IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'DB' NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.5897/Del/2017
Assessment Year: 2013-14

Baker Hughes Singapore Pte., C/o Nangla & Co., A-109, Sector 136, Noida. **PAN: AAACB8516F**	Versus	DCIT (International Taxation) Circle-1, Dehradun.
(Appellant)		(Respondent)

ITA No.1883/Del/2018
Assessment Year: 2014-15

DCIT (International Taxation) Circle-1, Dehradun.	Versus	Baker Hughes Singapore Pte., C/o Nangla & Co., A-109, Sector 136, Noida.
(Appellant)		(Respondent)

C.O. No. 132/Del/2018
(in ITA No.1883/Del/2018)
Assessment Year: 2014-15

Baker Hughes Singapore Pte., C/o Nangla & Co., A-109, Sector 136, Noida.	Versus	DCIT (International Taxation) Circle-1, Dehradun.
(Appellant)		(Respondent)

Assessee by	:	Sh. Amit Arora, C.A. & Sh. Itesh Dodhi, C.A.
Revenue by	:	Sh. Mayank Kumar, JCIT-DR

Date of hearing	:	23.06.2023
Date of pronouncement	:	15.09.2023

ORDER

PER SAKTIJIT DEY, V.P.

Captioned appeals and cross objection arise out of two separate orders of learned Commissioner of Income-tax (Appeals)-2, Noida pertaining to assessment years 2013-14 and 2014-15.

2. Since, the facts involved and issues arising in these appeals and cross objection are more or less identical, they have been clubbed together and are disposed of in a consolidated order for the sake of convenience.

ITA No. 5897/Del/2017 (Assessee's appeal for A.Y. 2013-14):

3. The core issue arising in the appeal relates to taxability of revenue received from provision of services relating to management of chemicals. While the assessee has claimed that such receipts are taxable on presumptive basis under section 44BB of the Income-tax Act, 1961, the department is of the view that they are in the nature of fee for technical services (FTS) and since, the assessee has a Permanent Establishment (PE) in India, they will be taxable under section 44DA of the Act.

4. Briefly, the facts are, the assessee is a non-resident corporate entity and tax resident of Singapore. As stated, the assessee is engaged in the business of providing services and facilities in connection with exploration, exploitation and extraction of mineral oils. As a part of such business activities, the assessee has entered into multiple contracts with various Indian entities and earned revenue from provision of services under the contracts. For the assessment year under dispute, the assessee had filed its return of income on 30.11.2013 declaring income of Rs.38,74,26,700/-. In the return of income, the assessee had offered the contract receipts as income of the nature provided under section 44BB of the Act and paid tax on presumptive basis as provided in the said provision. In course of assessment proceedings, the Assessing Officer called for various details relating to the services provided and income earned. He also examined various contracts entered by the assessee with Indian entities.

5. After examining the facts and materials in detail, the Assessing Officer observed that the assessee has a PE in India and is rendering services through the said PE. He further observed that in the year

under consideration, the assessee had performed activities under various contracts, which can be divided into two categories, such as, contracts with companies executing production sharing contracts (PSC) for oil exploration activities and contracts with non- PSC, who, in turn, are providing services to companies engaged in executing PSC contracts. After listing and examining each of the contracts entered by the assessee with Indian entities, the Assessing Officer accepted assessee's claim of assessability of income under section 44BB of the Act in respect of majority of contracts. However, in respect of some of the contracts relating to provision of management of chemical services, the Assessing Officer was of the view that receipts from such services are not covered under the provision of section 44BB of the Act, as they are in the nature of FTS and since the assessee has PE in India, would be covered under section 44DA of the Act. Elaborating further, he observed that such services cannot be considered as activity relating to mining and basically the assessee is providing technical and consultancy services by providing annual maintenance contract for software supply and

maintenance, hence, such services would be covered under section 9(1)(vii) of the Act.

