

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.2011/Del/2022  
Assessment Year: 2017-18

DCIT, Circle -3(1)(2), International Taxation, New Delhi	<b>Vs.</b>	M/s. Sapura Offshore SDN BHD, C/o- M/s. Nangia & Co. LLP, A-109, Sector-136, Noida
<b>PAN :AAECT0247K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Amit Arora, CA Sh. Vishal Misra, CA
Respondent by	Sh. Gangadhar Panda, CIT(DR)

Date of hearing	12.01.2023
Date of pronouncement	31.01.2023

**ORDER**

**PER SAKTIJIT DEY, JM:**

Captioned appeal by the Revenue arises out of order dated 20.06.2022 of learned Commissioner of Income Tax (Appeals)-43, New Delhi, pertaining to assessment year 2017-18.

2. The grounds raised are as under:

- 1) *Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in holding that reimbursement of service tax shall not form part of receipts for the purposes of section 44BB of the Income Tax Act, 1961, without appreciating the fact that section 44BB is a code in itself and there is clear distinction the gross*

*receipts in general and the gross receipts as per provision of section 44BB of the Act.*

- 2) *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that income under sub-section(1) of section 44BB of Act if computed @ 10% of the gross receipts/ revenue after taking into consideration as if all expenses from section 30 to 43B of the Income-tax Act are deemed to have been allowed.*
- 3) *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that the service tax forms part of gross revenue as service tax paid is deemed to have been allowed u/ s 43B of the Act in the instant case,*
- 4) *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the profit to be taxed at a rate lower than the prescribed rate of 10% as per section 44BB of the Income-tax Act in the light of the fact that service tax collected is not taken as part of gross receipt while the service tax paid is deemed to have been allowed as expense.*
- 5) *Whether the Ld, CIT(A) is correct in following the order of Hon'ble Delhi High Court in the case of Mitchell Drilling International Pty Ltd in ITA No. 43/ 2013 and decision of the Hon'ble High Court of Uttarakhand in the case of M/ s Schlumberger Asia Services Ltd in ITA No. 40/2012 while deciding the issue even when the said orders do not set any binding precedence being contrary to correct legal position.*
- 6) *The appellant prays to leave to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal.*

2. As could be seen from the grounds raised, the substantive issue arising for consideration is whether

reimbursement of service tax shall not form part of receipts for the purpose of computing income under section 44BB of the Income-tax Act, 1961 (for short 'the Act'). It is an agreed position between the parties before us that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment year 2015-16.

3. Having taken note of the submissions of the parties and perused the materials on record, we find, while deciding identical issue in assessee's own case for assessment year 2015-16, the Tribunal vide order dated 13.01.2020 in ITA No. 8310/Del/2018 has held as under:

*"3. The assessee is a company engaged in the business of setting up and installation of platforms in the sea used for the purpose of oil exploration. The assessee filed return of income on 30.11.2015 declaring income of Rs. 24,96,97,890/- u/s 44BB of the Act. On 05.12.2016 the return was revised at Rs. 16,60,57,150/-. The AO completed the assessment by making an addition of Rs. 2,05,24,664/- holding that service tax of Rs. 20,52,46,638/- is also includible in the gross receipts u/s 44BB of the Act. The Id CIT(A) deleted the same. Now the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in 380 ITR 108 holding that service tax collected by the assessee and passed on to the govt. does not have any element of income and therefore, cannot form of part of gross receipt u/s 44BB of the Act. Same view has also been taken by the Hon'ble High Court in 264 [Taxmann.com](http://Taxmann.com) 108. In view of this, the grounds of appeal of the Id AO are dismissed."*

4. It is a matter of record, while deciding the issue learned first appellate authority has merely followed the aforesaid decision of the Tribunal. There being no factual difference brought to our notice in the impugned assessment year, respectfully following the decision of the Coordinate Bench, as referred to above, we uphold the decision of learned Commissioner (Appeals) on the issue by dismissing the grounds raised.

5. In the result, the appeal is dismissed.

***Order pronounced in the open court on 31<sup>st</sup> January, 2023***

***Sd/-***  
**(G.S. PANNU)**  
**PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 31<sup>st</sup> January, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi