

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

Before Sh. Saktijit Dey, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2537/Del/2023 : Asstt. Year : 2017-18

ACIT, Income Tax Department, New Delhi-110002	Vs.	Vetco Gray Pte. Ltd., 2, Benoi Road, Jurong Town, Singapore-629876
(APPELLANT)		(RESPONDENT)
PAN No. AADCV3121H		

Assessee by : Ms. Disha Jha, Adv.

Revenue by : Sh. Vijay B. Vasanta, CIT-DR

Date of Hearing: 06.05.2024

Date of Pronouncement: 15.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-43, New Delhi dated 12.06.2023.

2. Following grounds have been raised by the Revenue:

"1. Whether on facts and circumstances of the case, Id. CIT(A) erred in quashing Assessing Order relying on ITAT's order quashing revision order passed u/s 263 without going into merits of the case."

3. Vetco Gray Pte. Ltd. (VGPL) is a company incorporated in, and a tax resident of Singapore. During the year under consideration, it was engaged in the business of offshore supply of equipment rendering of services and supply of plant and machinery on the hire basis, to be used in prospecting for, or extraction or production of mineral oil.

4. VGPL had filed ITR on October 31, 2017, therein declaring total income Rs.1,37,85,751/- as per the provisions of section 44BB of the Income tax Act, 1961.

5. The details of income earned during the FY 2016-17 are as under:

Nature of Income	Amount (USD/GBP)	Amount (INR)I	Taxability (as per ITR)
Provision of Services and Repairs	USD 632,421	4,05,38,186	10% of said receipts offered to tax as per sec-44BB
Rental of Equipment	USD 1,518,241	9,73,19,312	10% of said receipts offered to tax as per sec-44BB
Offshore supply of goods	USD 3,185,570 GBP 18,611,176	168,63,89,093	Not taxable being income accrue/arise outside India

6. The case was selected for scrutiny assessment by the Assessing Officer, Circle 3(1)(1), International taxation, Delhi and the assessment order was passed vide order dated February 17, 2020 holding as under:

- *that the AO constituted a 'Service/Installation' Permanent establishment (PE) in India in terms of para 6(a) and para 5 of Article 5 of the India - Singapore DTAA ('tax treaty').*
- *that the involvement of the Assessee's employees in the onshore activities related to offshore supplies cannot be ruled out. Hence, some of activities in relation to supply of equipment may have taken place in India and accordingly some portion of profit from offshore supply of equipment should be taxable in India.*
- *that in view of Rule 10 and drawing guidance from instruction No. 1767 dated July 1, 1987 issued by Central Board of Direct Taxes ('CBDT') for non-resident companies engaged in Oil & Gas business, 10% of the gross receipts from the offshore*

supplies was adopted as the profit of the Assessee, Out of the income so computed, 10 per cent (i.e. 1% of the gross receipts) was attributable to the activity of sale assumed to be carried out in India and the balance for the offshore functions. Accordingly, 1% profit from offshore supply of equipment was held to be taxable in India as income attributable to PE in India.

- *that the income from services and rentals, was acceptable and assessed the same at 10% in line with section 44BB of the Act.*

7. The Appellant had neither filed an appeal before Commissioner of Income-tax (Appeals) nor filed any objections before the Dispute Resolution Panel ('DRP') and accepted the decision of the Assessing Officer.

8. Later, the Id. Commissioner of Income-tax (International Tax), Delhi-3 issued the notice dated January 14, 2022 for initiating the revision proceedings under section 263 of the Act, and passed the order on March 24, 2022 concluding as under:

- In order to make an opinion, the AO need to gather all the relevant facts leading to assessment of the income. Since, the AO has failed to call for relevant material, facts and made necessary investigations/enquiry during the course of assessment proceeding, there could not be any opinion.
- Change of opinion applies on facts and not on legal position. The CIT is free to make additions by opting correct legal positions. Failure to gather information, make inquiry and application of correct legal positions, made the AO's Order erroneous and prejudicial to revenue.

- The Assessee being a non-resident and engaged in oil exploration contracts is covered by the specific provisions contained in section 44BB of the Act. Accordingly, Ld. CIT has taxed the income from offshore supply of goods under section 44BB of the Act.
- Under the scope of section 44BB of the Act, only assessee(s) directly engaged in prospecting / extracting /production of mineral oil, are eligible for concessional regime of section 44BB. The Assessee has been subcontracted and not the original contractor. Further, leasing of Equipment is a one-time affair and lessor used to receive fixed amount at regular intervals. Being passive income, it is not in the nature of business income, and shall also fall outside the scope of section 44BB. Accordingly, Rental of Equipment shall be either taxed as Royalty under section 9(1)(vi)/115A or 44DA of the Act, depending on its PE in India or not, and taxed the income from rental of equipment as royalty taxable under section 44DA of the Act taking the attribution of 25% instead of 4% tax rate made by the AO in the original order.

9. The assessee has filed an appeal before Income-tax Appellate Tribunal against the order of Ld. CIT passed under section 263 of the Act.

10. The Assessee has filed an appeal before the ITAT Delhi against the revisionary order passed by the CIT under section 263 of the Act. The Co-ordinate Bench of ITAT has disposed the matter by passing an order dated December 20, 2022, holding as under:

- The revisionary authority, the Id. CIT cannot impose his view only because the view taken by the Assessing Officer is not acceptable to him. Further, the Id. CIT was not able to demonstrate the change in facts of the case, in order to justify the increase in the rate of attribution.
- The Assessing Officer has taken a view based on the past assessment history of VGPL and being consistent with the approach adopted in past assessment years, assessment order cannot be held to be erroneous. Further, in order to invoke 263 proceedings, an order should be erroneous and prejudicial to the interest of revenue. Hence, one of the conditions for initiation of 263 proceedings is not fulfilled in the present case.

11. Based on above, the Co-ordinate Bench of ITAT has quashed the order passed under section 263 which effectively restores the original assessment order.

12. The AO passed the final order dated **June 27, 2022** under section 143(3) read with section 263 of the Act, in line with the order passed by the Ld. CIT under section 263 of the Act.

13. The Id. CIT(A)-43 vide order dated **12.06.2023** unequivocally held that, when the revision order passed u/s 263 has been quashed by the ITAT, the order of the AO passed u/s 143(3) r.w.s. 263 dated 27.06.2022, no longer remains operative and quashed the assessment order passed by the AO u/s 143(3) r.w.s. 263 of the Act, following the order of the ITAT in its own case.

14. To conclude, the Id. CIT(A) has rightly quashed the Assessment Order passed u/s 143(3) r.w.s. 263.

16. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 15/05/2024.

Sd/-

(Saktijit Dey)
Vice President

Dated: 15/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR