

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.1152/Del/2015
Assessment Year: 2010-11**

**M/s Eni India Ltd., vs Jt. Commissioner of Income-tax,
14th Floor Eros Corporate Tower, International Taxation,
Nehru Place, New Delhi. Dehradun.
PAN: AABCE5205F**

AND

**I.T.A. No.797/Del/2015
Assessment Year: 2010-11**

**Jt. Commissioner of Income-tax, vs M/s Eni India Ltd.,
International Taxation, 14th Floor Eros Corporate Tower
Dehradun. Nehru Place, New Delhi.
PAN: AABCE5205F**

(Appellant)

(Respondent)

**Assessee by: S/Shri Vishal Kalra,
S.S. Tomar
Ankit Sahni, Advocates
Respondent by: Shri G.K. Dhall, CIT DR**

**Date of Hearing: 04.10.2018
Date of Pronouncement: 10.10.2018**

ORDER**PER NARASIMHA K. CHARY, JM**

ITA No.1157/Del/2015 is filed by the assessee and ITA No.797/Del/2015 is filed by the Revenue challenging the directions u/s 144C(5) of the Income-tax Act, 1961 ("the Act") dated 28.11.2014 of the Disputes Resolution Panel-II, New Delhi.

2. Relevant facts, in brief, are that the assessee is a company incorporated under the laws of United Kingdom. They have entered into Production Sharing Contract with Government of India along with other consortium members for exploration, development and production of mineral oil in various blocks. For the Asstt. Year 2010-11, they have filed their return of income on 28.9.2010 declaring a loss of Rs.18,51,22,141/- in their profit and loss account for the year ending 31.3.2010. The assessee had shown an income of Rs.14,051/- under the head "other income" as against which they have claimed an expenditure to the tune of Rs.18,51,22,451/- thereby claiming loss of Rs.18,51,08,090/-. However, in the return filed on 28.9.2010 they have claimed the loss of Rs.18,51,22,141/-.

3. Learned AO disallowed the expenses claimed by the assessee on the ground that commercial production has not commenced and on that ground, the expenses was not allowable u/s 42 of the Act.

Further, learned AO found that the assessee had not included the service tax amount of Rs.1,67,25,656/- in respect of M/s Hindusthan Oil Exploration Company Ltd. ("M/s HOEC") contract in the gross receipts from the above contract for computing the deemed profit u/s 40BB of the Act and proposed to add the same. Further, Ld. AO refused to apply the provisions of Section 44BB of the Act in respect of the revenue earned by the assessee in terms of agreement with M/s HOEC and determined the income as fee for technical services.

4. Before the learned DRP-II, the assessee conceded that similar disallowance as made by the learned AO and was upheld by the learned DRP for the Asstt. Years 2007-08 to 2009-10 and the appeals against such orders were pending before the Tribunal. On this basis, learned DRP, following the rule of consistency, declined to interfere with the findings of the learned AO in so far as the disallowance of the expenditure of Rs.18,51,22,144/- is concerned.

5. So also in respect of the addition of Rs.1,67,25,656/- towards the service tax amount in respect of M/s HOEC contract, learned DRP by following the decision of the Delhi Tribunal in the case of Technip Offshore Contracting BV for Asstt. Year 2005-06 29 SOT 33 (Delhi) opined that the amount of service tax collected by the assessee in connection with the services or facility or supply specified u/s 44BB of the Act is includible in the total receipts for the purpose of

determining presumptive profit of 10% u/s 44 of the Act. In so far as the AO refusing to apply the provisions of Section 44BB of the Act in respect of the revenue earned by the assessee under the agreement with HOEC Ltd. and determining the income as fee for technical services, learned DRP, after considering the contentions of the assessee, held that the amount received by the assessee during the year under consideration from the M/s HOEC contract should be brought to tax by applying the deemed profit rate of 10% u/s 44BB of the Act.

6. Challenging the DRP's refusal to delete the addition basing on the disallowance of depreciation on data acquisition and incidental services, general and administration expenses and head office expenses claimed by the assessee and also the refusal of the DRP to exclude the service tax in respect of the HOEC contract, assessee preferred ITA NO.1152/Del/2015. Revenue challenges the action of the learned DRP in applying deemed profit rate of 10% u/s 44BB of the Act to the amounts received by the assessee from the HOEC contract in ITA No.797/Del/2015.

7. Now coming to the assessee's appeal, Ground No.1 is general in nature. Ground Nos. 2 to 4 relate to the disallowance of the depreciation on data acquisition and incidental services, general and administration expenses and head office expenses. As stated above,

learned DRP declined to interfere with the action of the learned AO on the ground that similar disallowance was made by the AO in respect of Asstt. Years 2007-08, 2008-09 and 2-009-10 and was upheld by the learned DRP and, therefore, rule of consistency demands that the said view must be sustained for this year also. Learned DRP, however, also observed in their order that against the orders of the learned DRP for earlier years, appeal was filed and pending before the Tribunal.

8. It is submitted by the learned AR that the appeal for the Asstt. Year 2009-10 was disposed off on 23.4.2018 by a coordinate Bench of this Tribunal in ITA No.1839 of 2014 observing that the learned DRP did not consider the assessee's objection nor did it give proper reasons for sustaining the assessment order, not only for Asstt. Year 2009-10 but also for the years 2007-08 and 2009-10. It is further submitted that in respect of the Asstt. Years 2007-08 and 2009-10, the matter was sent back to the DRP for passing a speaking order on disallowance made by the AO.

9. Learned AR prayed that facts being similar, a similar course may be followed for this assessment year also. Learned DR does not place any material before us to take a different view.

10. On a careful perusal of the order dated 23.4.2018 in ITA No.1839/Del/2014 in assessee's own case for the Asstt. Years 2009-

10, we find that in all the appeals relating to the Asstt. Years 2007-08 to 2009-10, the assessee alleged that the learned DRP did not dispose of the assessee's objections by way of a detailed and speaking order. So also for this year also Ld. DRP recorded that because a view was taken for the earlier years by the DRP, the same course is followed and no discussion is made in the impugned order. We, therefore, are of the considered opinion that it is just and proper to set aside the impugned order in respect of these grounds and to remit the matter to the DRP for passing a speaking and reasoned order on the various objections taken by the assessee on disallowances made by the AO.

11. Now coming to Ground No.5 in assessee's appeal, it relates to the inclusion of service tax amount of Rs.1,67,25,656/- in respect of the M/s HOEC contract. As stated above, learned DRP followed the order of the Delhi Tribunal in the case of Technip Offshore Contracting BV (supra). However, the assessee brought to our notice an order passed by the Hon'ble jurisdictional High Court in the case of DIT vs. Mitchell Drilling International P. Ltd., ITA No.403/2013 wherein the Hon'ble High Court held that for the purpose of computing the 'presumptive income' of the assessee for the purposes of Section 44BB of the Act,, the service tax collected by the

assessee on the amount paid to it for rendering services is not to be included.

12. We have gone through the order dated 28.9.2015 of the Hon'ble jurisdictional High Court wherein the Hon'ble High Court held in unequivocal terms that for the purpose of computing the 'presumptive income' of the assessee for the purpose of Section 44BB of the Act, the service tax collected by the assessee on the amount paid to it for rendering services is not to be included u/s 44BB(2) of the Act. Since the service tax is not an amount paid or payable or received or deemed to have been received by the assessee for the services rendered by it and the assessee is only collecting the service charge for passing it on to the Government. In view of the binding precedent while respectfully following the same, we allow Ground No.5 and direct the learned AO to delete the addition of Rs.1,67,25,656/-. Ground No.5 is accordingly allowed.

13. Now coming to the appeal of the revenue, it relates to the denial of applicability of provisions of Section 44BB of the Act in respect of revenue earned by the assessee in terms of the agreement with the M/s HOEC. Learned AO determined the income as fee for technical services u/s 9(1)(vii) of the Act read with Section 44BA of the Act and estimated the profit at 25% of the gross receipts in respect of the above contract.

14. Learned DRP held that such amount received by the assessee during the year towards consideration from the M/s HOEC contract has to be brought to tax by applying the deemed profit rate of 10% under section 44BB of the Act. At the outset, it is brought to our notice by the learned AR that though for the Asstt. Year 2010-11, the AO determined the receipt as fee for technical services u/s 9(1)(vii) read with Section 44D of the Act and corrected by the learned DRP to apply the deemed profit rate of 10% u/s 44BB of the Act. For subsequent years, namely, 2012-13, 2013-14 and 2014-15, learned AO had taken a view that in view of the decision of the Hon'ble Supreme Court in the case of ONGC vs CIT & Anr. the nature of activities involved under the contract including the sale of services of HOEC are covered by the provisions of Section 44BB of the Act. Further, the learned AO enumerated the services in his order for the Asstt. 2012-13, which shall include the following:

1. Specific Services
 - (a) Geology, Geophysics, Hydrocarbon Exploration
 - (b) Research and Development
 - (c) Laboratory studies
 - (d) Laboratory operations
 - (e) Reservoir & Reservoir management
 - (f) Well operations
 - (g) Development and project management, Civil Engg and Logistics etc.
2. Operation Geology, Subsurface Geology & Petrophysics
3. Petrography & Sedimentology

4. Stratigraphy
5. Structural and basin Geology
6. Geophysical Data Acquisition
7. Seismic Data processing
8. Seismic Structural Methodologies
9. Seismic Stratigraphic Methodologies
10. Laboratory studies
11. Well operations etc.

15. A reading of the above clearly indicates that such services are intrinsically related to the exploration etc. of the mineral oils and covered by Section 44BB of the Act. We are, therefore, of the considered opinion that the finding of the learned CIT(A) is perfectly correct and does not warrant any interference. We, therefore, do not find any substance in the grounds of appeal of the revenue and dismiss the same.

16. In the result, appeal of the assessee is allowed in part for statistical purposes. Appeal of the revenue is dismissed.

Order pronounced in the Open Court on 10th October, 2018.

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 10th October, 2018
'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By order

Asstt. Registrar

Draft dictated on	10.10.2018
Draft placed before author	10.10.2018
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	