

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

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

**ITA No.4644/Del./2019
(ASSESSMENT YEAR : 2016-17)**

AND

**STAY No.624/Del/2019
(in ITA No.4644/Del./2019)
(ASSESSMENT YEAR : 2016-17)**

M/s. Shanghai Electric Group Co.Ltd., vs. ACIT,
188, Linchun Road, Circle 3(1)(2),
Shanghai City, International Taxation,
China – 201 100.

(PAN : AAPCS1357N)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Ms. Manasvini Bajpai, Advocate
REVENUE BY : Shri N.K. Bansal, Senior DR**

Date of Hearing : 04.06.2019
Date of Order : 10.06.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Shanghai Electric Group Co. Ltd.
(hereinafter referred to as 'the taxpayer') by filing the present
appeal sought to set aside the impugned order dated 25.04.2019
passed by the AO in consonance with the orders passed by Id.

DRP/TPO under section 143 (3)/144C (13) of the Income-tax Act, 1961 (for short 'the Act) qua the Assessment Year 2016-17 on the grounds inter alia that :-

“.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : the taxpayer, M/s. Shanghai Electric Group Co. Ltd. (SEC) is a foreign company incorporated under the Laws of People's Republic of China, which is into the business of supply of Boiler, Turbine & Generator (BTG) equipment to various companies (project owners) setting up power plants in India. The taxpayer company is also rendering offshore services in respect of erection, testing and commissioning of such BTG equipments. The taxpayer company during the year under assessment engaged in execution of contracts with reference to offshore supply to Jindal Project and Laguna Project. The taxpayer also provided offshore services qua erection, testing or commissioning and supervision of erection and testing and commission of such BTG equipments at project owner's site of Rosa Project, Laguna Project, Hydel Project and Jindal Project. The taxpayer has offered its income from aforesaid onshore activities to tax under section 44BBB of the Act. AO, after relying upon the order passed by the Id. DRP for AYs

2007-08 to 2009-10 and 2011-12 to 2014-15 taxed the revenue of the taxpayer from onshore services at a net profit rate of 25% on the ground that the provisions contained u/s 44BBB are not applicable to the taxpayer and supervisory receipts are subject to tax as per normal provisions of the Act and thereby assessed the total income at Rs.3,70,18,304/-. AO also levied interest u/s 234B of the Act.

3. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal challenging the impugned order passed by the AO.

4. We have heard the Id. Authorized Representatives of the parties 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.

GROUND NO.1

5. Ground No.1 is general in nature, hence does not require any specific adjudication.

TAXABILITY OF OFFSHORE SUPPLY

GROUNDS NO.2.1 TO 2.9

6. At the very outset, Id. AR for the taxpayer brought to the notice of the Bench that this issue has already been decided against

the taxpayer in AY 2015-16 in ITA No.3932/Del/2018 order dated 06.06.2018 by following the decision rendered by the Tribunal in *assessee's own case for AY 2014-15 in ITA No.4164/Del/2017 vide order dated 15.09.2017*. The ld. Senior DR for the Revenue agreed with the contentions raised by the ld. AR for the taxpayer.

7. Bare perusal of the grounds of appeal raised by the taxpayer in AYs 2014-15 & 2015-16 as well as in the year under assessment go to prove that the identical issue has already been decided against the taxpayer by confirming the assessment order by returning following findings :-

“2. We have heard both the sides and perused the relevant material on record. The assessee in the instant appeal is aggrieved against the rejection of claim u/s 44BB of the Act/Allegation of existence of fixed Permanent establishment; Taxability of offshore supply; and chargeability of interest u/s 234B of the Act. It is noticed, as has also been admitted by both the sides, that similar issues were raised in the appeals filed by the assessee for the assessment years 2007-08 to 2013-14. The Tribunal, vide its order dated 14.07.2017 in ITA Nos.224/Del/2014 etc., has dismissed all the grounds raised by the assessee except for the levy of interest u/s 234B. The ld. AR fairly conceded that the facts and circumstances of the instant appeal are, mutatis mutandis, similar to those of the earlier disposed of by the Bench. Respectfully following the precedent, we dismiss all the grounds taken by the assessee except the ground No.5 relating to levy of interest u/s 234B, which is hereby allowed.”

8. So, following the decision rendered by the coordinate Bench of the Tribunal in taxpayer's own case for AYs 2014-15 and 2015-16, grounds no.2.1 to 2.9 have been determined against the taxpayer.

GROUND NO.3

9. Ld. AR for the taxpayer contended that ground no.3 as to levy of interest u/s 234B has been decided in favour of the taxpayer in AYs 2014-15 and 2015-16. This factual and legal position has not been controverted by the ld. DR for the Revenue. So, following the decision rendered by the coordinate Bench of the Tribunal in taxpayer's own case for AYs 2014-15 and 2015-16, interest levied by the AO u/s 234B is hereby deleted, hence ground no.3 is determined in favour of the taxpayer.

10. Resultantly, the appeal filed by the taxpayer is partly allowed.

11. In view of the fact that appeal bearing ITA No.4644/Del/2019, in which the present stay application was filed, has since been disposed off vide this composite order, the present stay application is hereby dismissed having been become infructuous.

Order pronounced in open court on this 10th day of June, 2019.

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

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

**Dated the 10th day of June, 2019
TS**

Copy forwarded to:

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

AR, ITAT
NEW DELHI.