INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'I' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President)
And C.N Prasad (Judicial Member)]

ITA No.2371/Mum/2018
Assessment Year: 2014-15

Deputy Commissioner of Income Tax (IT)
Circle 2(3)(2) Mumbai **…………………….. Appellant**

Vs.

M/s. Global Santafe Drilling Company **………………….Respondent**
Transocean House, Lake Boulevard Road,
Hiranandani Business Park, Powai,
Mumbai 400076
[PAN: AAFCG2196P]

Appearances:
Sreenivas Raghavan & S. Iyengar *for the appellant*
Neeraj Agarwal *for the respondent*

Date of concluding the hearing: : December 31st , 2020
Date of pronouncement : January 04th, 2021

O R D E R

Per Pramod Kumar, VP:

1. This appeal, filed by the Assessing Officer, is directed against the order dated 25.01.2018 passed by the CIT(A) in the matter of assessment under section 143(3)/144C of the Income Tax Act, 1961, for the assessment year 2014-15.

2. In the first ground of the appeal the assessee has raised the following grievance:-

> **1. "On the facts and circumstances of the case, ld. CIT(A) erred in holding that the correct procedure for calculating receipts in the case of income from**

business and profession in case of currency conversion is explanation 2(c) to rule 115(1) without taking into account the proviso to the rule 115(1).”

3. The assessee is engaged in the business of charter and hire of oil drilling rig and other allied services. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that there was a difference in the revenues offered to tax and the revenues as per 26AS. In response to assessing officer show cause notice as to why the difference of Rs. 9,29,66,745/- not be brought to tax it was explained by the assessee that the revenues reported in the computation of income were converted into INR from USD by applying the Rule 115 of the Income Tax Rules 1962, which requires the conversion being made at the telegraphic transfer buying rate (TT Buying Rate) as on the date on which tax was required to be deducted at source, whereas the figures in 26AS reflect the conversion as on the date of payment. The assessing officer however was not satisfied with the said explanation, and therefore, proceeded to bring this amount of Rs. 9,29,66,745/- in the hands of the assessee.

4. Aggrieved assessee carried the matter in appeal before the learned CIT(A).

5. The learned CIT(A) upheld the claim of the assessee in principle but remitted the issue to the file of the assessing officer for limited verification purposes. While doing so learned CTI(A) observed as follows:

> **5. The case is whether to adopt rated used by ONGC for conversion or rate applied by assessee under rule 115 is to be used. Rule 115 is an explicit clause stating manner of foreign currency conversion and here being profits and gains of business and profession, sub-rule (c) applies. The proviso relied upon by Assessing officer is on conversion for the purpose of deduction of tax at source.**
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> **6. Rule 115(1) reads as under:**
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> > ***115. [(1)] The rate of exchange for the calculation of the value in rupees of any income accruing of arising or deemed to accrue or arise to the assessee in foreign currency or received or deemed to be received by him or on his behalf in foreign currency shall be the telegraphic transfer buying rate of such currency as on the specified date.***
>
> **It can be clearly seen that the stipulation is for "calculation of value of any income accruing or arising ......". It is income specific when sums received in foreign currency. The proviso is limited to TDS and TDS provisions is not for deciding income but for the purpose of chapter XVII-B and concern as to how "specified date" is determined. There is variance between the manner conversion rate for exchange is to be adopted in determination of income and determination of tax deduction at source. When rule provides as to how income is to be computed then that has to prevail since accurate computation of income**

is a primary requirement and tax deducted at source is to be set off against tax due on the income. Hence I hold that the Assessing Officer has to adopted correct procedure for currency conversion being on based one explanation (2)(c) to rule 115(1).

7. Having fixed manner of conversion of currency, since AO has mentioned that exchange rate as per TTBR specified in Rule 115 is not substantiated, the AO may verify the same and if rates applied is not correct, the correct TTBR rate is to be applied. No order prejudicial to assessee shall be passed without granting opportunity of being heard. The ground is treated as partly allowed.

6. The assessing officer is aggrieved and is in appeal before us.

7. Having heard the rival contentions, and having perused the material on record, we see no reasons to interfere in the conclusion so arrived at by the learned CIT(A). The rate at which revenues are required to be converted in the hands of the assessee is to be computed in accordance with Rule 115(1) which refers to the TT Buying Rate on the specified date. It is therefore possible, in fact inevitable, that they may be variations in the revenues computed in the hands of the assessee vis-a-vis the revenues converted as on the date on which the foreign currency payments are made by the payee. We have noted that learned CIT(A) has any way remitted the matter could be filed of the assessing officer for verification of the applicable TT Buying Rate under rule 115(1). We therefore see no infirmity in the order of the learned CIT(A) and declined to interfere the matter.

8. In the result ground no. 1 is dismissed.

9. In the second ground of the appeal the assessee has raised the following grievance:-

2. "On the facts and circumstances of the case, ld. CIT(A) erred in holding that the service tax should be excluded from gross receipts for the purpose of computation of income u/s. 44B without appreciating that fact that word used in the section is aggregate of the amounts and aggregate intends combined or collective and also the fact that an appeal has been admitted by the jurisdictional High Court on the similar grounds in the case of Hanjin Shipping Co. Ltd."

10. The learned Representative fairly agreed that this issue is covered in favour of the assessee by a decision of the coordinate bench in assessee's own case for the assessment year 2015-16. While doing so coordinate bench has *inter alia* observed as follows:-

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the service tax was wrongly excluded from the gross receipt for the purpose of computation of income u/s 44BB of the Act, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

> **"5 On identical facts and circumstances decision is taken in appellate order no. CIT(A)/DCIT(IT)-2(3)(2)/2016-17/316-G dated 25.01.2018. The matter being same on account of same reasons the same decision applies. The AO is directed to excluded service tax portion in computing income under section 44BB. Accordingly, the ground is allowed."**

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has allowed the claim of the assessee on the basis of his earlier decision for the A.Y. 2016-17 dated 25.01.2018. At the time of argument, the Ld. Representative of the assessee has placed reliance upon the decision of Hon'ble Delhi High Court in the case of titled as Director of Income Tax-1 Vs. Mitchell Drilling International in ITA. No.403/2013 dated 28.09.2015 and the decision of the Mumbai Bench in the case of M/s. Weatherford Drilling Vs. DCIT in ITA. No.495/M/2017 dated 20.06.2018. However, on the other hand, the Ld. Representative of the Department has placed reliance upon the decision of the Mumbai Tribunal in the case of China Shipping Container Lines Vs. Assistant Director of Income Tax, Mumbai. No doubt, the law relied by the Ld. Representative of the revenue speaks that the service tax is the part and parcel of the profit, therefore, the same was subject to presumptive profit and gain u/s 44BB of the Act. The issue has been considered by Hon'ble Delhi High Court in the case of Mitchell Drilling International (supra), Subsequently, by ITAT Mumbai Bench in the case of M/s. Weatherford Drilling Vs. DCIT in which it has been clearly held that the service tax is not liable to be include in gross receipt in terms of Section 44BB(1) r.w. Section 44BB(2) of the Act because the same is not part of the gross receipt for the purpose of depositing the presumptive tax. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide all the issues in favour of the assessee against the revenue.

11. We see no reasons to take any other view of the matter then the view taken by the coordinate bench respectfully following the same. We approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

12. In the result, the appeal is dismissed. Pronounced in the open court today on the 04th day of January, 2021

Sd/-	Sd/-
C.N Prasad	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 04th day of January, 2021
N.V, Sr. PS

Copies to:	*(1)*	*The Applicant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai