

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 2559/MUM/2021 (A.Y. 2016-17)

DCIT (IT)-4(3)(1) Room No. 1613, 16 th Floor Air India Building, Nariman Point Mumbai – 400 021	v.	M/s. Valentine Maritime Ltd., C/o. Vinod Agnani, CA 2004-05, B-31, Montreal Towers Shastri Nagar, Andheri (W) Mumbai - 400053 PAN: AABCV8604R
(Appellant)		(Respondent)

Assessee by	:	Shri Hiro Rai
Department by	:	Shri S.K. Das
Date of Hearing	:	21.06.2022
Date of Pronouncement	:	28.07.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the revenue against order of Learned Commissioner of Income Tax (Appeals)-58, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 10.05.2021 for the A.Y. 2016-17.

2. Brief facts of the case are, assessee filed its return of income on 23.11.2016 declaring total income of ₹.88,26,32,960/-. The case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response AR of the assessee attended and submitted the information as called for.

3. Assessee is the company incorporated in Republic of Liberia pursuant to Liberian Business Corporation Act of 1977 having its Registered Office at 80, Broad Street, Monrovia, Liberia and administration office located at Abu Dhabi, UAE. The assessee is in the business of installations, fabrications of Onshore-Offshore pipelines in connection with the prospecting for, or extraction of production of mineral oils. The company jointly with Supreme Offshore Constructions and Technical Services Ltd., submitted bid for ONGC project. ONGC had issued a tender document for Mumbai High North Redevelopment Phase III Pipeline project for certain subsea pipeline installation work, install new platforms and top side modification of platform. The company is providing services and goods independently as mentioned in the contract under their own control and management and is receiving revenues directly for

its services and goods rendered. The assessee has undertaken the project of ONGC which is related to oil exploration and the income earned from the project has been offered to tax u/s. 44BB of the Act.

4. During the assessment proceedings, when the assessee was asked to reconcile the AIR Data, in response assessee has submitted that assessee is registered with Service Tax Authorities under the category of works contract. Assessee received service tax from ONGC which was separately claimed in each invoice. The total service tax claimed from ONGC on the services provided by the assessee is of ₹.48,01,18,482/-. The assessee has declared net of service tax as project receipt which was offered for taxation and they have submitted that the assessee has declared gross amount as project receipt due to the fact that ONGC has deducted TDS on service tax also. Further, it submitted vide letter dated 12.12.2018 as under: -

"a. Service tax is not a fixed amount. It is statutory liability based on the revenue billed and at the rates prevalent in the relevant year. The chargeability of service tax is dependent on the finance Act. e.g. the rates of service tax which were reimbursed were 4.80% of the services provided till 30th May 2015 which was raised to 5.60% thereafter.

b. You will appreciate that this was not a fixed amount. It was a statutory liability which was being reimbursed on the basis of the rates specified in the finance budget.

c. VML was only agent of the Government who was collecting the statutory payments and paying to the Government. Whereas in the case of SEDCO, the amount was paid as fees/compensation to the assessee which was not a reimbursement.

d. There is no element of income in such reimbursement of statutory liability.”

5. The Assessing Officer rejected the submissions made by the assessee by interpreting the section 44BB and relying on decision of the Hon'ble Supreme Court in the case of Sedco Forex International INC v. CIT, and came to the conclusion that as per the provisions contained in section 44BB of the Act, it is clear that the amount which is to be taken is the amount paid to the Assessee, whether in or out of India, payable to the assessee, whether in or outside India on account of the provision or services and facilities in connection with, or supply of plant and machinery on higher used, or to be used in the prospecting for, or extraction or production of, mineral oils in India and the amount received or deemed to be received in India by the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on higher used, or to be used, in the prospecting for or extraction or of mineral oils outside India. Accordingly, he treated the gross rate received by the assessee as the total revenue including service tax to determine

the deemed income u/s. 44BB of the Act. Accordingly, he concluded the deemed income as the income from the year of ₹.93,06,44,807/-.

6. Aggrieved assessee preferred an appeal before the Ld.CIT(A). Assessee filed detailed submissions before the Ld.CIT(A) by relying on the Full Bench decision of the Hon'ble Uttarakhand High Court in the case of Director of Income-tax v. M/s. Schlumberger Asia Services dated 12.04.2019 Ltd., and decision of the Mumbai ITAT in the case of Swiwar Offshore Pte Ltd. v. Additional Director of Income-tax (2018) 89 taxmann.com 346 (Mum. Trib).

7. After considering the submissions of the assessee, Ld.CIT(A) found that similar issue was come up in the case of Weatherford Drilling International BVI Ltd., and has decided the issue in favour of the assessee by relying on Hon'ble Bombay High Court decision in the case of Pr.CIT (IT) v. Boskalis International-Dredging International CV, in Income Tax Appeal No. 55 of 2017 and held that service tax should not form part of gross receipts u/s. 44AB of the Act. The Hon'ble High Court also relied on the judgment of Hon'ble Uttarakhand High Court in the case of Director of Income-tax v. M/s. Schlumberger Asia Services Ltd. (supra).

8. Aggrieved revenue is in appeal before us raising following grounds in its appeal: -

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in excluding service tax from amount paid or payable to, received or receivable by the assessee on account of the provision of service and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India for the purpose of determining presumptive profit u/s 44BB of the Act".

9. At the time of hearing, Ld.DR briefly brought to our notice facts of the case and he heavily relied on the decision of the Sedco Forex International INC v. CIT decision; and relied on the findings of the Assessing Officer in Para No. 18 in Page No. 8 of the Assessment Order.

10. On the other hand, Ld. AR relied on the findings of the Ld.CIT(A).

11. Considered the rival submissions and material placed on record, similar issue came up for adjudication before the Coordinate Bench in the case of Deputy CIT (IT) v. Global Santafe Drilling Co. in ITA.No. 2371/Mum/2018 dated 04.01.2021 [(2021) 189 ITD 416 (Mumbai)] and in this case revenue filed the appeal agitating similar issue and the Coordinate Bench has decided as under: -

"9. In the second ground of the appeal the assessee has raised the following grievance:- 2.

"On the facts and circumstances of the case, Id. 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. Facts being identical, respectfully following the above said decision, we are inclined to agree with the findings of the Ld.CIT(A). Accordingly, ground raised by the revenue is dismissed.

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28th July, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 28.07.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum