IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'B' NEW DELHI

BEFORE : SHRI H.S. SIDHU, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 6142/Del./2014
Asstt. Year :2010-11

D.D.I.T., Intl. Taxation, Dehradun.	vs.	CGG Veritas Services SA, C/o Nangia & Co., 3rd Floor, NCR Plaza, New Cantt. Road, Dehradun. (PAN: AACCC 2605E)
(Appellant)		(Respondent)

Appellant by	:	Sh. Anil Kumar Sharma, Sr. DR
Respondent by	:	Sh. Amit Arora, C.A.
Date of hearing	:	30.01.2017
Date of pronouncement	:	31.01.2017

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the Revenue against the order of the ld. CIT(A)-II, Dehradun dated 26.08.2014 for the assessment year 2010-11 on the following grounds :

1. Whether on the facts and in the circumstances of the case, the Ld CIT (A) has erred in holding that the scope of work executed by the assessee under contracts with ONGC and Reliance Industries Ltd. for providing services of acquisition & processing of Seismic data ('services') was not in the nature of Fees for Technical Services ('FTS') squarely covered u/s 9(1)(vii)of the IT Act, 1961 ('the Act').

2. Whether on the facts and in the circumstances of the case, the LD CIT (A) has erred in holding that the income of the assessee was taxable

under the presumptive provisions of sec 44BB and ignoring the fact that taxability u/s 44BB shall not apply in respect of income referred to in section 44DA in view of the clarificatory provision to sec. 44BB and sec 44DA of the Act.

3. Whether on the facts and in the circumstances of the case, the Ld CIT(A) has erred in holding that the income of the assessee was not taxable under the provisions of sec 44DA r.w.s. 115A even though the nature of services rendered by the assessee were technical in nature liable to tax u/s 44DA of the Act.

4. Whether on the facts and in the circumstances of the case, the Ld CIT (A) has erred in his Interpretation of the legislative intent behind the scheme of taxation envisaged in sections 9(1)(vi) & 9(1)(vi) read with sections 44DA and 44BB of the Act, ignoring UK- decisions in the case of CIT M/s ONGC as agent of M/s Foramer France [(7008) 299 ITR 438 [Uttarakhand].

5. Whether on the facts and in the circumstances of the case the CIT(A) has erred in relying upon the decisions of the ITAT in the case of M.s CGG VER1TAS Services, SA in ITA No. 4653/Del/20IO (on the issue that once a PE is established to be in place then the income has to be treated as business profits and assessable u/s 44BB.

6. Whether on the facts and circumstances of the case the CIT(A) has erred in not appreciating the fact that proviso to section 44DA brought about by the Finance Act 2010 was only clarificatory in nature and its application has to be read into the main provisions with effect from the time the main provision came into effect in view of the decision of the Hon'ble Supreme Court in the case of Sedco Forex International Drilling v/s CIT.

7. Whether on the facts and circumstances, the Ld CIT(A) has erred in reversing the action of the AO who, having held that the assessee's revenues on account of services under the Contracts are liable to be taxed u/s 44DA, rightly estimated the income of lire assessee by applying 25% rate of profit on gross receipts in the absence of books of accounts and details of expenses incurred in providing the services.

8. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (Appeals) has erred in holding that the assessee is not

liable to pay interest u/s 2348 of the Act and in observing that the issue is covered in favour of the assessee by decision in the case of M/s Maersk [334 ITR 79, Uttarakhand].

8.1 The Ld CIT (Appeals) has erred in not appreciating the fact that the case of M.s Maersk was distinguishable on facts wherein the employer failed to deduct tax at source despite the specific mandatory provisions of the Act stipulating the employer being liable to deduct tax on the salary paid to the employee, thereby holding that an employee is not liable to pay advance tax on salary. The ITAT has erred in relying upon this decisions as the case does not lay down a general proposition of law that interest u/s 234B is not chargeable in all cases, particularly in cases where the Non-Resident assessee/payee/deductee has played a role in including non-deductor or short-deduction on the part of the payer/deductor.

8.2 The Ld ClT(Appeals) has erred in failing to take note of the observations of the Hon'ble High Court in the case of M/s Mitsubishi [330 1TR 578,Del] that the role of the assessee/payee/deductee in short-deduction or non-deduction of tax needs to be ascertained before claim regarding non-liability to interest u/s 234B of the Act is accepted, a proposition affirmed subsequently in the case of M/s Alcatel Lucent (judgement of Delhi High Court dated 7.1 1.2013 in ITA No. 327 & Ors of 2012)."

