IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 642/MUM/2015
Assessment Year: 2011-12

Smit Singapore Pte. Ltd. SRBC & Associates, 14th Floor The Ruby, 29, Senapati Bapat Marg Dadar (West) Mumbai – 400028	Vs.	DCIT (IT) CIR 4(1)(2) R. No. 116, 1st Floor Scindia House, Ballard Pier N.M. Road, Mumbai - 400038
PAN No. AAOCS1031L		
(Appellant)		**(Respondent)**

Assessee by: Mr. M.P. Lohia, AR
Revenue by: Mr. K Ravi Kiran, DR

Date of Hearing : 17/05/2017
Date of pronouncement: 31/05/2017

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the DDIT (IT) – 2(2), Mumbai and arises out of the order u/s 143(3) r.w.s. 144C(1) of the Income Tax Act, 1961 (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

i. On the facts and in the circumstances of the case and in law, the learned DRP / Assessing Officer (A.O.) erred in including the amount of service tax of Rs. 14,11,927/- deposited by BG Exploration and Production India Ltd. (BGEPIL) under the reverse charge mechanism, in the computation of gross receipts for the purpose of Section 44BB of the Act.

ii. On the facts and in the circumstances of the case and in law, the learned DRP / A.O. erred in not appreciating that the service tax

amount was neither invoiced nor received by the appellant and thus ought not to have been included in computation of gross receipts.

iii. On the facts and in the circumstances of the case and in law, the learned A.O. erred in withholding tax on the interest on income tax refund at the rate of 43.26% instead of the rate of 15% as per Article 11(2)(b) of the Double Taxation Avoidance Agreement between India and Singapore.

iv. On the facts and in the circumstances of the case and in law, the learned A.O. erred in not appreciating that interest on income tax refund is not effectively connected with the Permanent Establishment of the appellant and would be remitted directly to the bank account of the appellant in Singapore. Accordingly, such interest on income tax refund should be subject to withholding of tax at source at the rate of 15% as per Article 11(2)(b) of the Double Taxation Avoidance Agreement between India and Singapore.

3. We begin with the 1st & 2nd ground of appeal as they address a common issue. Briefly stated the facts of the case are that the assessee Smit Singapore Pte Ltd. (SSPL) has received income from providing specialised marine services .BG Exploration and Production India Ltd. (BGEPIL) has entered into a time charter with assessee SSPL to hire 'offshore service vessel' (Smit Jaguar – an 'Anchor Handling Tug') for carrying out certain activities relating to petroleum operations undertaken by BGEPIL. The scope of services undertaken by SSPL involves Smit Jaguar to pull back / position the tanker to enable loading of crude oil on to such tanker. A sum of Rs. 1,41,19,269/- being 10% of services of Rs. 14,11,92,694/- has been paid by BGEPIL under the reverse charge mechanism. However, the assessee has excluded the service tax collected & paid by BGEPIL from its gross freight collection for the purpose of section 44BB of the I.T. Act and has computed tax thereto. The Assessing Officer (A.O.) included the amount of service tax of Rs. 14,11,927/- deposited by

BGEPIL under the reverse charge mechanism in the computation of gross receipts for the purpose of section 44BB of the Act.

4. Aggrieved by the order of the A.O., the assessee has filed appeal before the Tribunal stating that the service tax amount was neither invoiced nor received by the assessee and thus ought not to have been included in the computation of gross receipts. The learned counsel of the assessee submits that the issue is covered by the order of the ITAT in assessee's own case for the A.Y. 2010-11 (ITA No. 1220/Mum/2014).

5. On the other hand the learned DR relied on the direction of the Disputes Resolution Panel u/s 144C(5) and the order of the A.O.

6. We have heard the rival submissions and perused the relevant material on record. It is found that similar issue arose before the Tribunal in assessee's own case for the A.Y. 2010-11. We find that the Co-ordinate Bench followed the judgement of the Hon'ble Delhi High Court in the case of *Mitchell Drilling International Pte Ltd*. (ITA No. 403/2013 & ITA No. 384/2015) . The Hon'ble High Court held as under:

> "17. The court accordingly holds that for the purposes of computing the 'presumptive income' of the assessee for the purposes of section 44BB of the Act, service tax collected by the Assessee on the amount paid to it for rendering services is not to be included in the gross receipts in terms of section 44BB(2) read with section 44BB(1). The service tax is not an amount paid or payable, or received or deemed to be received by the assessee for the services rendered by it. The Assessee is only collecting the service tax for passing it on the government.
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> 18. The court further notes that the position has been made explicit by the CBDT itself in two of its Circulars. In Circular No. 4/2008 dated 28th April 2008 it was clarified that 'Service Tax paid by the tenant does not partake the nature of income of the landlord'. The landlord only acts as a collecting agency for Government for collection of Service Tax. Therefore, it has been decided that the deduction at source u/s 194-I of Income Tax Act would be required to be made on the amount of rent paid / payable without including the service

tax. In Circular No. 1/2014 dated 13th January, 2014, it has been clarified that service tax is not to be included in the fees for professional services or technical services and no TDS is required to be made on the service tax component under section 194J of the Act".

6.1 Facts being similar, we follow the judgement of the Hon'ble Delhi High Court mentioned at para 6 here-in-above and also the order of the Co-ordinate Bench in ITA No. 1220/Mum/2014 for the A.Y. 2010-11 and allow the 1st & 2nd ground of appeal raised by the assessee.

6.2 The learned counsel of the assessee submits during the course of appeal that the 3rd & 4th grounds of appeal are premature. Thus the said grounds of appeal are dismissed.

7. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 31/05/2017

Sd/-	Sd/-
(MAHAVIR SINGH) JUDICIAL MEMBER	(N.K. PRADHAN) ACCOUNTANT MEMBER

Mumbai:
Dated: 31/05/2017
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai