



**Question of what proportion of profits arose or accrued in India is a question of fact: Apex Court of India arose accrued in India**

**Supreme Court of India held that the question of what proportion of profits arose or accrued in India is a matter of fact**

Hon'ble Supreme Court of India in the case of **DIT Vs Travelport Inc [Civil Appeal Nos. 6511-6518/2010]** dated 19.04.2023 stated that, Assessee provide electronic global distribution services to airlines through a computerized reservation system (CRS). The assessee maintain a Master Computer System, said to consist of several main frame computers and servers located in other countries, including USA. This Master Computer System is connected to airlines servers, to obtain data regarding flight schedules, seat availability, etc. The assessee market and distribute the CRS services to travel

agents in India through Indian entities. The Assessing Officers concluded that the entire income earned out of India by the assessee is taxable as the income was earned through the hardware installed by the assessee in the premises of the travel agents. The Tribunal held that the assessee constituted Permanent Establishment (PE) in two forms, namely, fixed place PE and dependent agent PE (DAPE). However, the Tribunal also held that the lion's share of activity was processed in the host computers in the USA/Europe, and the activities in India were only minuscule in nature. Therefore, as regards attribution to the PE constituted in India, the Tribunal assessed it at 15% of the revenue. The Delhi High Court dismissed the appeals filed by the Revenue on the ground that no question of law arose in these matters, as the

Tribunal had adopted a reasonable approach. The Supreme Court upheld the approach of the Tribunal and the High Court, stating that the question as to what proportion of profits arose or accrued in India is essentially one of facts.

For details, please refer the ruling of Hon'ble Supreme Court of India in the case of Director of Income-tax v. Travelport Inc. [Civil Appeal No. 6511-6518/2010] dated 19.04.2023:

[https://main.sci.gov.in/supremecourt/2009/36187/36187\\_2009\\_14\\_102\\_43636\\_Order\\_19-Apr-2023.pdf](https://main.sci.gov.in/supremecourt/2009/36187/36187_2009_14_102_43636_Order_19-Apr-2023.pdf)

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