2. The assessee filed his return of income electronically on 11.10.2010 declaring total income of Rs.45,24,03,578/-. The case was selected for scrutiny and statutory notices were issued by the ADIT, Intl. Taxation, Dehradun. Subsequently, case was assigned to the Addl. DIT (IT-II), New Deli. Subsequently, the case was referred to the TPO for determination of Arm's length price of the international transactions entered into by the assessee company with its associated enterprises and the TPO has passed his order u/s. 92CA(3) and no adjustments were made by the TPO. During the

assessment year, the assessee had a contract with ONGC and Reliance Industries Ltd. for the acquisition and processing of Seismic data, in respect of which the work was executed during the subject assessment year. The assessee was engaged in the following type of works :

(i). 3D OBC Seismic data acquisition.
(ii). Navigation & Positioning data unambiguously tied with seismic and bathymetric data.
(iii). Bathymetric Data along with navigation data
(iv). Onboard processing of the seismic trace data for QC.

During the year, the assessee had offered profit u/s. 44BB from the said contract from both the companies, but the ld. Assessing Officer was not agreed for offering profit u/s. 44BB. He asked the assessee that it should be taxed u/s. 44DA and it should be treated as fee for technical services and he wanted to apply section 5 & 9 of the Act. The Assessing Officer also relied on various judgments and circulars and amendments made and he denied the offer u/s. 44BB. The Assessing Officer applied the provisions of section 44DA and treated it as covered under the provisions of section 9(1)(7) being in the nature of technical and consultancy services and applied 25% deemed profit on the gross receipts and enhanced the income by Rs.113,10,08,946/-. Aggrieved by the order of the AO, he appealed before the first appellate authority, who allowed the appeal of the assessee on the basis that the assessee's appeal for the assessment year 2009-10 (Appeal No.

150/CIT(A)/II-2013-14). Aggrieved by the order of the CIT(A), the Revenue is in appeal before the Tribunal.

3. The ld. DR relied on the order of the Assessing Officer and submitted that the interest u/s. 234B is consequential in nature. He further submitted that the order of the Assessing Officer is a reasoned order and it does not require any interference.

4. On the other hand, the ld. AR submitted that ground No. 1, 2, 3, 5 & 7 are covered by the order dated 03.06.2016 of jurisdictional High Court in its own appeal for the assessment year 2007-08 in ITA No. 08/2012. He further submitted that while disposing of the appeal of the assessee for the assessment year 2007-08, the Hon'ble jurisdictional High Court has relied on the order of Hon'ble Apex Court in case of ONGC Ltd. vs. CIT, 376 ITR 306 (SC). He further submitted that ground No. 6 is covered by the decision of Hon'ble jurisdictional High court in the case of BJ Services Co. Middle East Ltd. vs. DDIT, 339 ITR 169 (Uttarakhand). He further submitted that the decisions relied on by the Assessing Officer in the case of ONGC as Agent of Foramer France in ITA No. 231 of 2001 & ONGC as Agent of Rolls Royce in ITA No. 86/2007 have been overruled by Hon'ble Supreme Court in Civil appeal No. 731 of 2007 and 1240 of 2008 respectively as reported in 376 ITR 306 (SC).

He further submitted in respect of ground No. 8, 8.1 & 8.2 that the interest u/s. 234B is not chargeable in case of a non-resident whose entire income is subject to tax deduction at source u/s. 195. In respect of this, he placed reliance on the decision of Delhi High Court in the case of DIT vs. GE Packaged Power Inc., 373 ITR 65.

5. After hearing both the sides and perusing the material on record and case laws cited by the assessee, we find that the issue involved in this appeal is covered by the decision of Hon'ble Jurisdictional High Court in own case of assessee for the assessment year 2007-08 (Appeal No. 08 of 2012) after relying upon the decision of Hon'ble Supreme Court in the case of ONGC vs. CIT & another reported in (2015) 7 SCC 649, wherein the Hon'ble Supreme Court has elaborately dealt with the provisions of section 44BB & 44D and the circulars issued by CBDT as under :

> *8. A careful reading of the aforesaid provisions of the Act goes to show that under Section 44BB (1) in case of a non-resident providing services or facilities in connection with or supplying plant and machinery used or to be used in prospecting, extraction or production of mineral oils the profit and gains from such business chargeable to tax is to be calculated at a sum equal to 10% of the aggregate of the amounts paid or payable to such non-resident assessee as mentioned in Sub-section (2). On the other hand, Section 44D contemplates that if the income of a foreign company with which the government or an Indian concern had an agreement executed before 1.4.1976 or on any date thereafter the computation of income would be made as contemplated under the aforesaid Section 44D. Explanation (a) to Section 44D however specifies that "fees for technical services" as mentioned in Section 44D would*

have the same meaning as in Explanation 2 to Clause (vii) of Section 9(1). The said explanation as quoted above defines "fees for technical services" to mean consideration for rendering of any managerial, technical or consultancy services. However, the later part of the explanation excludes from consideration for the purposes of the expression i.e. "fees for technical services" any payment received for construction, assembly, mining or like project undertaken by the recipient or consideration which would be chargeable under the head "salaries". Fees for technical services, therefore, by virtue of the aforesaid explanation will not include payments made in connection with a mining project.

9. Before the High Court, a Circular No. 1862 dated 22.10.1990 having a bearing on the subject was placed for consideration by the appellant-assessee. The aforesaid instruction may be conveniently reproduced herein below.

"Subject: Definition of "fees for technical services" in Explanation to Section 9 (1) (vii) of the Income Tax Act, 1961 whether prospecting for or extraction of production of mineral oil are "mining" operations-clarification regarding.

The expression "fees for technical services" has been defined in Explanation 2 to Section 9(1) (vii) of the Income Tax Act, 1961 as under:

"Explanation 2.—For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

2. The question whether prospecting for, or extraction or production of, mineral oil can be termed as 'mining operations, was referred to the Attorney General of India for his opinion. The Attorney General has opined that such operations are mining operations and the expressions "mining project' or 'like projects' occurring in Explanation 2 to Section 9(1) (ii) of the Income Tax Act would cover rendering of services like

imparting of training and carrying out drilling operations for exploration or exploitation of oil and natural gas.

3. In view of the above opinion, the consideration for such services will not be treated as fees for technical services for the purpose of Explanation 2 to Section 9(1) (vii) of the Income-tax Act, 1961. Payments for such services to a foreign company, therefore, will be income chargeable to tax under the provisions of section 44BB of the Income-tax Act, 1961 and not under the special provision for the taxation of fees for technical services contained in section 115A read with section 44D of the Income-tax Act, 1961.

4. A copy of the statement of the case dated 16.3.1990 (without annexures) and a copy of the Attorney General's opinion dated 13.5.90 are enclosed.

5. These instructions may brought to the notice of all the officers in your region. [F.N0.500/6/89-FTD dt.22.10.90 from CBDT]"

10. Before us the opinion of the learned Attorney General has been placed by the learned counsel for the appellants at great length to contend that the views expressed by the learned Attorney which had been accepted by the CBDT were based on an exhaustive consideration of the provisions of the Mines Act, 1952 and the Mines and Minerals (Regulation and Development) Act, 1957 read with the relevant Entries in the Union and the State List in the 7th Schedule to the Constitution of India. It is urged that the eventual test is one of pith and substance of the agreement, namely, whether the works contemplated or services to be rendered under the agreement is directly and inextricably linked with the prospecting, extraction or production of mineral oil. It is submitted on behalf of the appellants that the agreements in question satisfy the above test for which purpose the appellants have categorized the different contracts under 8 heads which may be conveniently set out at this stage hereinbelow.

1. Carrying out seismic surveys and drilling for oil and gas

2. Services starting/re-starting/enhancing production of oil and gas from wells

3. Services for prospecting for exploration of oil and or gas

4. Planning and supervision of repair of wells

5. Repair, Inspection or Equipment used in the exploration, extraction or production of oil and gas

6. Imparting Training

7. Consultancy in regard to exploration of oil and gas

8. Supply, Installation/ etc. of software used for oil and gas exploration"

11. It is also urged on behalf of the appellants that the instruction/Circular dated 22.10.1990 issued by the CBDT was binding on the primary authority on the ratio of the decision of this Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Others, (1981) 4 SCC 173. It has been further pointed on behalf of the appellants that even under the provisions of Section 3D of the Oil Fields (Regulation and Development) Act 1948 a mining lease means a lease granted for the purposes of searching for, winning, working, getting, making merchandisable, carrying away or disposing of mineral oils or for the purpose connected therewith and such a lease includes an exploring or prospecting lease. Reference has also been made to the Petroleum and Natural Gas Rules, 1959 framed under Section 5 of the aforesaid Act. Under Rule 4 of the said Rules no person can prospect for petroleum except pursuant to a Petroleum Exploration License (PEL) granted under the Rules and no person can mine petroleum except in pursuance of a Petroleum Mining License (PML) granted under the Rules. It is pointed out that under Rule 7 of the Rules of 1959 a petroleum mining license (PML) entitles the licensee to carry out construction and maintenance in and on such land, works, buildings, plants, waterways, roads, pipelines etc. as may be necessary for full enjoyment of the PML. On the said basis it is argued that rendering any service in connection with prospecting and extraction is an integral part of mining and that the expression "mining" in the Explanation 2 to Section 9(1) of the Income Tax Act, in the absence of any definition under the Income Tax Act, has to be understood as per the provisions of the Oil Fields (Regulation and Development) Act, 1948 read with the Petroleum and Natural Gas Rules, 1959.

12. Opposing the contentions advanced on behalf of the appellants, Shri Gurukrishna Kumar, learned senior counsel for the Revenue has urged

that the opinion of the Attorney General relied upon and the CBDT Circular has no relevance to the present case inasmuch as the agreements between ONGC and the non-resident companies made it abundantly clear that what is paid to the non-resident company are fees for technical services rendered. Though such services may have some connection with the prospecting, extraction or production of mineral oil, the primary service rendered by the non-resident companies on the basis of the agreements is not for prospecting, extraction or production of mineral oil but various ancillary services like training of personnel etc. which may have a somewhat remote connection with the business of prospecting, exploration or production of mineral oils.

Learned counsel for the revenue has even suggested that if it is held that the High Court ought to have examined each agreement or contract to find out its real purpose and intent the revenue would have no objection if the matters are remanded for a complete exercise to be made on the above basis.

13. The Income Tax Act does not define the expressions "mines" or "minerals". The said expressions are found defined and explained in the Mines Act, 1952 and the Oil Fields (Development and Regulation) Act 1948. While construing the somewhat pari materia expressions appearing in the Mines and Minerals (Development and Regulation) Act 1957 regard must be had to the provisions of Entries 53 and 54 of List I and Entry 22 of List II of the 7th Schedule to the Constitution to understand the exclusion of mineral oils from the definition of minerals in Section 3(a) of the 1957 Act. Regard must also be had to the fact that mineral oils is separately defined in Section 3(b) of the 1957 Act to include natural gas and petroleum in respect of which Parliament has exclusive jurisdiction under Entry 53 of List I of the 7th Schedule and had enacted an earlier legislation i.e. Oil Fields (Regulation and Development) Act, 1948. Reading Section 2(j) and 2(jj) of the Mines Act, 1952 which define mines and minerals and the provisions of the Oil Fields (Regulation and Development) Act, 1948 specifically relating to prospecting and exploration of mineral oils, exhaustively referred to earlier, it is abundantly clear that drilling operations for the purpose of production of petroleum would clearly amount to a mining activity or a mining operation. Viewed thus, it is the proximity of the works contemplated under an agreement, executed with a non-resident assessee or a foreign company, with mining activity or mining operations that would be crucial for the determination of the question

whether the payments made under such an agreement to the non-resident assessee or the foreign company is to be assessed under Section 44BB or Section 44D of the Act. The test of pith and substance of the agreement commends to us as reasonable for acceptance. Equally important is the fact that the CBDT had accepted the said test and had in fact issued a circular as far back as 22.10.1990 to the effect that mining operations and the expressions "mining projects" or "like projects" occurring in Explanation 2 to Section 9(1) of the Act would cover rendering of service like imparting of training and carrying out drilling operations for exploration of and extraction of oil and natural gas and hence payments made under such agreement to a non-resident/foreign company would be chargeable to tax under the provisions of Section 44BB and not Section 44D of the Act. We do not see how any other view can be taken if the works or services mentioned under a particular agreement is directly associated or inextricably connected with prospecting, extraction or production of mineral oil. Keeping in mind the above provision, we have looked into each of the contracts involved in the present group of cases and find that the brief description of the works covered under each of the said contracts as culled out by the appellants and placed before the Court is correct. The said details are set out below.

S. No.	Civil Appeal No.	Work covered under the contract
1	4321	Drilling of exploration wells and carrying out seismic surveys for exploratory drilling.
2.	740	Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.
3.	731	Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.
4.	1722	Furnishing supervisory staff with expertise in operation and management of Drilling unit
5.	729	Capping including subduing of well, fire fighting.
6.	738	Capping including subduing of well, fire
		fighting.
7.	1528	Analysis of data to prepare job design, procedure for execution anc details regarding monitoring.
B.	1532	Study for selection of enhanced Oil Recovery processes and conceptual design of Pilot Tests.
9.	1520	Engineering and technical support to ONGC in implementation of Cyclic Steam Stimulation in Heavy Oil Wells.
10.	2794	Assessment and processing of seismic data along with engineering and technical support in implementation of Cyclic Steam Stimulation.

11.	1524	Conducting reservoir stimulation studies in association with personnel of ONGC.
12.	1535	Laboratory testing under simulated reservoir conditions.
13.	1514	Consultancy for optimal exploitation of hydrocarbon resources.
14.	2797	Consultancy for all aspects of Coal Bed Methane.
15.	6174	Analysis of data of wells to prepare a job design.
16.	1517	Geological study of the area and analysis of seismic information reports to design 2 dimensional seismic surveys.
17.	7226	Opinion on hydrocarbon resources and foreseeable potential.
18.	7227	Opinion on hydrocarbon resources and foreseeable potential.
19.	7230	Opinion on hydrocarbon resources and foreseeable potential.
20.	6016	Opinion on hydrocarbon resources and foreseeable potential.
21.	6008	Evaluation of ultimate resource potential and presentations outside India n connection with promotional activities for Joint Venture Exploration program.
22.	1531	Review of sub-surface well data, provide repair plan of wells and supervise repairs.
23.	733	Repair of gas turbine, gas control system and inspection of gas turbine
		and generator.
24.	741	Repair and inspection of turbines.
25.	737	Repair, inspection and overhauling of turbines.
26.	736	Inspection, engine performance evaluation, instrument calibration and inspection of far turbines.
27.	1522	Replacement of choke and kill consoles on drilling rigs.
28.	1521	Inspection of qas generators.
29.	1515	Inspection of rigs.
30.	2012	Inspection of generator.
31.	1240	Inspection of existing control system and deputing engineer to attend to any problem arising in the machines.
32.	1529	Inspection of drilling rig and verification of reliability of control systems in the drilling rig.
33.	2008	Expert advice on the device to clean insides of a pipeline.
34.	2795	Feasibility study of rig to assess its remaining useful life and to carry out structural alterations.
35.	925	Engineering analysis of rig.
36.	1519	Imparting training on cased hold production log evaluation and analysis.
37.	1533	Training on well control.
38.	1518	Training on implementation of Six Sigma concepts.

39.	*1516*	*Training on implementation of Six Sigma concepts.*
40.	*6023*	*Training on Drillinq project management.*
41.	*2796*	*Training in Safety Rating System and assistance in development and audit of Safety Management System.*
42.	*1239*	*To develop technical specification for 3D Seismic API modules of work and to prepare bid packages.*
43.	*1527*	*Supply supervision and installation of software which is used for analysis of flow rate of mineral oil to determine reservoir conditions.*
44.	*1523*	*Supply, installation and familiarization of software for processing seismic data.*

The above facts would indicate that the pith and substance of each of the contracts/agreements is inextricably connected with prospecting, extraction or production of mineral oil. The dominant purpose of each of such agreement is for prospecting, extraction or production of mineral oils though there may be certain ancillary works contemplated thereunder. If that be so, we will have no hesitation in holding that the payments made by ONGC and received by the nonresident assessees or foreign companies under the said contracts is more appropriately assessable under the provisions of Section 44BB and not Section 44D of the Act. On the basis of the said conclusion reached by us, we allow the appeals under consideration by setting aside the orders of the High Court passed in each of the cases before it and restoring the view taken by the learned Appellate Commissioner as affirmed by the learned Tribunal."

6. A perusal of the impugned order reveals that the learned CIT(A) has also relied on its own order for the assessment year 2009-10 when the issue under consideration has been decided in favour of the assessee in the identical facts and circumstances of the case. The decision of ld. CIT(A) for A.Y. 2009-10 was confirmed by ITAT vide order dated 16.05.2016 after following the earlier decision of Tribunal as under :

> *5. At the outset, the ld. AR took our attention to the order passed by the coordinate Bench of the Tribunal in the assessee's own case for AY*

2007-08 reported in 50 SOT 335 wherein in page 24, para 46, the Tribunal held as under:-

"46 On combined reading of section 44DA(l) and 115A(l)(b) it is clear that the provisions of section 44DA(l) are applicable in the case of a non-resident assessee who carries on business in India through a permanent establishment, or performs professional services from a fixed place of profession, and fees for technical services paid under such permanent establishment or fixed place of profession in India. In section 115A (1)(b) the Finance Act, 2003 with effect from 1.4.2004 substituted words "a non-resident (not being a company) or a foreign company includes any income by way of royalty or fees for technical services other than income referred to in sub-section (1) of section 44DA" for words "a foreign company, includes any income by way of royalty or fees for technical services". Therefore, w.e.f. 1.4.2004 fee for technical services which is not connected with permanent establishment of business or fixed place of profession in India, will be taxable u/s 115A(l)(b) of the Act. As observed earlier section 44DA was inserted in proviso to section 44BB (1) by the Finance Act, 2010 with effect from 1.4.2011 and simultaneously inserted second proviso to section 44DA applicable from assessment year 2011-12 according to which provisions of section 44BB (1) will not be applicable in respect of income referred to this section. On combined reading of proviso to section 44BB (1) and second proviso to section 44DA it is clear that the fee for technical services rendered in connection with prospecting for or extraction or production of mineral oil though effectively connected with PE or fixed place of profession will fall not under section 44BB(l) and will be assessable under section 44DA of the Act. To make it more clear the fee for technical services can be divided in following categories:

(i) Fee for technical services rendered in connection with prospecting for or extraction or production of mineral oil having business PE or fixed place of profession-(section 44DA);

(ii) Fee for technical services rendered in connection with prospecting for or extraction or production of mineral oil

without having business PE or fixed place of profession-(section 115A);

(iii) Other fee for technical services having business PE or fixed place of profession-(section 44DA);

(iv) Other fee for technical services without business PE or fixed place of profession-(section 115A);

Thus it is abundantly clear that with effect from assessment year 2011-12 fee for technical services whether rendered in connection with prospecting for or extraction or production of mineral oil or otherwise will be assessable either u/s 44DA or section 115A of the Act depending on fact whether such receipts are effectively connected with PE or fixed place of profession, or not. However, for assessment year 2004-05 to 2010-11 the consideration received for fee for technical services rendered in connection with prospecting for or extraction or production of mineral oil though effectively connected with PE or fixed place of profession will fall outside the scope of section 44DA and will be assessable under section 44BB (1) of the Act for the simple reason that proviso to section 44BB(1) does not contain section 44DA for these years."

Accordingly, he want us not to interfere with the order of the ld. CIT (A) and dismiss the revenue's appeal.

6. We have heard the rival submissions and perused the material on record. After going through the order of the CIT (A) and the submissions of the ld. AR for the assessee, we find that this issue has already been decided in favour of the assessee by the Tribunal in assessee's own case for assessment year 2007-08 (supra). Since the ld. DR could not bring to our notice any change in facts to persuade us to take a different view and respectfully following the order of the co-ordinate Bench for AY 2007-08, we do not find any infirmity in the order of the CIT (A) and accordingly, we uphold the same."

Accordingly, this issue is decided in favour of the assessee and against the Revenue.

7. The issue involved in ground No. 6 regarding amendment made in the Finance Act, 2010 – whether prospective or retrospective, is also found covered by the decision of Hon'ble jurisdictional High Court in favour of the assessee in the case of BJ Services Co. Middle East Limited vs. DDIT, 339 ITR 169 (Uttarakhand). Accordingly, this ground of the Revenue fails.

8. As regards the case laws relied by the AO, as taken in ground No. 4, we find that these case laws have been overruled by Hon'ble Apex Court in Civil appeal No. 731 of 2007 and 1240 of 2008 respectively as reported in 376 ITR 306 (SC). Therefore, the Revenue does not get any help on this account.

9. The levy of interest u/s. 234B is consequential in nature and the AO is, therefore, directed to give its consequential effect. In view of the above discussion, the appeal of the Revenue is found to have no merits and is liable to be dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 31.01.2017.

Sd/-	Sd/-
(H.S. SIDHU)	(L.P. SAHU)
Judicial Member	Accountant Member

Dated : 31.01.2017
*aks/-