# THE INCOME TAX APPELLATE TRIBUNAL
# DEHRADUN BENCH, NEW DELHI
## BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
## AND
## SHRI YOGESH KUMAR US, JUDICIAL MEMBER

(Through Video Conferencing)

ITA No. 7476/Del/2017 (Assessment Year: 2014-15)
ITA No. 5304/Del/2018 (Assessment Year: 2015-16)

| | | |
|---|---|---|
| DCIT,<br>Circle-1, International Taxation, Dehradun | Vs. | M/s. Gaia Ship Management AS (formerly known as Rolv Berg Drive AS),<br>214-2nd Floor, Ajanta Hotel, Santacrauz (W), Mumbai |
| (Appellant)<br>**PAN:a AACCR6772K** | | (Respondent) |

| | |
|---|---|
| Assessee by : | Ms. Ananya Kapoor, Adv |
| Revenue by: | Sh. Mayank Kumar, Adit CIT DR (International) |
| Date of Hearing | 15/12/2023 |
| Date of pronouncement | 22/12/2023 |

## O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No. 7476/Del/2017 for AY 2014-15 and 5304/Del/2018 for AY 2015-16, arises out of the order of the Commissioner of Income Tax (Appeals)-2, Noida, [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No.103/CIT(A)-2/2016-17 dated 27.09.2017 for AY 2014-15 and in 87/CIT(A)/2017-18/Noida dated 30.05.2018 for AY 2015-16 against the order of assessment passed u/s 143(3)/ 144C(3)(a) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.01.2015 by the DCIT, International Taxation, Circle-2, Dehradun and ACIT, International Taxation, Circle-2, Dehradun for AY 2015-16 (hereinafter referred to as 'ld. AO').

2. Identical issues are involved in both the appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. With the consent of both the parties appeal of the revenue for AY 2014-15 is taken as the lead case and the decision rendered thereon shall apply with equal force for AY 2015-16 also except with variance in figures.

4. The revenue has raised the following grounds of appeal for AY 2014-15:-

> *"1 Whether on facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of convention between India and Norway by ignoring the vital fact that the assessee was not engaged solely in the supply operations*
>
> *2 Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of convention between India and Norway by picking the offshore supply operations part in isolation out of the scope of work carried out by the assessee that consists of a number of other activities/services which are not covered by the special provisions of Article 23 of DTAA between India and Norway.*
>
> *3 Whether on facts and circumstances of the case, the CIT(A) has ermed in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the comprehensive scope of the contract as mentioned in "RECITALS of the contract which clearly stipulates that the services required to be performed by the assessee includes lowing services anchoring services, standby services surveillance services, emergency evacuation service, rig mobilization or demobilization services etc. In addition to supply services. These activities are not at all covered by the provisions of Article 23(4) of the above DTAA*
>
> *4 Whether on facts and circumstances of the case, the CIT(A) has erred in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the clause mentioned in column 1.1 (b) of scope of work of the contract which inter alia contains the provision that the offshore vessel of the assessee would be required to stand by the drilling rig always for any emergency office operation This activity is not at all covered by the provisions of Article 23(4) of the above DTAA*
>
> *5 Whether on facts and circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the clauses mentioned in column 1.1 (b) of scope of work of the contract which inter alia contains the provision that the offshore vessel of the*

*assessee would be required to evacuate the personnel onboard the offshore rig in the event of any calamity. This activity is not at all covered by the provisions of Article 23(4) of the above DTAA*

*6 Whether on facts and circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the clauses mentioned in column 11 (b) of scope of work of the contract which inter alia contains the provision that the offshore vessel of the assessee would be required to carry out routine surveillance in offshore for supply and security reason. This activity is not at all covered by the provisions of Article 23(4) of the above DTAA*

*7 Whether on facts and circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the clauses mentioned in column 1.1 (c) of scope of work of the contract which inter alia contains the provision that the offshore vessel of the assessee would be required to be deployed on rig tow for rig mobilization or demobilization or movement between drilling location to run anchors for the rigs and to carry necessary towline for the same. This activity is not at all covered by the provisions of Article 23(4) of the above DTAA*

*8 Whether on facts and circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the clauses mentioned in column 11 (d) of scope of work of the contract which inter alia contains the provision that the offshore vessel of the assessee would be required to handle anchors that a jack-up or semi sub or drilling ship might use for rig positioning This activity is not at all covered by the provisions of Article 23(4) of the above DTAA*

*9 Whether on facts and circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the clauses mentioned in column 1.1 (e) & (f) of scope of work of the contract which inter alia contains the provision that the assessee would be required to depute two captains with minimum of five years of experience in anchor handling This clause shows that the activity of anchor handling is a very important and integrated part of the contract. This activity is not at all covered by the provisions of Article 23(4) of the above DTAA.*

*10 Whether on facts and circumstances of the case and in law, the CIT(A) has erred in allowing benefit of Article 23(4) of DTAA between India and Norway by ignoring the fact that the contract is an integrated one whose main ingredients are towing, anchoring. standby services, emergency services, surveillance services, ng mobilization/demobilization services etc, which do not fall within the ambit of Article 23(4) of the DTAA*

*11 Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in holding that receipts on account of service tax are not includible in gross revenues of the assessee for the purpose of computation of profits under the presumptive provisions of u/s 44BB of the IT Act, 1961*

*12 Whether the CIT(A) has erred in not appreciating the fact that the provisions of section 44BB of the Act are a self-contained code providing for computation of profit at a percentage of gross receipts of the assessee and all the deductions and exclusions from income are deemed to have been allowed to the assessee.*

*13 Whether the CIT(A) has erred in not appreciating the fact that once the receipts are offered to tax u/s 44BB of the Act which provides for computation of profits on gross basis, there is no scope for computing or re-computing the profits by excluding any element of the receipts from the total turnover as the same would amount to defeating the very purpose of providing for a scheme of simple mode of computation of profits u/s 44BB of the Act and obviating the need for accounting for individual receipts and payments etc.*

*14. Whether CIT(A) has erred in ignoring the ratio of the judgment in the case of M/s Chowringhee Sales Bureau (P) Ltd. (82 ITR 542, SC) wherein the Hon'ble Apex Court has held that the Sales Tax collected by an assessee in the ordinary course of its business forms part of its business receipts. Owing to the inherent similarly in the nature of sales tax and service tax, the ratio of the judgment in the said case is directly applicable to the facts of the instant case*

*15 Whether the CIT (A) has erred in directing the Assessing Officer to not levy interest u/s 234B of the Income Tax Act, 1961 when the decision of the Delhi High Court in GE Packaged Power Inc has not attained finality as the Department has filed review application in the Hon'ble Supreme Court*

*16. The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time of or before the hearing of the appeal."*

5. We have heard the rival submissions and perused the materials available on record. The assessee is a non-resident company incorporated under the laws of Norway. The assessee entered with the contract with Gujarat State Petroleum Ltd for Anchor Handling Tug Supply (AHTS). This contract is continuing from previous year. The assessee earned gross revenue amounting to Rs. 28,83,67,595/- from Gujarat State Petroleum Ltd and offered the same to tax after applying deemed profit rate of 7.5% of gross revenue applying the the provisions of Article 21(4) of the India-Norway Double Taxation Avoidance Agreement (DTAA) after reducing service tax amounting to Rs. 2,92,40,718/- from the gross receipts as the same need not be included in the gross receipts thereon. The assessee also offered interest income on account of interest on fixed deposit amounting to Rs. 1,32,450/- in the return of income. The ld AO

observed that Article 21(4) of India –Norway DTAA is applicable only for transportation of material from one shore to another shore outside India, whereas, the assessee had hired the vessels for carrying out multiple activities such as anchor handling, towing work, providing standby services to rig, providing security surveillance services when vessels are in operations and evacuation of personnel in the event of any calamity. These activities cannot be construed as transportation activities and hence Article 21(4) of the Treaty cannot be made applicable according to the revenue. With these observations, the ld AO determined the income of the assessee in accordance with section 44BB of the Act by applying the presumptive rate thereon @10% of gross receipts and further added interest income on fixed deposit under the head 'income from other sources'. While doing so, the ld AO corrected the service tax receipt of Rs. 2,92,40,718/- to 4,45,55,489/- and included the same in the gross receipts for the computation of profit u/s 44BB of the Act. The ld CIT(A) by placing reliance on the order passed by predecessor in assessee's own case for AY 2012-3 and also the decision of the Tribunal in assessee's own case for AY 2005-06 granted relief to the assessee on all the grounds. The ld CIT(A) relied on the decision of the Hon'ble Jurisdictional High Court in the case of DIT Vs. Schlumberger Asia Services Ltd 414 ITR 1 (Uttarakhand), among other decisions, while granting relief to the assessee.

6. At the outset, the ld AR stated that the contract which had generated revenue to the assessee during the year under consideration is continuing contract from earlier year which fact is not disputed at all. The very same issue and argument advanced by the ld DR before us were already considered by this Tribunal in assessee's own case for AY 2010-11 in ITA No. 4621/Del/2014 dated 18.06.2019. We have gone through the said order and we find that similar grounds were raised by the revenue during AY 2010-11 also before this Tribunal. For the sake of convenience, the order passed by this tribunal is reproduced herein for AY 2010-11 dated 18.06.2019:-

*"This appeal is filed by the Revenue against the order dated 6/6/2014 passed by CIT(A)-I1, Dehradun for Assessment Year 2010-11.*

*2. The grounds of appeal are as under:-*

> *"1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT (A) has erred in holding that the income of the assessee is liable to be taxable under Article 23(4) of India - Norway Double Taxation Avoidance Agreement ('DTAA').*
>
> *1.1.Whether the Ld. CIT(A) has erred in his interpretation of the scope of the provisions of Article 23(4) of the DTAA which are applicable only to profits derived from the activities of "transportation of supplies or personnel" and operation of other vessels "auxiliary to such activities".*
>
> *1.2. Whether the Ld CIT(A) has failed to appreciate that the activities carried out by the assessee included "Anchor Handling Services" which are beyond the scope of the services contemplated under Article 23(4) of the DTAA and therefore, the Assessing Officer was justified in holding that the income of the assessee is not eligible for treatment the said Article and is liable to be assessed u/s 44BB of the Income Tax Act, 1961( 'the Act')*
>
> *2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that Service Tax would not form part of gross receipts for the propose of computation of profits under the presumptive provisions of u/s 44BB of the Act.*
>
> *2.1. Whether the Ld. CIT(A) has erred in not appreciating the fact that the provisions of section 44BB are a self-contained code providing for computation of profits at a fixed percentage of gross receipts of the assessee and all the deductions and exclusions from income are deemed to have been allowed to the assessee.*
>
> *2.2. Whether the Ld. CIT(A) has erred in not appreciating the fact that once the receipts are held as assessable u/s 4488 of the Act which provides for computation of profits on gross basis, there is no scope for computing or re- computing the profits by excluding any element of the receipts from the total turnover as the same would amount to defeating the very purpose of providing for a scheme of simpler mode of computation of profits u/s 44BB of the Act and obviating the need for accounting for individual receipts and payments etc.*
>
> *2.3. Whether the Ld. CIT(A) has erred in ignoring the judgment of the Hon'ble ITAT in the case of DDIT v/s Technip Offshore Contracting, [29 SOT 33 Del] and the Ruling of Hon'ble AAR in the case of Siem Offshore [337 ITR 207], wherein it has been held that service tax receipts of the assessee have to be considered as part of its gross receipt for the purpose of presumptive determination of profit.*
>
> *2.4. Whether the Ld. CIT(A) has erred in ignoring the ratio of the judgment in the case of M/s Chowringhee Sales Bureau (P) Ltd (82 ITR*

*542, SC) wherein the Hon'ble Apex Court has held that the Sales Tax collected by an assessee in the ordinary course of its business forms part of its business receipts. Owing to the inherent similarity in the nature of the sales tax and service tax, the ratio of the judgment in the said case is directly applicable in the facts of the instant case.*

*3. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(Appeals) has erred in holding that the assessee is not liable to pay interest u/s 2348 of the Act and in observing that the issue is covered in favour of the assessee by decision in the case of M/s Maersk [334 ITR 79, UK]*

*3.1. Whether the Ld CIT(Appeals) has erred in not appreciating the fact that the case of M/s Maersk was distinguishable on facts wherein the employer failed to deduct tax at source despite the specific mandatory provisions of the Act stipulating the employer being liable to deduct tax on the salary paid to the employee, thereby holding that an employee is not liable to pay advance tax on salary.*

*3.2. Whether the Ld CIT (Appeals) has erred in not appreciating the fact that the said case does not lay down a general proposition of law that interest u/s 2348 is not chargeable in all cases, particularly in cases where the Non- Resident assessee/payee/deductee has played a role in inducing non- deduction or short-deduction on the part of the payer/deductor.*

