

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DEHRADUN BENCH, NEW DELHI)**

**(Through Video Conferencing)**

**BEFORE**

**SHRI AMIT SHUKLA, JUDICIAL MEMBER  
and  
Dr. B.R.R. KUMAR , ACCOUNTANT MEMBER**

**ITA No. 4286/Del./2017, A.Y. : 2014-15**

Deepwater Pacific 1 Inc. Noida	Vs	DCIT, Circle-1, INTL. Taxation, Dehradun
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>(PAN : AADCD1582A)</b>		

**Assessee by : Shri Amit Arora, Adv.  
Revenue by : Sh. Narendra Singh Jangpangi, CIT- DR**

<b>Date of Hearing: 08.11.2021</b>	<b>Date of Pronouncement: 11.11.2021</b>
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**ORDER**

**PER B.R.R.KUMAR, ACCOUNTANT MEMBER :**

This appeal has been filed by the assessee against the order of the Id. CIT(A)-2, Noida, dated 27.04.2017.

2. Following grounds have been raised by the assessee:

"Based on the facts and circumstances of the case, your appellant respectfully submits the following grounds which are without prejudice to each other.

Ground No. 1 -Reimbursement receipt on account of catering recharge, incorrectly held chargeable to tax.

On the facts and circumstances of the case the Ld. CIT(A) has erred in holding that the receipt on account of reimbursement of catering recharge, amounting to INR. 13,174,848 are includible in the gross receipts for the purpose of

determination of income under section 44BB of the Income Tax Act, 1961 as opposed to the claim of the appellant that the same being devoid of any profit element is not chargeable to tax.

Ground No. 2 -Reimbursement receipts incorrectly held chargeable to tax.

On the facts and circumstances of the case the Ld. CIT(A) has erred in holding that the receipts on account of reimbursement of expenses incurred on provision of materials, amounting to INR.

31,500,975 are includible in the gross receipt for the purpose of determination of income under section 44BB of the Income Tax Act, 1961 as opposed to the claim of the appellant that the same being devoid of any profit element is not chargeable to tax

Your appellant prays that the erroneous order be cancelled and appropriate relief may be granted to the appellant.

Your appellant craves leave to add to, alter, amend, vary, omit, substitute or delete any of the aforementioned grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal."

3. The assessee is taken up two grounds pertaining to reimbursement of catering charges and other receipts. At the outset, we find that this matter has been agitated by the Hon'ble Supreme Court in the case of Sedco Forex International Inc. vs. Commissioner of Income Tax, Meerut and Ors. (2017) **399 ITR 1** (SC). A. Ys.: 1986-87, 1987-88, 2000-2001. The relevant part of Hon'ble Supreme Court as under :-

**8) Civil Appeal Nos. 4906 of 2010, 4907 of 2010, 4915 of 2010 filed by Sedco Forex International Inc., M/s Transocean Offshore Inc., M/s Sedco Forex International Drilling Inc. respectively were taken up as lead matters and, therefore, for the sake of brevity, we recapitulate the factual matrix from the said appeals, as it would suffice for answering the question involved.**

**9) During the years under consideration, the assesseees are engaged in executing the contracts all over the world including India in connection with exploration and production of mineral oil. The assesseees are companies incorporated outside India and, therefore, non-resident within the meaning of [Section 6](#) of the Act. The assesseees entered into agreements with ONGC, Enron Oil and Gas India Ltd. The aforesaid agreements**

*provided for the scope of work along with separate consideration for the work undertaken. Since the dispute is about mobilisation charges, clauses in respect thereof are as under:*

*"Operating Rate – Receipts for undertaking drilling operations computed by per day rates provided in the contract. The operating rates shall be payable from the time the drilling unit is jacked-up and ready at the location to spud the first well.*

*Mobilisation – charges for the transport of the drilling unit from a location outside India to a location in India as may be designated by ONGC." In addition to the above, assessee also received amounts from the operator towards reimbursement of expenses like catering, boarding/lodging, fuel, customs duty, the supply of material etc., with which we are not concerned.*

*10) The assessee filed their return of income declaring income from charter higher of the rig. The same was offered to tax under [Section 44BB](#) of the Act. In the case of Sedco Forex International Inc., the assessee did not include the amount received as mobilisation charges to the gross revenue for the purpose of computation under [Section 44BB](#) of the Act. In the case of Transocean Offshore Inc., the assessee included 1% of the mobilisation fees. The mobilisation fees were offered to tax on a 1% deemed profit basis on the ratio of the CBDT Instruction No. 1767 dated July 1, 1987.*

*11) The AO included the amounts received for mobilisation/demobilisation to the gross revenue to arrive at the "profits and gains" for the purpose of computing TAX under [Section 44BB](#) of the Act. The Commissioner of Income Tax (Appeals) {hereinafter referred to as the 'CIT(A)'} confirmed the action of the AO. The Income Tax Appellate Tribunal (hereinafter referred to as the 'ITAT') in the case of Sedco Forex International Inc. dismissed the appeal of the assessee and the action of the AO was upheld insofar as the mobilisation charges were concerned. In the case of Transocean Offshore Inc., the ITAT upheld the view taken by the assessee and directed the AO to assess the profits on mobilisation charges at 1% of the amount received. This was done following the Circular of CBDT Instruction No. 1767 dated July 1, 1987 and decision of the third Member in the case of [Saipem S.P.A. v. Deputy Commissioner of Income Tax 1](#). The High Court has held that the mobilisation charges reimbursed inter alia even for the services rendered outside India were taxable under [Section 44BB](#) of the Act as the same is not governed by the charging provisions of [Sections 5](#) and [9](#) of the Act. Even on the issue of reimbursement in M/s. Sedco Forex International Drilling Inc. (Civil Appeal No. 4915 of 2010), the High Court followed its earlier judgments dated September 20, 2007 and May 22, 2009 to hold that reimbursement of expenses*

***incurred by the assessee was to be included in the gross receipts, and taxable under [Section 44BB](#) of the Act.***

4. Hence, respectively following the judgement of Hon'ble Supreme Court, we hereby hold that the reimbursement of expenses incurred by the assessee are to be included in the gross receipts, and taxable under [Section 44BB](#) of the Act.
5. In the result, appeal of the revenue is allowed.

Order pronounced in open court on this 11<sup>th</sup> day of November, 2021.

Sd/-

Sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**(Dr. B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**

\*Binita\*

Dated : 11/11/2021

Copy forwarded to:

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

AR, ITAT  
NEW DELHI.