

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE  
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-6170/Del/2014  
(Assessment Year: 2009-10)**

DDIT International Taxation, Aayakar Bhawan, 13A- Subhash Road Dehradun	vs	Association of Persons (AOP) of M/s. Schlumberger Asia Services Ltd. & Transocean Off- shore Deepwater Drilling Inc. C/o. M/s. Nangia & Co., CAs, 3 <sup>rd</sup> Floor, NCR Plaza, New Cantt Road, Dehradun
---	----	--

**C.O. No.-185/Del/2015  
(ITA No. 6170/Del/2014)  
(Assessment Year: 2009-10)**

Association of Persons (AOP) of M/s. Schlumberger Asia Services Ltd. & Transocean Off-shore Deepwater Drilling Inc. C/o. M/s. Nangia & Co., CAs, Suite-4A, Plaza M-6, Jasola New Delhi	vs	DDIT International Taxation, Aayakar Bhawan, 13A- Subhash Road Dehradun
---	----	---

**ITA No. 6171/Del/2014  
(Assessment Year : 2010-11)**

DDIT International Taxation, Aayakar Bhawan, 13A- Subhash Road Dehradun	vs	Association of Persons (AOP) of M/s. Schlumberger Asia Services Ltd. & Transocean Off- shore Deepwater Drilling Inc. C/o. M/s. Nangia & Co., CAs, 3 <sup>rd</sup> Floor, NCR Plaza, New Cantt
---	----	---

		Road, Dehradun
--	--	-------------------

**C.O. No. 186/Del/2015  
 (ITA No. 6171/Del/2014)  
 (Assessment Year : 2010-11)**

Association of Persons (AOP) of M/s. Schlumberger Asia Services Ltd. & Transocean Off-shore Deepwater Drilling Inc. C/o. M/s. Nangia & Co., CAs, Suite-4A, Plaza M-6, Jasola New Delhi	vs	DDIT International Taxation, Aayakar Bhawan, 13A-Subhash Road Dehradun
<b>Appellant</b>		<b>Respondent</b>

**Assessee by : Sh. Amit Arora, CA, Sh. Vishal Mishra, CA  
 Revenue by : Shri G.K.Dhall, CIT(DR)**

<b>Date of Hearing</b>	<b>20.09.2018</b>
<b>Date of Pronouncement</b>	<b>30.11.2018</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

ITA no. 6170/Del/2014 is preferred by the department against order dated 25.08.2014 passed by the Ld. CIT (Appeals) –II, Dehradun for assessment year 2009-10. C.O. no. 185/Del/2015 is the assessee's cross objection for the same year. ITA no. 6171/Del/2014 is department's appeal preferred against order dated 25.08.2014

passed by the Ld. CIT (Appeals)-II, Dehradun for assessment year 2010-11 whereas C.O. No. 186/Del/2015 is the assessee's cross objection for the same year. Both the appeals and the cross objections involved identical issues and, accordingly, they were heard together and are being disposed of by this common order for the sake of convenience.

2.0 The brief facts of the case are that the assessee is allegedly an Association of Persons (AOP) of M/s. Schlumberger Asia Services Ltd. & Transocean Off-shore Deepwater Drilling Inc. Notices u/s 148 of the Income Tax Act, 1961 were issued for both the years under consideration requiring the assessee to file return/s of income as per the requirement of the notice/s issued u/s 148. The assessee filed objections against the issuance of notice/s and submitted that the alleged AOP did not exist. It was submitted that both the entities were offering tax separately on deemed profit basis u/s 44BB of the Act. The AO proceeded to complete the assessment/s u/s 144 of the Act and made a best judgment assessment for both the years under consideration by holding that the AOP of the two non-resident companies executing contract/s in India was to be treated as resident AOP. The taxable income was determined on the basis of accounts and Section 44BB of the Act was held to be not applicable to the case

of the assessee. For assessment year 2009-10, the AO computed the taxable income at Rs. 111,89,57,600/-. For assessment year 2010-11, the taxable income was determined at Rs. 165,60,03,650/-.

2.1 Aggrieved, the assessee approached the Ld. Commissioner of Income Tax (Appeals) and raised the ground that the consortium of M/s. Schlumberger Asia Services Ltd. and M/s. Transocean Offshore Deepwater Drilling Inc. did not constitute an AOP. The Ld. CIT (Appeals) accepted this contention of the assessee in both the years under appeal by relying on the orders of the Ld. CIT (Appeals) for assessment year 2007-08 and 2008-09 on identical facts.

2.2 Now the department has approached the ITAT and has challenged the adjudication of the Ld. CIT (Appeals) in holding that the said consortium did not constitute an AOP so as to be brought within the ambit of taxation. The cross objections filed by the assessee in both the years are supporting the orders of the Ld. CIT (Appeals) and also raise the ground that the Ld. CIT (Appeals) did not adjudicate the assessee's grounds challenging the initiation of reassessment proceedings.

3.0 The Ld. Authorized Representative, at the outset, submitted that this issue was covered in favour of the assessee by order of the ITAT in assessee's own case for assessment year 2007-08 in ITA no.

4655/Del./2013 and in assessment year 2008-09 in ITA no. 4656/Del/2013. The Ld. Authorised Representative submitted that in both these years, the ITAT had held that the consortium-agreement did not constitute an AOP. It was submitted that in view the binding precedent of the ITAT the departmental appeals were liable to be dismissed.

4.0 In response, the Ld. CIT (DR) supported the order of the AO. He, however, could not controvert the fact that the issue stood covered in favour of the assessee by the order of the ITAT in assessee's own case for two earlier assessment years as aforementioned. The Ld. CIT (DR) also could not point out any distinguishable facts in the two years under consideration before us and assessment years 2007-08 and 2008-09 for which the assessee was relying on the orders passed by the ITAT.

5.0 We have heard the rival submissions and have also perused the material available on record. We agree with the averments of the Ld. Authorised Representative that the issue stands covered in favour of the assessee by order of the ITAT in assessee's own case for the assessment year 2007-08 and 2008-09 in ITA nos. 4655/Del/2013 and 4656/Del/2013 respectively wherein vide order dated 26.03.2018 the revenue's appeals on identical facts were

dismissed by following the judgment of the Hon'ble Delhi High Court in the case of Linde AG Linde Engineering Division vs. DDI reported in 365 ITR 1 (Delhi). The relevant observations of the Co-ordinate bench are contain in paragraph 4.5 of the said order of the Tribunal and in view of the facts being identical and respectfully following the order of the Co-ordinate bench, we dismiss both the appeals of the department.

6.0 Since the department's appeals have been dismissed, the assessee's challenge to non-adjudication by the Ld. CIT (Appeals) of the assessee's legal ground challenging the reassessment proceedings becomes *in fructuous*.

6.1 Accordingly, both the COs of the assessee also stand dismissed as having become *in fructuous*.

7.0 In the final result both the department's appeals as well as both the CO of the assessee stand dismissed.

**Order pronounced in the open court on 30.11.2018**

**Sd/-  
(R.K.PANDA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 30.11.2018  
BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR  
 ITAT NEW DELHI

Date of dictation	28.11.2018
Date on which the typed draft is placed before the dictating Member	28.11.2018
Date on which the typed draft is placed before the Other Member	29.11.2018
Date on which the approved draft comes to the Sr. PS/PS	30.11.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	30.11.2018
Date on which the fair order comes back to the Sr. PS/PS	30.11.2018
Date on which the final order is uploaded on the website of ITAT	30.11.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	