*3.3. Whether the Ld CIT(Appeals) has erred in failing to take note of the observations of the Hon'ble High Court in the case of M/s Mitsubishi [330 ITR 578, Del] that the role of the assessee/payee/deductee in short-deduction or non-deduction of tax needs to be ascertained before claim regarding non-liability to interest u/s 2348 of the Act is accepted, a proposition affirmed subsequently in the case of M/s Alcatel Lucent (judgment of Delhi High Court dated 7 11.2013 in ITA No. 327 & Ors of 2012) and followed by 1TAT Delhi in the order dated 13.06.2014 in the case of Nortel Network India International Inc [ITA No. 4766/DEL/20I 1]*

*4. The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time of or before the hearing of the appeal.*

*3. The assessee company is a non resident company incorporated under the law of Norway. The assessee company entered into the contract with Gujrat State Petroleum Ltd. vide contract dated 12/12/2007 for off shore supply vessel services required for off shore drilling. Return of income was filed by the assessee electronically on 30/09/2010 declaring total income of Rs. 2,72,78,810/-. The case was selected for scrutiny and accordingly notice u/s 143(2) was issued on 21/9/2011. Further, notice u/s 142(1) along with questionnaire dated 4/4/2012 was issued by the Assessing Officer. Further, notice u/s 142(1) dated 7/11/2012 was issued and another notice along with questionnaire dated 30/11/2012 was issued. The CA and AR of the assessee attended the proceedings from time to time and submitted written replies. A draft assessment order u/s 143(3)/144C(1) of the Income Tax Act, 1961 was*

*passed on 15/3/2013 thereby assessing total income at Rs. 3,82,96,710/-. The Assessing Officer made addition of Rs. 36,37,17,501/- in respect of receipts offered and also made addition of Rs. 1,92,49,636/- towards service tax receipts as well as made addition as to total income u/s 44BB towards Rs. 3,82,96,714/-.*

*4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.*

*5. The Ld. DR submitted that the CIT(A) was incorrect in holding that the income of the assessee is liable to be taxable under Article 23(4) of the India-Norway Double Taxation Avoidance Agreement (DTAA). The Ld. DR relied upon the Assessment Order.*

*6. As regards to Ground No. 1, the Ld. AR relied upon the Tribunal's order in assessee's own case for Assessment Year 2005-06 being ITA No.3427/Del/2011 order dated 14.02.2013.*

*7. We have heard both the parties and perused all the relevant material available on record. It is found that for A.Y. 2005-06, the Tribunal in assessee's own case held as under:*

> *"5. We have heard rival submissions and perused the material available on record. As the facts emerges, it remained undisputed that the assessee provided a vessel i.e. tugboats for ONGC work. Assessing Officer has given a very restricted meaning of Article 23(4) by ignoring the second of the two limbs of the Article. It amply covers the tugboats services provided by the assessee to ONGC. In our view CIT(A) has rightly considered the issue allowing the relief to the assessee, which we uphold.*
>
> *6. In result, revenue's appeal is dismissed."*

*The issue in the present assessment year is identical to that of A.Y. 2005-06. The CIT(A) rightly held that Article 23(4) of the Norway DTAA speaks of a case whereby transportation of personnel or materials to an oil drilling site would attract lesser rates of tax. The Assessing Officer wrongly placed reliance on the isolated clause (d) of the contract with M/s GSPC to deny the benefit to the assessee. In fact the entire contract should have been considered properly by the Assessing Officer which he failed to do so. Therefore, in light of the decision of the Tribunal which is having identical facts in the present year as well, this issue is decided in favour of the assessee. Ground No. 1 of the Revenue's appeal is dismissed.*

*8. As regards to Ground No. 2, the Ld. DR submitted that the CIT(A) erred in holding that Service Tax would not form part of gross receipts for the purpose of computation of profits under the presumptive provisions u/s 44BB of the Act. The CIT(A) failed to appreciate the fact that the provisions of Section 44BB are a self-contained code providing for computation of profits at a fixed percentage of gross receipts of the assessee and all the deductions and exclusions from income are deemed to have been allowed to the assessee. The Ld. DR submitted that once the receipts are held as assessable u/s 44BB of the*

*Act which provides for computation of profits on gross basis, there is no scope for computing or re-computing the profits by excluding any element of the receipts from the total turnover as the same would amount to defeating the very purpose of providing for a scheme of simpler mode of computation of profits u/s 44BB of the Act and obviating the need for accounting for individual receipts and payments etc. The Ld. DR relied upon the decision of Tribunal in case of DDIT vs. Technip Offshore Contracting (29 SOT 33 Del.) and Ruling of AAR in case of Siem Offshore (337 ITR 207). The Ld. DR also relied upon the decision of the Hon'ble Apex Court in case of ONGC vs. CIT 376 ITR 306.*

*9. The Ld. AR submitted that the CIT(A) has rightly deleted this additions. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of DIT vs. Mitchell Drilling International (P.) Ltd. 380 ITR 130.*

*10. We have heard both the parties and perused all the relevant material available on record. The Hon'ble Delhi High Court in case of Mitchell Drilling International (P.) Ltd. (supra) held as under:*

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

*Thus, the Hon'ble Delhi High Court has clearly held that purpose of Section 44BB of the Act, the service tax collected by the Assessee on the amount paid to it for rendering services is not to be included in the gross receipts in terms of Section 44BB(2) read with Section 44BB(1). Besides that the CIT(A) also held that the issue is coved in favour of the assessee due to the cases of M/s Sedco Forex 139 ITD 188 (Del) and thereafter followed by the case of Precision Energy Service Ltd. (ITA No. 5609/Del/2012) and allowed this ground with direction to exclude service tax from the purview of computation of income u/s 44BB of the Act. The decision of the Hon'ble Apex Court relied by the Ld. DR is not applicable in the present case as the ratio laid down by the Apex Court is different than the issue involved in the present case. Therefore, in light of the decisions of the Hon'ble Delhi High Court, this issue is decided in favour of the assessee and against the revenue. Ground No. 2 of the Revenue's appeal is dismissed.*

*11. As regards to Ground No. 3, the Ld. DR submitted that the CIT(A) erred in holding that the assessee is not liable to pay interest u/s 234B of the Act and in observing that the issue is covered in favour of the assessee by decision in case of M/s Maersk 334 ITR 79, UK. The Ld. DR relied upon the decision of Hon'ble Delhi High Court in case of DIT (IT) vs. Alcatel Lucent USA, Inc. 264 CTR 240 (Del.): 223 Taxman 176.*

*12. The Ld. AR submitted that CIT (A) rightly decided the issue in favour of the assessee by relying on the decision of the Hon'ble Uttarakhand High Court in case of DIT vs. Maersk Co. Ltd. 334 ITR 79.*

*13. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Hon'ble Uttarakhand High Court in case of Maersk Co. Ltd. (supra) held as under:*

> *"24. In light of the aforesaid, we are of the view that the assessee was not laible to pay advance tax under section 208 of the Act inasmuch as the tax at source was required to be deducted by the person responsible for paying any income chargeable under the head "Salaries" at the time of payment under section 192 of the Act. The assessee only became liable to pay the tax directly under section 191 of the Act since it was not deducted at source. The stage for making payment of tax could only arise at the stage of self-assessment which is to be made in a later assessment year as is clear from section 190 of the Act, whereas advance tax is liable to be paid in a financial year only and not thereafter. We are consequently of the view that if the employer fails to deduct the tax at source while paying any income chargeable under the head "Salaries", would be responsible for payment of interest under section 201(1A) of the Act. The assessee would not be liable to pay interest under section 234B of the Act since he was not liable to pay advance tax under section 208 of the Act."*

*Thus, the issue is squarely covered by the decision of the Uttarakhand High Court in case of Maersk Co. Ltd. (supra). The CIT(A) was rightly decided this issue in favour of assessee. Thus, Ground No. 3 of the Revenue's appeal is dismissed.*

*14. In result, appeal of the Revenue is dismissed."*

7. All the arguments of the ld DR have already been addressed by this Tribunal in assessee's own case referred (supra) hence, we hold that the ld CIT(A) was duly justified in granting relief to the assessee. Accordingly, grounds raised by the revenue for AY 2014-15 are dismissed.

8. The grounds raised by the revenue for AY 2015-16 are also dismissed in view of the decision hereinabove for AY 2014-15.

9. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 22/12/2023.

| -Sd/- | -Sd/- |
|---|---|
| **(YOGESH KUMAR US)** | **(M. BALAGANESH)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated: 22/12/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi