

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.888/MUM/2017 (A.Y: 2013-14)

M/s. Korea Marine Transport Company Limited C/o. Sea Horse Ship Agencies (P.) Ltd. Sea Horse House, 30/32, Marzben Street, Ballard Estate, Mumbai – 400 001 PAN: AACCK 1101 F	v.	D.C.I.T (International Taxation) – 3(1)(2) Room No. 1605, 16 th Floor, Air India Building, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Assessee by : Shri Sandesh Desai
Department by : Shri Manoj Kumar Singh

Date of Hearing : 07.08.2018
Date of Pronouncement : 30.10.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Dispute Resolution Panel-I, Mumbai u/s. 144C(5) of the Income-tax Act, 1961 (hereinafter in short "the Act") dated 29.11.2016.

2. Assessee has raised the following grounds in its appeal: -

"1. On the facts and circumstances of the case and in law, the Learned Assessing Officer erred in including Service tax collected and remitted to the Government and which does not have any profit element, as part of freight receipts for the purpose of arriving at Gross Taxable Income under section 44B of the Income Tax Act, 1961. The interpretation of the Assessing Officer is erroneous.

2. *On the facts and circumstances of the case and in law, the Learned Assessing Officer erred in relying only on the following decisions;*

- a. *Authority for Advance Ruling in case of Siem Offshore Inc reported in 337 ITR 207*
- b. *ITAT, Delhi Bench in the case of DDIT (Int. Tax) Dehradun Vs. Technip Offshore Contracting BV*
- c. *ITAT, Mumbai Bench in case of China Shipping Container Lines (Hongkong) vs ADIT(IT)-1(2)*

3. *On the facts and circumstances of the case and in law, the Assessing Officer failed to appreciate that the amounts received as Service Tax of Rs.7,14,92,585, being government dues, does not represent amounts payable or receivable on account of carriage of passengers, livestock, mail or goods shipped at any port in India as specified in section 44B(2)(i) or 44B(2)(ii) of the Act.*

4. *On the facts and circumstances of the case and in law, the Learned Assessing Officer failed to appreciate that the inclusion of service tax as income arising from carriage of goods is not based on decisions of High Courts and contrary to the ratios held by High Courts and the Order is in violation of principles Judicial discipline.*

5. *On the facts and circumstances of the case and in law, the Learned Assessing Officer passed the order without application of mind to the various judicial cases laws pointed out to him and without dealing with them.*

6. *On the facts and circumstances of the case and in law, the Assessment order is not legally sustainable as it is based on the order of DRP which was erroneously passed on a frivolous ground - " the decision of DRP is no longer appealable by the department, in order to protect the interest of revenue," even on face of the fact that two of the three members bench of DRP were part of the earlier DRP panel which passed an order on the same issue contrary to the one passed at present, in favor of appellant."*

3. At the outset, the Learned Counsel for the assessee submitted that the issue in appeal is decided in favour of the assessee by the Coordinate Bench of the Tribunal in ITA.No. 1025/Mum/2015 dated 11.07.2018 for the Assessment Year 2011-12. Copy of the order is placed on record.

4. Ld. DR placed reliance on the order of the Assessing Officer.

5. On a perusal of the order of the Tribunal, we find that identical issue has been decided in favour of the assessee by the Coordinate Bench by

directing the Assessing Officer to recompute the income after excluding the service tax component from the total receipts for the purpose of computing the income u/s. 44BB of the Act. While holding so the Tribunal observed as under: -

“8. We have deliberated at length on the issue under consideration and are of the considered view, that as the service tax which is a statutory levy collected by the assessee in his capacity as a service provider from its customers on behalf of the government does not involve any element of profit thus, the same cannot be included in the total receipts of the assessee for determining its income under Sec.44B. We have perused the order passed by the A.O under Sec. 143(3) r.w.s 144(C)(13) and are unable to persuade ourselves to subscribe to the view taken to the contrary by him. We find that the issue involved in the present appeal is covered in favour of the assessee by the judgment of the Hon’ble High Court of Uttarakhand in the case of CIT (International taxation) Vs. Schlumberger Asia Services Ltd. (2009) 317 ITR 156 (Uttarakhand). The High Court in its aforesaid judgment had distinguished the earlier decisions of the Court in the case of Sedco Forex International Inc. Vs. CIT (2008) 299 ITR 238 (Uttaranchal) and CIT Vs. Trans. Ocean Offshore Inc. (2008) 299 ITR 248 (Uttaranchal). In the backdrop of the facts involved in the case before the High Court, it was held that reimbursement of custom duty paid by the assessee company, being in the nature of a statutory levy, would not form part of the freight receipts for the purpose of computing its deemed profit under Sec.44BB. We further find that a similar view had also been arrived at by the Hon’ble High Court of Delhi in the case of DIT Vs. Mitchell Drilling International Pty. Ltd (2016) 380 ITR 130 (Del). The High Court in the aforementioned case finding itself to be in agreement with the view taken by the High Court of Uttarakhand in the case of Schlumberger Asia Services Ltd(supra), observed that for the purposes 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 was not to be included in the gross receipts in terms of Section 44BB(2) r.w Section 44BB(1). The High Court while concluding as hereinabove, observed that as service tax was collected by the assessee for passing it on to the government, and was not an amount paid or payable, or received or deemed to be received by the assessee for the services rendered by it, thus, the same could not be included in the gross receipts of the assessee for computing its income under Sec. 44BB. Still further, we find that a coordinate bench of the Tribunal in the case of Islamic Republic of Iran Shipping lines Vs. DCIT (International Taxation) (2011) 46 SOT 101 (URO) had also concluded that as service tax which was collected by the assessee from its customers on behalf of the government, did not involve any element of profit, therefore, the same was not liable to be included in the total receipts for determining the presumptive income of the assessee under Sec.44B of the Act. We further find that another coordinate bench of the Tribunal viz. ITAT Mumbai Bench “D” in the case of Orient Overseas Container Line Ltd. Vs. Addl. Director of Income Tax (International Taxation), Range-4, Mumbai (2013) 35 taxman.com 342 (Mum), after deliberating at length on the issue under consideration, had observed that service tax was not to be included in total receipts for computing the presumptive income under Sec.44BB of the Act.

9. We have given a thoughtful consideration to the issue under consideration in the backdrop of the settled position of law. We are of the considered view that as the issue involved in the present appeal is squarely covered by the aforesaid judgments of the Hon'ble High Courts and the orders of the coordinate benches of the Tribunal, therefore, respectfully follow the same. We thus, in terms of our aforesaid observations, being of the considered view that the A.O had erred in including the service tax collections of Rs.3,94,59,752/- in the total receipts of the assessee for computing its income under Sec.44B of the Act, direct him to recompute the income under the said statutory provision after excluding the said amount. The Grounds of appeal Nos. 1 to 4 are allowed in terms of our aforesaid observations. The Ground of appeal No. 5 being general in nature is dismissed as not pressed."

6. Following the above said order, we allow the appeal of the assessee and direct the Assessing Officer to exclude the service tax component from total receipts while arriving at taxable income u/s. 44BB of the Act.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on the 30th October, 2018

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai / Dated 30/10/2018
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum