

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member
and Shri Amarjit Singh, Judicial Member**

ITA No. 495/Mum/2017
(Assessment Year: 2009-10)

M/s Weatherford Drilling International (BVI) Ltd. 1101 Tower B, Peninsula Business Park, Ganpatrao Kadam Marg, Lowr Parel Mumbai 400013	Vs.	DCIT (Intl. Taxation) - 4(3)(2) [formerly DCIT (IT)-2(2)] Room No. 1728, Air India Bldg. Nariman Point Mumbai 400021
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PAN – AAACW7377F

Appellant

Respondent

ITA No. 514/Mum/2017
(Assessment Year: 2009-10)

DCIT (Intl. Taxation) - 4(3)(2) [formerly DCIT (IT)-2(2)] Room No. 1728, Air India Bldg. Nariman Point Mumbai 400021	Vs.	M/s Weatherford Drilling International (BVI) Ltd. 1101 Tower B, Peninsula Business Park, Ganpatrao Kadam Marg, Lowr Parel Mumbai 400013
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PAN – AAACW7377F

Appellant

Respondent

Appellant by: Shri Neeraj Aggarwala &
Shri Kishan Kumar Mundhara
Respondent by: Shri Suman Kumar

Date of Hearing: 20.06.2018
Date of Pronouncement: 20.06.2018

ORDER

Per B.R. Baskaran, AM

These cross appeals are directed against the order dated 20.10.2016 passed by the learned CIT(A)-59, Mumbai and it pertains to A.Y. 2009-10.

2. The assessee is a non-resident company incorporated under the laws of British Virgin Islands. It is engaged in the business of providing services or facilities in connection with excavation or production of natural oil. The assessee offered its income under Section 44BB(1) of the Income Tax Act (hereinafter "the Act").

3. The issue urged in the appeal of the assessee is whether the amount received by the assessee for mobilisation/demobilisation of vessels and equipments outside Indian territorial waters is required to be included in the gross receipts for the purpose of determining total income under Section 44BB of the Act. The AO as well as the CIT(A) included the mobilisation/demobilisation receipts as part of gross receipt.

4. At the time hearing the learned A.R. fairly submitted that identical issue was considered by Hon'ble Supreme Court in the case of Sedco Forex International Inc (Civil Appeal No. 4906 of 2010) and vide its order dated 30.10.2017, the Hon'ble Apex Court has held that the receipts related to mobilisation/ demobilisation of vessels outside Indian territorial waters is required to be included in the gross receipt for the purpose of determining the total income under Section 44BB of the Act.

5. We have heard the learned D.R. and perused the record. Since the issue urged herein has been decided against the assessee by the Hon'ble Supreme Court in the case cited above, we confirm the order passed by the CIT(A) on this issue.

6. We shall now take up the appeal filed by Revenue. The solitary issue urged therein is whether the service tax collected by the assessee shall form part of gross receipts for computing income under Section 44BB of the Act.

7. The learned A.R. submitted that the Hon'ble Delhi High Court in the case of Mitchell Drilling International (P) Ltd. 380 ITR 130 (Del) has decided the issue in favour of the assessee by holding that service tax collected by the assessee was not to be included in the gross receipts in

terms of section 44BB of the Act. He submitted that the learned CIT(A) has followed the decision rendered by the Hon'ble Delhi High Court in the case referred above.

8. On the contrary, the learned D.R. submitted that the Mumbai Bench of the Tribunal has held in the case of China Shipping Container Lines (Hong Kong) (2013) TIL-1621-ITAT, Mum-Intl) has held that the service tax collected from distributors shall be included in gross receipts.

9. In the rejoinder the learned A.R. submitted that the Mumbai benches of Tribunal has followed the decision rendered by the Hon'ble Delhi High Court (referred supra) in the cases of Oceaneering International GmbH (ITA No. 1023/Mum/2014 dated 06.11.2015 and Jet Drilling (S) Pte Ltd. in ITA No. 6439/Mum/2014 dated 07.07.2016.

10. We have heard the rival submissions on this issue and perused the record. We noticed that the learned CIT(A) has followed the decision rendered by the Hon'ble Delhi High Court in the case of Mitchell Drilling International (P) Ltd. (supra) in holding that service tax collected by the assessee cannot form part of gross receipts.

11. On the contrary, Revenue has placed reliance on the decision rendered by the Coordinate Bench of the Tribunal in the case of China shipping Container lines (supra). The learned A.R. has, on the contrary, pointed out that the Coordinate Benches of the Tribunal have followed the decision rendered by the Hon'ble Delhi High Court in other cases (referred above) and have held that the service tax shall not form part of Gross receipts. Since the High Court is superior to the Tribunal, the inferior Court should bow to the wisdom of Superior Court. Accordingly, the decision rendered by the High Court should be preferred over the decision rendered by the Tribunal. Accordingly we do not find any infirmity in the action of the AO in following the decision rendered by the Hon'ble Delhi High Court. Therefore we affirm the order passed by the learned CIT(A) on this issue.

12. In the result, the appeals filed by the assessee as well as Revenue are dismissed.

Order pronounced in the open court on 20th June, 2018.

Sd/-
(Amarjit Singh)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai, Dated: 20th June, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -58, Mumbai*
4. *The CIT (IT) -4, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

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Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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