6. Thus, applying section 44DA read with Rule 10, he computed profit of 25% on gross contractual receipts of Rs.74,74,189/-. Further, in respect of some other contracts relating to supply of chemicals, the Assessing Officer observed that they cannot be covered under section 44BB of the Act, as these contracts are purely and exclusively supply contracts. Accordingly, he concluded that profit on such sale and supply of chemicals has to be computed at 40% of gross revenue earned, out of which 30% is attributable to sale in India. Accordingly, out of the total revenue of Rs.5,75,49,702/-, he attributed an amount of Rs.80,56,958/- as income of the PE. Besides the above, he made various other additions such as reimbursement of Service Tax, VAT etc. Accordingly, he proposed the draft assessment order by determining total income of Rs.42,18,08,292/-. Since, the assessee did not raise objections before the Dispute Resolution Penal against the draft assessment order, the Assessing Officer finalised the assessment.

7. Against the final assessment order, the assessee preferred appeal before learned first appellate authority. While deciding the appeal, learned first appellate authority, though, granted relief in respect of some of the issues/additions covered in the assessment order, however, he upheld the decision of the Assessing Officer with regard to taxability of receipts from management of chemical services and supply of chemicals.

8. Before us, learned counsel appearing for the assessee submitted that in so far as revenue earned from chemical management services is concerned, since, the services and facilities provided are in connection with exploration, exploitation and extraction of mineral oils, they are fully covered under section 44BB of the Act. He submitted, the issue is squarely covered by various decisions of the coordinate Bench including in assessee's own case in assessment years 2007-08, 2008-09 and 2011-12. Further, he strongly relied upon the decision of Hon'ble Supreme Court in case of Oil and Natural Gas Corporation Ltd. vs. CIT (2015) 376 ITR 306 (SC) and decision of the Tribunal in case of MI Overseas Ltd. vs. ADIT (ITA No. 2956/Del/2013 & Ors. dated 08.06.2021).

9. Per contra, strongly relying upon the observations of the Assessing Officer and learned first appellate authority, learned Departmental Representative submitted that, in no way, the chemical management services or supply of chemicals are connected to the activities specified under section 44BB of the Act. He submitted, the fact that chemical management services is in the nature of FTS under section 9(1)(vii) of the Act, has been well established by the departmental authorities. Thus, he submitted, the receipts have been rightfully brought to tax in accordance with the provisions of law by the Assessing Officer.

10. We have considered rival submissions and perused materials on record. In so far as the scope of work under the chemical management services is concerned, the assessee is required to provide such services to Cairn Energy India Pty. Ltd. As observed by learned first appellate authority, the scope of such work can be divided into two parts, i.e., supply of personnel and equipments to deliver chemicals in the required volume in the timely manner to the correct location of the company and provide appropriate report. The scope of work also includes sampling and testing oil, water and gas

as part of process monitoring, consumables for laboratory testing etc. It also includes providing necessary documentation, certification and license and various other ancillary and incidental activities. Thus, from the scope of work, it is evident that the nature of services provided by the assessee to the contractee is in connection with services or facilities used in the prospecting for, or extraction and production of mineral oils as envisaged under section 44BB of the Act. Though, the Assessing Officer has made an attempt to bring the services rendered within the ambit of section 9(1)(vii) of the Act, however, in our view, the exceptions provided under Explanation-2 to Section 9(1)(vii) of the Act would cover the activities/services of the assessee. In fact, in case of ONGC Ltd. (supra), Hon'ble Supreme Court has held that exploitation/exploration of mineral oils would be regarded as mining activity. Since, the services rendered by the assessee are in connection with such activity, in our view, they will be covered under section 44BB of the Act. In fact, in assesee's own cases in assessment years 2007-08, 2008-09 and 2011-12, the Tribunal has laid down the aforesaid legal position.

11. As observed earlier, while treating the services rendered by the assessee as FTS, the Assessing Officer has differentiated between the income received from PSC and non-PSC partners. However, as we find, in case of MI Overseas Ltd. (supra), the coordinate Bench, applying the ratio laid down by Hon'ble Supreme Court in case of ONGC Ltd. (supra), has held that if the pith and substance of the contract is for exploration of mineral oils irrespective of the fact whether the contract is from PSC or non-PSC parties, would not matter and both the receipts can be taxed under section 44BB the Act. Thus, respectfully following the judicial precedents cited before us, we hold that the receipts from chemical management services are not in the nature of FTS to be taxed under section 44DA of the Act, but would fall within the ambit of section 44BB of the Act.

12. In so far as receipt from supply of chemical is concerned, it is the claim of the assessee that since such supplies have been made from outside India and not in any way connected to the activities of PE, they will not be taxable in India.

10. Having considered the rival submissions, we find, while deciding identical nature of dispute in case of another group entity,

viz., DDIT vs. Baker Hughes Asia Pacific Ltd. (ITA No. 3881/Del/2014 dated 07.02.2018, the Tribunal has restored the issue to the Assessing Officer with the following observations :

> 7. The ground No. 6 of the appeal of the revenue is with respect to the taxability of offshore supply of goods. The Ld. authorised representative submitted that the above issue has already been considered in the assessee's own case wherein the coordinate bench is of the opinion that such offshore supply of goods are connected with the permanent establishment in India and then this issue has been set aside back to the file of the Ld. assessing officer for attribution of income in view of the decision in assessee's own case. In view of this we also set aside this ground of appeal back to the file of the Ld. assessing officer to decide the issue in view of direction given in ITA No. 5283/del/2010 in assessee's own case. Accordingly the above grounds of appeal are allowed with similar directions. In the result ground No. 6 of the appeal of the revenue is allowed accordingly.

13. Facts being identical, following the aforesaid decision of the coordinate Bench, we restore the issue to the Assessing Officer for re-examination in the light of the directions of the Tribunal in the cited case.

14. In the result, ground Nos. 1, 2 & 3 are allowed. Whereas, ground Nos. 4, 5, 6 & 7 are allowed for statistical purposes.

ITA No. 1883/Del/2018(Revenue's appeal for A.Y. 2014-15):

15. Ground Nos. 1, 2, 3, 4, 5 & 6 in this appeal are on the common issue of taxability of various receipts in connection with services rendered and facilities provided in respect of exploration, exploitation and extraction of mineral oils.

16. Briefly, the facts are, like in assessment year 2013-14, in the impugned assessment year also, the assessee has provided services under multiple contracts with Indian entities, which are in connection with exploration, exploitation and extraction of mineral oils. In the return of income filed for the assessment year under dispute, the assessee claimed receipts to be taxable under section 44BB of the Act. Whereas, the Assessing Officer treated the receipts to be in the nature of FTS falling under section 9(1)(vii) of the Act. Learned first appellate authority, being convinced with the submissions of the assessee that receipts are in relation to services rendered in connection with use or right to use of equipment/facilities for exploration, exploitation and extraction of mineral oils, allowed assessee's claim under section 44BB of the Act.

17. We have heard learned Departmental Representative and learned counsel for the assessee. As could be seen from the facts on

record, the disputed receipts are in respect of contracts for provision of services relating to Pre-Drill Perdition Pressure of Formation Pressure, Well Bore Stability Study, 3D Pore Pressure study, Real Time FPM services and Real Time Specialized Services for Geo Mechanics and Drilling Optimization services for deep water control room. As can be seen from the facts on record, after analyzing the nature of services performed by the assessee under the contract and keeping in view the ratio laid down by Hon'ble Supreme Court in case of ONGC Ltd. (supra), learned Commissioner (Appeals) had recorded categorical factual finding that Pre-Drill Perdition Pressure of Formation Pressure, Well Bore Stability Study, 3D Pore Pressure study, Real Time FPM services and Real Time Specialized Services for Geo Mechanics and Drilling Optimization services for deep water control room, are closely associated with the activities relating to exploration, exploitation and extraction of mineral oils. He has also recorded a factual finding that these particular types of services provided by the assessee fall within the scope of work considered by the Hon'ble Supreme Court in case of ONGC Ltd. (supra) to be falling under the category of services envisaged under section 44BB of the

Act. Further, on going through the relevant observations of learned first appellate authority in paragraph No. 5.9 to 5.14 of the order, it is quite evident that he has exhaustively dealt with the nature and character of each of the services provided by the assessee and has found them to be intrinsically connected to the activity of exploration, exploitation and extraction of mineral oils. No material has been brought on record by the Revenue to controvert the factual finding recorded by learned first appellate authority. In fact, in assessee's own cases in preceding assessment years, the Tribunal has held that the nature of services provided by the assessee comes within the scope and ambit of section 44BB of the Act. Thus, keeping in view the factual position emerged on record as well as the ratio laid down in the judicial precedents cited before us, we hold that the conclusion reached by learned first appellate authority is just and proper, hence, needs no interference. Accordingly, we uphold the order of learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

18. Ground Nos. 7, 8 & 9 involve the taxability of receipts on account of Service Tax/VAT under section 44BB of the Act.

19. We have considered rival submissions and perused materials on record. It is observed, identical issue came up for consideration in assessee's own case in assessment year 2013-14. While deciding the issue in Revenue's appeal in ITA No. 6178/Del/2017 in order dated 08.02.2022, the Tribunal after following the decision of Hon'ble Delhi High Court in case of PCIT vs. Mitchell Drilling International Pvt. Ltd., 380 ITR 130, has held that Service Tax and VAT cannot form part of computation of income under section 44BB of the Act. In view of the aforesaid, we decline to interfere with the decision of learned first appellate authority. Grounds are dismissed.

20. In ground No. 10 & 11, the Revenue has challenged the deletion of addition made on account of receipts from equipments lost in hole.

21. Briefly, the facts are, in the year under consideration, the assessee received an amount of Rs.11.97,385/- on account of tools/equipments lost in hole. Claiming that they are in the nature of capital receipts, the assessee did not consider it as part of income offered to tax on presumptive basis under section 44BB of the Act. The Assessing Officer, however, did not accept assessee's claim and

included it in the gross receipts for computing income under section 44BB of the Act. Relying upon a decision of Hon'ble Uttarkhand High Court in case of CIT vs. Schlumberger Asia Services Ltd. (ITA No. 58/2006), learned Commissioner (Appeals) decided the issue in favour of the assessee.

22. We have considered rival submissions and perused materials on record. In course of drilling operation for exploration of mineral oils, certain tools and equipments used in such operation are either destroyed or lost, which are termed as equipments lost in hole. For such loss/destruction of tools and equipments, the assessee has received certain amounts from contractee. The facts reveal that the receipts are for loss/destruction of capital asset. Therefore, they cannot be in the nature of revenue receipts. In fact, the issue has been put to rest by the decision of Hon'ble Uttarakhand High Court in case of CIT vs. Schlumberger Asia Services Ltd.(supra). In that view of the matter, we do not find any reason to interfere with the decision of learned Commissioner (Appeals). Grounds raised are dismissed. In the result, appeal is dismissed.

C.O. No. 132/Del/2018 (By Assessee for A.Y. 2014-15):

23. Grounds are raised on the common issue of taxability of offshore supply of chemicals. Identical issue came up for consideration before us in ground No. 4, 5, 6 & 7 of ITA No. 5897/Del/2017 for assessment year 2013-14 decided by us in earlier part of the order. While deciding the issue, we have restored it back to the Assessing Officer for reconsideration. Consistent with the view taken therein, we restore this issue to the Assessing Officer for reconsideration. Grounds are allowed for statistical purposes.

24. To sum up, assessee's appeal is partly allowed, Revenue's appeal is dismissed and cross objection of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15/09/2023.

Sd/-	Sd/-
(M. BALAGANESH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 15.09.2023
*aks/-