or extended probation period, the services of expat employees are liable to be terminated without any notice;

(iv) Expat employees are liable to disciplinary action under rules and regulation of LGEIL;

(v) The contract of service is liable to be terminated, if any employee is found guilty of misconduct or misdemeanour; &

(vi) The expat shall be in the employment of LGEIL exclusively during the term of said employment

19. The terms and conditions of the above agreement clearly states that the employee shall exclusively work for the company i.e. LGEIL. During the period of employment with the said company, the employee shall not render service of any nature, whatsoever, to any other person, whether for a consideration or on a gratuitous basis. The AO while placing reliance on the statement of various expats has failed to take note of the Employment Agreement which is integral part of documentation for establishing employer-employee relationship between LGEIL and expat employees. The assessee has also placed on record a copy of Form 16 to substantiate that expat employee are subject to tax in India under the provisions of the Income Tax Act, during their employment with LGEIL.

20. During the course of hearing of appeal, a specific query was made to the DR as to whether the manner of hiring of expats during AY 2015-16 as compared to earlier assessment years has changed? The ld. DR stated that hiring and terms and conditions of employment appear to be consistently followed in AY 2015-16 and even thereafter. In the case of LGEIL i.e. AE of the assessee for AY 2010-1 (supra), where the AO disallowed the salaries paid to expatriate alleging that expatriates were working under direct control of LG Korea, the Tribunal in an unambiguous manner held:

> *"111. We have considered the orders of the authorities below and have given thoughtful consideration to the rival submissions. We have also perused the employment agreement between the assessee and the expat employees. On perusal of the agreement it clearly shows that the expatriates were wholly and exclusively working for the business interest/benefit of the assessee and were not entitled to render service of any nature whatsoever to any other person. It is also true that the assessee follows a well-defined recruitment process which is headed by HRD of the assessee.*
>
> *112. Process of recruitment, as exhibited at page 405 of the paper book Volume I, shows that a requisition for recruitment is raised to the HRD and on such a receipt of such a requisition, the HRD evaluates job requirement and requisite skills and competencies to fill vacant posts. Thereafter, requisition is made to LG Korea. Based on job profile, LG Korea nominate its employees and thereafter HRD of the assessee shortlists the employees from pool of names suggested by LG Korea and conducts independent interviews and finally the assessee takes final decision of recruitment.*
>
> *113. Considering the entire factual matrix, the only logical conclusion that can be drawn is that, such expatriates were employees of the assessee during the year under consideration and worked under the direct control and supervision of the assessee for the purpose of business of*

<u>the assessee, and for such services they were paid remuneration directly by the assessee, on which tax was deducted at source as per the relevant provisions of the Act, which part has not been disputed by the revenue</u>.

114. The decision of the Hon'ble Supreme Court in the case of Carborandum [supra] squarely apply on the facts of the case, in as much, as the assessee company had taken such expatriates on its payroll on the basis of various agreements of employment, and such expatriate employees worked under the direct control of the assessee company for day to day working. Considering the facts of the case in totality, it can be safely concluded that the expatriates were wholly and exclusively working for the business interest of the assessee and payment of salary to such expatriates is allowable u/s 37 of the Act. We, accordingly, direct the Assessing Officer to delete the impugned addition. Ground No. 11 is allowed."

Once in the case of assessee's AE it is established that expatriate empolyees are working under the direct control and supervision of assessee's AE, contrary view in the case of assessee cannot be taken on same set of facts. The above findings of the Coordinate Bench in the case of LGEIL demolishes the argument of ld. DR and the case of the Revenue that the expats are working for the assessee. No material is available on record to show that the above finding of the Tribunal have been reversed by the higher appellate authority.

21. In the case of PCIT vs. Samsung Electronics Company Ltd. (supra) we find that the AO had made a similar observation as is in the case of assessee, holding that Samsung Electronics Company Ltd. Korea has PE in India in the form of its subsidiary. The AO had come to such a conclusion based on the statements of various expatriate employees recorded during the course of survey at the premises of Samsung India Electronics P. Ltd. (SIEL), the subsidiary of Samsung Korea. The Hon'ble Jurisdictional High Court after considering the decisions rendered in the case of *Progress Rail Locomotive Inc. vs. DCIT reported as 163 taxmann.com 52* and Hyatt International South West Asia Ltd. vs. ADIT (supra) distinguish the same and held as under:-

"20. As is manifest from the principles that we had identified in Progress Rail, <u>a PE would be deemed to have come into existence if one were to find a Fixed Place through which the business of the enterprise seated in the other Contracting State was being carried out</u>. Those premises must be found to be at the disposal of that enterprise and under its control. We had quoted, with approval, the test formulated by Klaus Vogel who had explained control over premises or space to answer the test of "considerable extent" and the premises being "an instrument (equalling or resembling an operating asset) for his entrepreneurial activity". It is these tests which would qualify the benchmark of "virtual projection" as evolved by courts.

21. In Hyatt International, the Full Bench of our Court had explained that PE itself was a concept based upon an enterprise undertaking economic activity in a particular State irrespective of its residence. The taxability of business profits, we had explained, is itself dependent upon a PE existing in the Contracting State notwithstanding that establishment being a constituent of a larger enterprise which may be domiciled in the other Contracting State. However, and as the Tribunal itself has noticed, the DRP had not concurred with the opinion of the AO that a Fixed Place PE, DAPE or Service PE of the respondentassessee had come into existence. While the DRP had disagreed with the AO on those aspects, it ultimately came to hold *against the respondent-assessee, taking the view that by virtue of secondment of employees, a deemed PE had come into being. It is this view that the Tribunal has proceeded to overturn.*

22. <u>We find ourselves in complete agreement with the opinion expressed by the Tribunal, since the secondment of employees has not been found to be for the furtherance of the business or enterprise of the respondent. Those seconded employees were not discharging functions or performing activities connected with the global enterprise of the respondent. Their placement in India was with the objective of facilitating the activities of SIEL. Collection of market information, collation of data for development of products, market trend studies or exchange of information would not meet the qualifying benchmarks of a PE</u>."

(Emphasized by us)

22. The Hon'ble High Court further referred to OECD Model Commentary on as to whether secondment of employees constitute PE and observed as under:-

"*25. This would constitute an appropriate juncture to pause and take into consideration how the secondment of employees is explained in the UN and OECD Model Commentaries.*

26. The OECD Model Commentary 2017 while explaining the scope of Article 5 enters the following pertinent clarifications:-

"39. There are different ways in which an enterprise may carry on its business. In most cases, the business of an enterprise is carried on by the entrepreneur or persons who are in a paid-employment relationship with the enterprise (personnel). This personnel includes employees and other persons receiving instructions from the enterprise (e.g. dependent agents). The powers of such personnel in its relationship with third parties are irrelevant. It makes no difference whether or not the dependent agent is authorised to conclude contracts if he works at the fixed place of business of the enterprise (see paragraph 100 below). As explained in paragraph 8.11 of the Commentary on Article 15, however, there may be cases where individuals who are formally employed by an enterprise will actually be carrying on the business of another enterprise and where, therefore, the first enterprise should not be considered to be carrying on its own business at the location where these individuals will perform that work. Within a multinational group, it is relatively common for employees of one company to be temporarily seconded to another company of the group and to perform business activities that clearly belong to the business of that other company. In such cases, administrative reasons (e.g. the need to preserve seniority or pension rights) often prevent a change in the employment contract.

The analysis described in paragraphs 8.13 to 8.15 of the Commentary on Article 15 will be relevant for the purposes of distinguishing these cases from other cases where employees of a foreign enterprise perform that enterprise"s own business activities."

27. While dealing with Article 15 and the subject of taxation of income from employment, we find the following relevant passages which would guide us in answering the challenge which is raised before us:

"8.5 In some cases, services rendered by an individual to an enterprise may be considered to be employment services for purposes of domestic tax law even though these services are provided under a formal contract for services between, on the one hand, the enterprise that acquires the services, and, on the other hand, either the individual himself or another enterprise by which the individual is formally employed or with which the individual has concluded another formal contract for services .

(Added on 22 July 2010; see HISTORY)

8.6 In such cases, the relevant domestic law may ignore the way in which the services are characterised in the formal contracts. It may prefer to focus primarily on the nature of the services rendered by the individual and their integration into the business carried on by the enterprise that acquires the services to conclude that there is an employment relationship between the individual and that enterprise .

(Added on 22 July 2010; see HISTORY)

8.7 Since the concept of employment to which Article 15 refers is to be determined according to the domestic law of the State that applies the Convention (subject to the limit described in paragraph 8.11 and unless the context of a particular convention requires otherwise), it follows that a State which considers such services to be employment services will apply Article 15 accordingly. It will, therefore, logically conclude that the enterprise to which the services are rendered is in an employment relationship with the individual so as to constitute his employer for purposes of subparagraphs 2 b) and c). That conclusion is consistent with the object and purpose of paragraph 2 of Article 15 since, in that case, the employment services may be said to be rendered to a resident of the State where the services are performed.

(Added on 22 July 2010; see HISTORY)

***

8.13 The nature of the services rendered by the individual will be an important factor since it is logical to assume that an employee provides services which are an integral part of the business activities carried on by his employer. It will therefore be important to determine whether the services rendered by the individual constitute an integral part of the business of the enterprise to which these services are provided. For that purpose, a key consideration will be which enterprise bears the responsibility or risk for the results produced by the individual"s work. Clearly, however, this analysis will only be relevant if the services of an individual are rendered directly to an enterprise. Where, for example, an individual provides services to a contract manufacturer or to an enterprise to which business is outsourced, the services of that individual are not rendered to enterprises that will obtain the products or services in question .

(Added on 22 July 2010; see HISTORY)

8.14 Where a comparison of the nature of the services rendered by the individual with the business activities carried on by his formal employer and by the enterprise to which the services are provided points to an employment relationship that is different from the formal contractual relationship, the following additional factors may be relevant to determine whether this is really the case:

- who has the authority to instruct the individual regarding the manner in which the work has to be performed;

- who controls and has responsibility for the place at which the work is performed;

- the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided (see paragraph 8.15 below);

- who puts the tools and materials necessary for the work at the individual"s disposal;

- who determines the number and qualifications of the individuals performing the work; - who has the right to select the individual who will perform the work and to terminate the contractual arrangements entered into with that individual for that purpose;

- who has the right to impose disciplinary sanctions related to the work of that individual; who determines the holidays and work schedule of that individual.

(Added on 22 July 2010; see HISTORY)

8.15 Where an individual who is formally an employee of one enterprise provides services to another enterprise, the financial arrangements made between the two enterprises will clearly be relevant, although not necessarily conclusive, for the purposes of determining whether the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided. For instance, if the fees charged by the enterprise that formally employs the individual represent the remuneration, employment benefits and other employment costs of that individual for the services that he provided to the other enterprise, with no profit element or with a profit element that is computed as a percentage of that remuneration, benefits and other employment costs, this would be indicative that the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided. That should not be considered to be the case, however, if the fee charged for the services bears no relationship to the remuneration of the individual or if that remuneration is only one of many factors taken into account in the fee charged for what is really a contract for services (e.g. where a consulting firm charges a client on the basis of an hourly fee for the time spent by one of its employees to perform a particular contract and that fee takes account of the various costs of the enterprise), provided that this is in conformity with the arm"s length principle if the two enterprises are associated. It is important to note, however, that the question of whether the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided is only one of the subsidiary factors that are relevant in determining whether services rendered by that individual may properly be regarded by a State as rendered in an employment relationship rather than as under a contract for services concluded between two enterprises.

(Added on 22 July 2010; see HISTORY)"

28. A similar explanation appears in the UN Model Commentary 2021 which, while explaining the scope of Article 5 of the Model Convention, adopts the position as enunciated in paragraph 39 of the OECD Commentary and observes:-

"15. The Committee considers that the following part of the Commentary on Article 5 of the 2017 OECD Model Tax Convention, which deals with the interpretation of the phrase "through which the business of an enterprise is wholly or partly carried on" in paragraph 1 of the Article, is applicable to paragraph 1 of Article 5 of this Model (the modifications that appear in italics between square brackets, which are not part of the Commentary on the OECD Model Tax Convention, have been inserted in order to provide additional explanations or to reflect the differences between the provisions of the OECD Model Tax Convention and those of this Model):

"39. There are different ways in which an enterprise may carry on its business. In most cases, the business of an enterprise is carried on mainly by the entrepreneur or persons who are in a paid-employment relationship with the enterprise (personnel). This personnel includes employees and other persons receiving instructions from the enterprise (e.g. dependent agents). The powers of such personnel in its relationship with third parties are irrelevant. It makes no difference whether or not the dependent agent is authorised to conclude contracts if he works at the fixed place of business of the enterprise (see paragraph 100 below [of the Commentary on Article 5 of the 2017 OECD Model Tax Convention]). As explained in paragraph 8.11 of the Commentary on Article 15 [of the 2017 OECD Model Tax Convention, as quoted in paragraph 5 of the Commentary on Article 15 of this Model] , however, there may be cases where individuals who are formally employed by an enterprise will actually be carrying on the business of another enterprise and where, therefore, the first enterprise should not be considered to be carrying on its own business at the location where these individuals will perform that work. Within a multinational group, it is relatively common for

employees of one company to be temporarily seconded to another company of the group and to perform business activities that clearly belong to the business of that other company. In such cases, administrative reasons (e.g. the need to preserve seniority or pension rights) often prevent a change in the employment contract. The analysis described in paragraphs 8.13 to 8.15 of the Commentary on Article 15 [of the 2017 OECD Model Tax Convention, as quoted in paragraph 5 of the Commentary on Article 15 of this Model] will be relevant for the purposes of distinguishing these cases from other cases where employees of a foreign enterprise perform that enterprise"s own business activities…………… "

29. As is manifest from the above, the secondment of employees which may consist of technically trained personnel or persons with experience is an arrangement not uncommon in today's world of business. What however needs to be considered is whether the deployment of such employees is in furtherance of the business of their formal employer or intended to be utilized for the business of the enterprise with whom they are placed. In the facts of the present case, the weight of evidence which was collated unerringly leans towards their engagement being view as one which was for the benefit of SIEL."

The Hon'ble High Court, thus, concluded that what is relevant to ascertain is whether the seconded employees are working for their formal (sic) employer or for the enterprise they are working for. The evidence/documents on record, in the case of Samsung Korea unflinchingly show that the seconded employees were working for the cause of SIEL.

23. We are of considered view that mere reliance on the statements recorded u/s.133A of the Act unsubstantiated by any documentary evidences cannot be a basis to come to a conclusion that the assessee has a PE in India. The conditions as envisaged under Article 5 of India-Korea DTAA have to be satisfied. The AO while passing the impugned assessment order has failed to substantiate with cogent evidence that the conditions set out in Article 5 of DTAA are satisfied so as to constitute assessee's PE in India. The entire reliance of the AO is on the statements recorded u/s.133A of the Act during survey action. The AO has completely ignored the Employment Agreement between expatriate employees and LGEIL. The AO has selectively used the excerpts from the statements to from an opinion. The AO has also failed to take note of the statement of Shri Umesh Kumar Dhal, Head (HR) of LGEIL, where he has explained the procedure of employment in LGEIL for both Indians, as well as, expatriates. The relevant excerpts from the statement of Umesh Kumar Dhal is reproduced herein under:-

Qn. Please give your identity ?

Ans. I am Umesh Kumar Dhal, working as Head (HR) of L.G.Electronics, Noida since November,2008.

Qn. Please explain the procedure of employment in LG Electronics India for both Indians as well as expatriates ?

Ans. Manpower plan for every year is finalized in consultation with functional head and Managing director. The skills required is assessed based upon that the requirement whether Indian employees or Koreans required are taken out. The Indian requirements are fulfilled locally and wherever Koreans are required the requirement is communicated to Korea. A list of eligible and suitable employees is forwarded by Korea to us from where a suitable candidate is selected after interview on video conferencing.

Qn. Do you have designated post for Koreans and Indians. ?

Ans. There is no thumbrule policy. It is need base.

Qn. Who decides the need of expatriate on a particular post ?

Ans. Functional head, MD and HR(Head) discusses together the skill and competence required for a particular position based upon that it is decided for what position expatriates are required.

Qn. Once a decision is taken to recruit an expatriate what is the procedure followed for sourcing that employee ?

Ans. The requirement is forwarded to LG Korea based upon that they send a list of suitable and available persons from which a decision is taken and person is finalized after interview through VC.

Qn. Why is the requisition only send to LG Korea and not to any other concern or recruitment agency ?

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Int. Taxation

Ans. The requirement is sent to LG Korea because India reports to LG Korea and as a principle first they evaluate the in house talent available if need then they help in finding from other resources.

Qn. Please explain your statement regarding India reports to Korea ?

Ans. LG Electronics has its head quarter based at Korea. Therefore, LG subsidiary in India reports to head quarter at LG Korea.

Qn. What is the procedure of reporting from India to Korea ?

Ans. The MD of LG India reports to Global CEO of LG Electronics, Korea and CEO office has all the functional directors for other related matters.

Qn. Who sends the requisition to LG Korea and whether probable candidates come for interview to India or not .Also whether the Indian directors visit Korean office for recruitment or not ?

Ans. The MD of LG India forwards the requirement of Korean candidates to HR at head quarter. Based upon that they propose the available candidate whose willingness is prechecked by them. From this list the candidates are interviewed either through VC or whenever senior person visits Korea they interview them.

Qn. How is the salary and perquisites of Korean expatriates decided ?

Ans. For deciding the salary there is clear norm that whatever salary a person is drawing in the parent country plus the benefit of house + car and driver + education support for the children is paid.

Qn. How is the salary of an employee in the parent company verified by the Indian HR department ?

Ans. It is based upon the information provided by the Head quarter HR.

Qn. What is the global leadership policy of LG and how employees are posted from one company to another company and whether they have a lien over their original employment ?

Ans. Globally leadership talent is identified and the information is forwarded to head quarter HR alongwith the willingness of employee that they are willing to move out of their parent country. This gives them an opportunity to develop themselves and grow. This also builds leadership pipeline for the organization.

Qn. When expatriates employees are posted in India whether they have any relationship with the parent i.e. LG Korea or any of its AE. When the employee leaves India whether they resign or they are transferred ?

Ans. I need to check and revert back on the above question. However, the expatriate employees do not resign in India when their term finishes in India and they go back.

Qn. Whether the expatriate employees get any salary, perquisite or allowance reimbursement , payment by whatever name called outside India during their stay in India?

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Ans. No.

The said statement by Head (HR) clearly shows that the seconded employees of assessee were selected from panel of employees proposed by assessee, as per requirement of LGEIL.

24. Thus, in light of facts of the case, documents on record and the decisions discussed above, we find merit in ground no. 2 to 6 of assessee's appeal. The conditions necessary to constitute fixed place PE as per India-Korea DTAA are not satisfied in the present case. The Revenue has failed to establish that the assessee has PE in India. The assessee succeeds on ground no. 2 to 6 of appeal.

25. In ground no. 7 of appeal, the assessee has assailed attribution of profits, since, we have held that the assessee has no PE in India, the question of attribution does not arise in absence of assessee's PE in India. Thus, ground no. 7 of appeal being consequential is decided in favour of the assessee.

26. In the result, appeal of the assessee is allowed.

ITA No. 7012/Del/2019, 179/Del/2021 & 1034/Del/2023 (AY 2016-17, 2017-18 & 2020-21)

27. Both sides are unanimously stating that facts and the grounds of appeal in appeals for AY 2016-17, 2017-18 and 2020-21 are identical to AY 2015-16, hence, the submissions already made in appeal for AY 2015-16 would apply to AY 2016-17, 2017-18 & 2020-21.

28. We find that the primary issue in all these appeals is against the findings of AO alleging assessee having PE in India. Since, the facts germane to the issue in the impugned assessment years are identical to AY 2015-16, the findings given by us while adjudicating appeal of the assessee for AY 2015-16 would mutatis mutandis apply to AY 2016-17, 2017-18 & 2020-21. For parity of reasons, the issue is decided in favour of the assessee in the impugned assessment years as well.

29. To sum up, appeals of the assessee are allowed.

Order pronounced in the open court on Monday the 17th day of August, 2026.

Sd/-	Sd/-
MANISH AGARWAL	**VIKAS AWASTHY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Delhi
Dated: **17-August-2026**

Copy to:

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3	THE PCIT / CIT,
4	THE D.R., ITAT, DELHI BENCH
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