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

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.2281/Del/2023 & 2282/Del/2023
Assessment Year: 2020-21 & 2021-22

DCIT(IT) Circle – 2 (1)(2) New Delhi	**Vs.**	**J Ray MCDERMOTT S. A PF ARIFA, 9th and 10th Floors, Panama West Bouelvard Sants, Maria Business District Panama USA PAN No.AADCJ6385R**
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. Vizay B Vasanta, CIT DR
Respondent by	Sh. Amit Arora, CA Sh. Vishal Mishra, CA

Date of hearing:	14/12/2023
Date of Pronouncement:	14/12/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.2281/Del/2023 and 2282/Del/2023 are two separate appeals by the revenue preferred against two separate orders of the CIT(A)-43, New Delhi pertaining to A.Y. 2020-21 and 2021-22.

2. Since common grievance is involved in both these appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance read as under :-

> "*Whether the facts and circumstances of the case, the Ld. CIT(A) erred in holding that receipts on account of Service tax/ GST are not forming part of the gross receipts for the purpose of determining presumptive income under section 44BB of the Act, 1961.*"

4. This issue is no more resintegra as it has been now well settled in favour of the assessee and against the revenue by the Hon'ble Jurisdictional High Court of Delhi in the case of **DIT Vs. Mitchell Drilling International (P) Ltd. 380 ITR 0130** and by full bench of the Hon'ble High Court of Uttrakhand in the case of **Schluberger Asia Services Limited 414 ITR 1**.

5. The Dispute is in respect of the computation of presumptive income and whether collection of service tax form part of the gross receipts section 44 BB clause 1 and 2 of the Act read as under :-

> *"44BB. (1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee, being a non-resident, engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or*

extraction or production of, mineral oils, a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that this sub-section shall not apply in a case where the provisions of section 42 or section 44D or section 44DA or section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections.

(2) The amounts referred to in sub-section (1) shall be the following, namely:-

(a) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services 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; and

(b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services 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 outside India."

6. The Hon'ble High Court of Delhi in the case of **Mitchell Drilling International (P) Ltd.** (supra) has considered this issue as under :-

"9. Section 44BB begins with a non obstante clause that excludes the application of Sections 28 to 41 and Sections 43 and 43A to assessments under Section 44 BB. It introduces the concept of presumptive Income and states that 10% credit of the amounts paid or payable or deemed to be received by the Assessee on account of

"the provision of services 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" shall be deemed to be the profits and gains of the chargeable to tax. The purpose of this provision is to tax what can be legitimately considered as income of the Assessee earned from its business and profession.

10. The expression 'amount paid or payable' in Section 44BB(2)(a) and the expression 'amount received or deemed to be received' in Section 4488(2)(b) is qualified by the words 'on account of the provision of services and facilities in connection with, or supply of plant and machinery." Therefore, only such amounts which are paid or payable for the services provided by the Assessee can form part of the gross receipts for the purposes of computation of the gross income under Section 44 BB (1) read with Section 44BB(2). 11. It is in this context that the question arises whether the service tax collected by the Assessee and passed on to the Government from the person to whom it has provided the services can legitimately be considered to form part of the gross receipts for the purposes of computation of the Assessee's 'presumptive income' under Section 44BB of the Act?"

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17. The Court accordingly holds that for the purposes of computing the 'presumptive income ne the assessee for the purposes of Section 44 BB of the Act, the service tax collected by Assessee on the amount paid t it for rendering services is not to be included in the gross receipts in terms of Section 44 BB (2) read with Section 44 BB (1). The service tax services amount paid or payable, or received or

deemed to be received by the Assessee for the so the rendered by it. The Assessee is only collecting the service tax for passing it on to the government.

18. The Court further notes that the position has been made explicit by the CBDT itself in two of its circulars. In Circular No. 4/2008 dated 28th April 2008 it was clarified that "Service tax paid by the tenant doesn't partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of Service Tax. Therefore, it has been decide that tax deduction at source) under sections 194-1 of Income Tax Act would be required to be made on the amount of rent paid/payable without including the service tax. In Circular No. 1/2014 dated 13th January 2014, it has been clarified that service tax is not to be included in the fees for professional services or technical services and no TDS is required to be made on the service tax component under Section 1943 of the Act.

19. The question framed, is therefore, answered in the negative i.e. favour of the Assessee and against the Revenue.

7. Similar view was taken by the Hon'ble High Court of Uttrakhand in the case of **Schluberger Asia Services Limited** (supra) against which SLP of the revenue was dismissed by the Hon'ble Supreme court by order dated 28.11.2023. The order of the Hon'ble Supreme Court read as under :-

ITEM NO.22 COURT NO.13 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 45067/2023
(Arising out of impugned final judgment and order dated 02-11-2022 in ITA No. 13/2022 passed by the High Court Of Uttarakhand at Nainital)

COMMISSIONER OF INCOME TAX Petitioner(s)

VERSUS

M/S TRANSOCEAN OFFSHORE INTERNATIONAL VENTURES LTD. Respondent(s)

(FOR ADMISSION and I.R. and IA No.236246/2023-CONDONATION OF DELAY IN FILING and IA No.236247/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 28-11-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. N Venkatraman, A.S.G.
Mr. Raj Bahadur Yadav, AOR
Mr. H R Rao, Adv.
Mr. Udai Khanna, Adv.
Mrs. Gargi Khanna, Adv.

For Respondent(s) Mr. S. Ganesh, Sr. Adv.
Mr. Divyanshu Agrawal, Adv.
Ms. Pooja Mittal, Adv.
Mr. Vaibhav Niti, AOR
Ms. Madhavi Agrawal, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Though, there is a delay of 272 days in filing the Special Leave Petition. Nevertheless, we have heard learned Additional Solicitor General on merits of the case.

Delay condoned.

We are not inclined to interfere in the matter.

The Special Leave Petition is dismissed.

Pending application(s) shall stand disposed of.

8. In the light of the above we do not find any reason to interfere with the findings of the CIT(A). Both the appeals filed by the revenue are dismissed.

9. Decision announced in the open court on 14.12.2023.

Sd/-	**Sd/-**
(ASTHA CHANDRA)	**(N. K. BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NEHA
Date:- .12.2023