

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4841/Del./2016
(ASSESSMENT YEAR : 2011-12)**

DCIT, Circle 1,
International Taxation,
New Delhi.

vs. M/s. Dolphin Drilling Limited,
C/o Nangia & Co. NCR Plaza,
New Cantt. Road,
Dehradun.

(PAN : AABCD8263C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Amit Arora, Advocate
Shri Vishal Mishra, Advocate

REVENUE BY : None

Date of Hearing : 25.04.2019

Date of Order : 30.04.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, DCIT, Circle 1, International Taxation, Dehradun (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 29.06.2016 passed by the Commissioner of Income-tax (Appeals)-2, Noida, qua the assessment year 2011-12 on the grounds inter alia that :-

“Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the appeal of the assessee on the issue of levy interest u/s 234B of the Income Tax Act, 1961 when the decision in the case of M/s GE Packaged Power Inc. has not yet attained finality and the review petition of the Department against the decision has been admitted by the Hon'ble Supreme.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of providing drill ship to Reliance Industries Ltd. qua contract no. OG3/3598769 dated 29.03.2006 for provision of semisubmersible deep water drilling rig (Blackford Dolphin) and has filed return under section 44BB of the Income-tax Act, 1961 (for short ‘the Act’) by declaring contract revenues of Rs.123,29,78,605/- from Reliance Industries Ltd. apart from interest of Rs.44,55,967/-. Assessee claimed set off of losses of earlier years and as such computed the income u/s 44BB of the Act of Rs.12,32,97,861/- being 10% of gross revenue. AO levied interest u/s 234B of the Act declining the contention of the assessee that the interest u/s 234B is not leviable as there was no liability on the part of the assessee to pay advance tax in terms of section 209(1)(d) of the Act and assessed the total income of the assessee at Rs.16,12,81,958/-.
3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the addition by relying upon the

decision rendered by *Hon'ble Uttarakhand High Court in CIT vs. Oil Limited in ITA No.56 of 2007, Hon'ble High Court of Uttarakhand vs. DIT, International Taxation, Delhi-II – 334 ITR 79, Delhi Bench of the Tribunal in SNC-Lavalin International, Hon'ble Bombay High Court in DIT (International Taxation) vs. NGC Network Asia LLC in ITA No.1037 of 2008, DIT (International Taxation) vs. Clifford Chance LLP in ITA No.2883 of 2008; and Hon'ble Delhi High Court in GE Packaged Power Inc. in ITA No.352 of 2014*. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. Revenue has not preferred to put in appearance and consequently, we proceeded to decide the present appeal with the assistance of the Id. AR for the assessee as well as on the basis of documents available on the file.

5. We have heard the Id. Authorized Representative for the assessee to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Bare perusal of the grounds of appeal raised by the Revenue, extracted at preceding para no.1, goes to prove that the present appeal has just been filed on the ground that the decision of *M/s. GE Packaged Power Inc. 373 ITR 65* has not yet attained finality

as the review petition of the Department against the said decision lying admitted in the Hon'ble Supreme Court. The Revenue has not disputed the fact that the case of *M/s. GE Packaged Power Inc.* (supra) is applicable to the issue in controversy. Operative para 23 of the decision rendered by Hon'ble Delhi High Court is extracted for ready perusal :-

“For the above reasons, this court finds that no interest is leviable on the respondent-assessee under section 234B even though they filed returns declaring nil income at the stage of reassessment. The payers were obliged to determine whether the assessee were liable to tax under section 195(1), and to what extent, by taking recourse to the mechanism provided in section 195(2) of the Act. The failure of the payers to do so does not leave the Revenue without remedy; the payer may be regarded an assessee-in-default under section 201, and the consequences delineated in that provision will visit the payer. The appeal of the Revenue is accordingly dismissed without any order as to costs.”

7. In view of what has been discussed above, when issue raised in this appeal by the Revenue is covered in favour of the assessee vide judgment rendered by Hon'ble Delhi High Court in case of *M/s. GE Packaged Power Inc.* (supra), no contrary view can be taken by the Tribunal merely on the ground that review petition of the Revenue is lying admitted before the Hon'ble Supreme Court in case of *M/s. GE Packaged Power Inc.* (supra). So, we are of the considered view that Id. CIT (A) has rightly deleted the

addition by following the law laid down by Hon'ble Delhi High Court in *M/s. GE Packaged Power Inc.* (supra). So, finding no illegality or perversity in the impugned order passed by the ld. CIT (A), present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 30th day of April, 2019.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 30th day of April, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-2, Noida.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**