

## ***ITAT rejects the claim that an Indian AE without an IRDAI license is unable to carry out insurance transactions***

*RGA International Reinsurance Company Limited [TS-519-ITAT-2023(Mum)]*

*Sep 12, 2023*

**CA Om Rajpurohit & Adv. Sakshi Bhardwaj  
-AMRG & ASSOCIATES**



### ***Facts of the case***

The case pertains to RGA International Reinsurance Company Designated Activity Company for the assessment years 2018-19 and 2019-20.

The primary issue in this case was the determination of whether the Assessee had a Fixed Place Permanent Establishment (PE) in India for tax purposes.

Additionally, the case explored the existence of a Dependent Agent Permanent Establishment (DAPE) in India and the Transfer Pricing (TP) analysis related to functions performed by a related entity, RGA Services, within the reinsurance business.

An essential point of contention was whether RGA Services held the necessary license from the Insurance Regulatory and Development Authority of India (IRDAI) to engage in reinsurance activities or serve as a reinsurance broker in India.

### ***Assessee's contention***

The Assessee contended that it did not have a Fixed Place PE in India and that RGA Services, a related entity, did not qualify as a dependent agent capable of executing reinsurance contracts in India on its behalf.

The Assessee argued that the functions performed by RGA Services were not those of a reinsurer but rather support services, and it did not assume any risk or invest assets in India.

They emphasized that RGA Services did not possess the required license from IRDAI to act as a reinsurance entity in India.

### ***Revenue's contention***

The Revenue authorities argued that RGA Services performed functions integral to the reinsurance business and that these activities should be attributed to the Assessee.

They contended that the presence of RGA Services in India created a DAPE, regardless of whether RGA Services assumed any risk or possessed an IRDAI license.

### ***Held:***

For the assessment year 2018-19, the tribunal held in favour of the Assessee, concluding that there was no Fixed Place PE and that RGA Services did not qualify as a dependent agent. The DAPE issue was not definitively resolved.

For the assessment year 2019-20, the appeal was allowed for statistical purposes regarding the TDS credit issue, and the matter was remitted to the Assessing Officer for further examination.

## ***AMRG Take***

The case underscores the importance of a factual analysis to determine the presence of PEs for tax purposes, considering factors such as functions performed, assets used, and risk assumed.

It highlights the significance of possessing the necessary licenses when engaging in regulated activities in India, such as reinsurance.

The case provides clarity on certain aspects while leaving others open for further examination, emphasizing the need for a comprehensive assessment of each situation's unique facts and circumstances in international tax matters.



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