

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 7334/Del./2017 : Asstt. Year : 2013-14

ITA No. 7848/Del./2017 : Asstt. Year : 2014-15

ITA No. 5647/Del./2018 : Asstt. Year : 2015-16

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| Weatherford Oil Tools M.E. Ltd., C/o Nangia & Company, A-109, Sector-136, Noida-201301 (APPELLANT) | Vs | DCIT, International Taxation, Circle-2, Dehradun-248001 (RESPONDENT) |
| PAN No. AAACW1524G | | |

ITA No. 7477/Del./2017 : Asstt. Year : 2013-14

ITA No. 417/Del./2018 : Asstt. Year : 2014-15

ITA No. 5696/Del./2018 : Asstt. Year : 2015-16

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| ACIT/DCIT, International Taxation, Circle-2, Dehradun-248001 (APPELLANT) | Vs | Weatherford Oil Tools M.E. Ltd., C/o Nangia & Company, IDA, 1 st Floor, 46, EC Road (RESPONDENT) |
| PAN No. AAACW1524G | | |

**Assessee by: Sh. Salil Kapoor, Sh. Anil Chachra,
Ms. Ananya Kapoor & Sh. S. L. Chandani, Advs.
Revenue by: Sh. Mithun Shete, Sr. DR**

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| Date of Hearing: 19.03.2025 | Date of Pronouncement: 28.04.2025 |
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ORDER

Per Bench:

These assessee's and Revenue's three cross appeals each involve the following relevant details:

| Sl. No. | ITA Nos. | Appellant | Respondent | Order passed against | Proceedings u/s |
|---------|-------------------------------|-------------------------------|------------|---|-----------------------|
| 1. | 7334/Del/2017 A.Y. 2013-14 | Weatherford Oil Tools ME Ltd. | DCIT | CIT(A)-2, Noida, Appeal No. 45/CIT(A)- 2 /2016-17 Dated 27.09.2017 | 143(3)/144C (3)(b) |

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|----|-------------------------------|-------------------------------------|-------------------------------------|---|-----------------------|
| 2. | 7848/Del/2017 A.Y. 2014-15 | Weatherford Oil Tools ME Ltd. | DCIT | CIT(A)-2, Noida, Appeal No. 120/CIT(A)-2 /2016-17 Dated 25.10.2017 | 143(3)/144C (3)(b) |
| 3. | 5647/Del/2018 A.Y. 2015-16 | Weatherford Oil Tools ME Ltd. | ACIT | CIT(A)-2, Noida, Appeal No. 93/CIT(A)- 2/2017-18/ Noida Dated 22.06.2018 | 143(3)/144C (3)(b) |
| 4. | 7477/Del/2017 A.Y. 2013-14 | ACIT | Weatherford Oil Tools ME Ltd. | CIT(A)-2, Noida, Appeal No. 45/CIT(A)- 2 /2016-17 Dated 27.09.2017 | 143(3)/144C (3)(b) |
| 5. | 417/Del/2018 A.Y. 2014-15 | ACIT | Weatherford Oil Tools ME Ltd. | CIT(A)-2, Noida, Appeal No. 120/CIT(A)-2 /2016-17 Dated 25.10.2017 | 143(3)/144C (3)(b) |
| 6. | 5647/Del/2018 A.Y. 2015-16 | DCIT | Weatherford Oil Tools ME Ltd. | CIT(A)-2, Noida, Appeal No. 93/CIT(A)- 2 /2017-18/Noida Dated 22.06.2018 | 143(3)/144C (3)(b) |

2. Heard both the parties at length. Case file perused. We proceed assessment year wise for the sake of convenience and brevity.

A.Y. 2013-14

ITA No. 7334/Del/2017 (Assessee's appeal)

ITA No. 7477/Del/2017 (Revenue's cross appeal)

3. This assessee's appeal ITA No. 7344/Del/2017 raises the following substantive grounds:

"Ground No. 1

That on the facts and circumstances of the case and in law the Ld Commissioner of Income-tax, Appeals-II, Noida [CIT(A)] has erred in computing INR 68,74,954 as the income attributable to the Appellants PE from offshore supply of goods and thereby confirming the addition of INR 34,20,203.

Ground No. 2

That on the facts and in the circumstances of the case and in law the Ld CIT(A) erred in arbitrary applying the

deemed profit rate of 3.98 percent of gross sales, as attributable to the Indian operations. While doing so Ld CIT(A) erred in not considering such portion of income as is reasonably attributable to the extent of operations carried out in India by the Appellants PE in relation to offshore supply of goods.

Ground No. 3

The Ld CIT(A) erred in facts and in law, by ignoring the Appellants Profit Attribution Report [duly maintained by the Appellant in accordance with provisions of section 92D of the Income-tax Act, 1961 ("the Act") read with Rule 10D of the Income Tax Rules, 1962 ("the Rules")] which clearly demonstrates that the 1.68 percent (of the value of supplies made) profits attributable to the Indian operations with respect to overseas supplies made by Appellant is in compliance with the arm's length principle, as embodied in the Indian transfer pricing regulations.

Ground No. 4

That Ld CIT(A) erred in law and on facts by failing to appreciate that the functional profile of the Appellants PE is even below a low risk distributor and that the Appellants PE does not assume title of the goods sold in India and merely provides low end coordination support services for the offshore supply.

Ground No. 4

That the Ld CIT(A) erred in law and on facts by rejecting comparable companies identified by the Appellant in its detailed Profit Attribution Report and cherry picking favourable years merely on the grounds of low profit margins, which is not permissible as per principles of comparability laid down by various judicial precedents. While doing so, the Ld CIT(A) grossly violated the provisions of Rule 10 B(2) of the Rules.

Ground No. 6

That the Ld CIT (A) erred in law and on facts in not allowing working capital adjustments, risk adjustments and other economic adjustments while determining the income to be attributed to the Appellants PE for the alleged offshore supply segment of the Appellant.

Ground No. 7

That the Ld CIT(A) erred in law and on facts by not providing the benefit of the 5 percent range as provided by the proviso to section 92C(2) of the Act.

Ground No. 8

That the order passed violates the principle of natural justice, equity and fair play.

The above grounds of objection are independent of and without prejudice to one another.

Your appellant prays that the erroneous order be cancelled, and appropriate relief may be granted to the appellant."

4. Now come the basic relevant facts. This assessee is admittedly a company engaged in providing slick line services, mud logging services, casing services, completion services, LWD/MWD services, directional drilling services, core/fluid services, AMC for well test interpretation software etc. It had offered its revenue on account of sale of material/equipment amounting to Rs.17,27,92,605/- at profit margin of 2% going by the corresponding profit attribution report maintained which was assessed u/s 44BB of the Act to the tune of Rs.7,25,92,605/- representing sale of material from composite contracts and the other head of sale of material from pure supply/standalone contract amounting to Rs.10,01,44,938/- was taxed @8%, as it is evident from the Assessing Officer's detailed discussion dated 18.05.2016 in para 7.3 page 17 thereof. And that the CIT(A)'s order has followed A.Y. 2012-13 findings for the purpose of taxing the assessee's entire revenue

amounting to Rs.17,27,37,543/- at a profit rate/margin of 3.98%. We are informed that the CIT(A) has further excluded the negative data of profit of less than 1% of the comparables as per para 5.27 page 20 onwards.

5. It is in this factual backdrop that we sought to know about the finality of the proceedings between the parties relevant to the preceding assessment year 2012-13. We are informed that the instant issue travelled upto the tribunal and the Revenue's appeal in ITA No. 4424/Del/2017 with cross objection CO No. 192/Del/2017 stand decided on 22.12.2023 as under:

"11. Though the assessee has raised several grounds in its cross objection, the only effective issue to be decided is with regard to attribution of profit on the activities of overseas sale of equipment of the assessee which has been considered by the Id AO as fee for technical services and the Id CIT(A) held the profit rate @3.13 % of gross sales to be attributed to Indian operation, as against the profit rate of 2% attributed by the assessee.

12. We have heard the rival submissions and perused the materials available on record. The assessee offered to tax in respect of sale of tools and equipments made overseas at profit rate of 2% of gross sales of Rs. 38,34,76,937/- as profit attributable to Indian operations carried out in India and accordingly, the same alone would be income deemed to accrue or arise in India. The Id AO however, held that the sales made by the assessee are in nature of composite activities involving supply of consumable and spares which are connected and form intricate part of service contract therefore, to be taxed u/s 44BB of the Act. Before the Id CIT(A), the dispute got narrowed down pursuant to various additional evidences furnished by the assessee and remand report given by the Id AO. The Id CIT(A) vehemently held that the profit attribution rate to Indian operations @3.13 % as against 2% declared by the assessee. Now the short point that arises for our consideration is whether the profit attribution should be estimated at 2% or 3.13%. The Id DR vehemently argued that the profit attribution @2% made by the assessee was without any basis and it was arbitrary and the assessee did not give any details to justify the estimated profit rate 2%. The Id CIT(A) on taking certain comparables had arrived at the weighted average arithmetic mean of 3.13% as under:-

| Sl No. | Company name | NPM FY 2009-10 (%) | NPM FY 2010-11 | NPM FY 2011-12 | Weighted average |
|--------|---------------------------------|--------------------|----------------|----------------|------------------|
| 1. | Hazel Mercantile Limited | 3.61% | 3.71% | 2.97% | 3.38% |
| 2. | Super Domestic Machines Limited | 0.75% | 3.98% | 1.70% | 2.21% |
| 3. | Jainex Ltd. | 2.73% | 4.30% | 3.99% | 3.81% |
| | Arithmetic mean | | | | 3.13% |

13. The assessee on the other hand furnished the comparables and arrived at the weighted average arithmetic mean of 1.69% worked out in the following manner:-

| Sr.No. | Company Name | NPM FY 2009-10 (%) | NPM FY 2010-11 (%) | NPM FY 2011-12 (%) | Weighted Average |
|--------|---------------------------------|--------------------|--------------------|--------------------|------------------|
| 1 | Aseem Global Limited | 1.06% | 0.80% | 0.40% | 0.80% |
| 2 | Hazel Mercantile Limited | 3.61% | 3.71% | 2.97% | 3.38% |
| 3 | P O C L Enterprises Limited | -0.77% | -1.80% | 0.14% | -0.87% |
| 4 | Veritas (India) Limited | 1.37% | 1.77% | 0.01% | 0.84% |
| 5 | Super Domestic Machines Limited | 0.75% | 3.98% | 1.70% | 2.21% |
| 6 | Jainex Ltd. | 2.73% | 4.30% | 3.99% | 3.81% |
| | Arithmetich mean | | | | -0.87% |
| | Min | | | | 3.81% |
| | Max | | | | |

14. The Id AR before us argued that the Id CIT(A) had ignored the comparable cases where the weighted average of net profit margin were either negative or less than 1%, which has got absolutely no basis. Accordingly, he prayed for acceptance of comparables given by the assessee to be justified workings for adoption of 2% profit attribution rate as against the comparables of the assessee wherein, arithmetic mean margin of the comparables were 1.69%. Similar issue had arose before the coordinate bench of this tribunal in the case of Smith International Inc. Vs. ADIT in ITA No. 4561/Del/2013 for AY 2009-10; 3824/Del/2014 for AY 2010-11 dated 10.11.2021, wherein, in that case, that assessee had offered 2% of gross sales as attributed to the Indian operations which was reworked by the Id CIT(A) @5.08% after ignoring the comparable companies (KOA tools India Ltd) which had incurred loss. The relevant observations of this tribunal are reproduced below:-

"14. It was argued that ignoring the functional comparability of KOA Tools Limited which is against comparability study. The company operates in 3 segments i.e., segment tools, Trading of tools and parking. Since the profile of this company, in respect of its trading business is comparable to SIO in terms of functions performed, risks assumed and assets employed, the trading segment of this company has been considered as comparable to SIO for AY 2009-10. However, for AY 2008-09 and AY 2007-08, the trading segment was not available, hence the company has not been considered comparable for these years. As regards the losses for AY 2009-10, the assessee submitted that losses are a regular business phenomenon. If a company is otherwise comparable in terms of functions performed, risks assumed and the assets employed, it cannot be rejected as a comparable merely because it has incurred losses in a particular year.

15. *It was argued that Koa Tools India Limited meets all comparability criteria examined by the Appellant in view of income-tax regulations and OECD guidelines and hence, should be considered as comparable as per the law.*

16. *The assessee relied on the ruling of the Special Bench of Chandigarh ITAT in the case of DCIT vs. M/s Quark Systems Private Limited [2010-TIOL-31-ITAT-CHD-SB], wherein it was held as under:*

"25..... While we agree that merely because a comparable is making loss, it cannot be excluded from the list of comparables, Imercius is a case in which not only functional area is different..

17. The above principle has also been upheld by other benches of ITAT in the case of UCB India (P) Limited vs. ACIT (2009) (121 ITD 131) (Mumbai ITAT), ACIT vs. Wockhardt Limited (6 Taxmann.com 98) (Mumbai ITAT), Brigade Global Services Private Limited vs. ITO (ITA No 988/Hyd./2011) (Hyderabad ITAT).

18. In view of the orders of the Co-ordinate bench of ITAT, we hold that Koa Tools India Limited which clears the FAR test should not be rejected as a comparable for the AY 2009-10."

15. It is not in dispute that the comparables chosen by the assessee duly fulfilled the comparability test i.e. FAR (Functions performed, Assets employed and Risks assumed). The Id CIT(A) had also not disputed the comparability test of the 6 comparables chosen by the assessee. He had merely ignored the comparables incurring losses or having weighted average net profit margin less than 1%. Accordingly, we have no hesitation to hold that the comparables chosen by the assessee duly fulfilled the comparability test of FAR analysis and in view of the decision of the Special Bench of Chandigarh Tribunal in the case of M/s Quark Systems Pvt Ltd Vs ITO, Chandigarh reported in 2010-TIOL-31-ITAT-CHD-SB, we hold that Assem Global, POCL Enterprises Ltd and Veritas (India) Ltd should also be included as comparable companies and when these three are included, the weighted average margin of the comparable companies works out @1.69% and the assessee itself had attributed 2% as profit for the Indian operations. Hence, there is no need for further attribution of profit for the Indian operations. Accordingly, we direct the Id AO to accept 2@ profit attribution made by the assessee. Hence, the ground raised by the assessee in its cross objection is allowed."

6. Faced with this situation, we are of the considered view that once there is no distinction on facts and law involved between the parties on the instant issue of the assessee's profit attribution, we hereby adopt judicial consistency in the

instant appeal raising the sole substantive ground of income attributed on account of offshore sale of equipment in very terms and direct the learned Assessing Officer to frame his consequential computation. No other ground or argument has been pressed. This assessee's appeal ITA No. 7334/Del/2017 is accepted in very terms.

7. Next comes the Revenue's cross appeal ITA No. 7477/Del/2017 raising the following substantive grounds:

"(i) Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in allowing the appeal of the assessee by completely overlooking the amended provisions of section 9(1)(i), 9(1)(vii), 44AB, 44DA of the Act which were applicable to the AY under consideration.

(ii) Whether the CIT (A) has erred in placing reliance on the judgment of the Hon'ble Supreme Court in the case of ONGC vs. CIT (Civil Appeal No. 731 of 2007) by failing to appreciate that the issue of taxability u/s 44BB vs. 44DA of the Act was not there before the Apex Court, and that the case before the Apex Court pertained to the AY 1985-86, and involved the issue of taxability u/s 44BB vs. 44D of the Act.

(iii) Whether the CIT (A) has erred in failing to note that the Memorandum to Finance Bill 2010 makes it clear that any service which falls within the ambit of 44DA, even if it is in connection with prospecting for, or extraction or production of mineral oils as stipulated in section 44BB, has to be assessed u/s 44DA of the Act.

(iv) Whether the CIT (A) has erred in ignoring the nature of activities and scope of work as per the contracts of the assessee thus arriving at conclusion that the receipts of the assessee were not in the nature of Royalty u/s 9(1)(vi) and FTS u/s 9(1)(vii) of the Act.

(V) Whether the CIT (A) has erred in overlooking that the software provided by the assessee was not actually

used for mining or like project and thus did not fall in the exclusion clause of section 9(1)(vi) and 9(1)(vii) of the Act, in distinction to the lead case of Foramer inter alia covered by the Hon'ble Apex Court in ONGC case supra where the dominant purpose of the contract was prospecting, extraction or production of mineral oil.

(vi) Whether the CIT (A) has erred in overlooking that the dominant purpose of the contract for the software was not prospecting, extraction or production of mineral oil but was simulation & optimization and was basically back end processing.

(vii) Whether on the facts and in the 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 revenue of the assessee for the purpose of computation of profits under the provisions of section 44BB of the I.T. Act, 1961.

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

(ix) Whether the 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 sales tax and service tax, the ratio of the Judgment in the said case is directly applicable to the instant case."

8. The Revenue's first and foremost substantive ground herein seeks to assess the assessee's revenue receipts derived from core/fluid analysis services and software maintenance contracts, as fee for technical services u/s 9(1)(vii) r.w.s. 115A/44DA of the Act.

9. It emerges during the course of hearing that the instant issue is indeed a recurring one between the parties having travelled upto the tribunal in at least from assessment year 2007-08 onwards. Learned counsel refers to the tribunal's order in A.Y. 2011-12 involving the Revenue's appeal ITA No. 6586/Del/2014 decided on 31.05.2018 in assessee's favour as under:

"2. Brief facts of the case are as under: Assessee for the year under consideration filed its return of income declaring total income of Rs.10,83,04,365/-under section 44 BB on total receipts of Rs. 122,79,09,521/-. The case was processed under section 143 (1) and notices under section 143 (2) was issued to assessee along with the questionnaire under section 142 (1) of the Act. In response to the notices issued representatives of the assessee appeared before Ld. AO and filed necessary details as called for.

3. Ld. AO completed the assessment at Rs.21,94,29,740/-by including the reimbursement of service tax expenses incurred by assessee in the gross receipts and treating the royalty received from another non-resident as income of assessee thereby estimating 25% of the Gross revenue towards the same.

4. Aggrieved by the order of Ld.AO assessee preferred appeal before Ld.CIT (A) who deleted additions made by Ld.AO.

5. Aggrieved by the order of Ld.CIT (A) the revenue is in appeal before us now.

6. In a nutshell the issues that requires to be considered is: Whether the income of assessee shall be taxed as per the provisions of section 44AB; Whether the service tax forms part of the receipts as per provisions of section 44B of the act;

6.1. Both parties admit that issues raised by assessee in the present appeal is covered in favour of assessee by decision of coordinate bench of this Tribunal in ITA No. 3910/del/2014 for assessment year 2010-11 vide order

dated 29/01/18. This Tribunal has decided the issue as under:

"4. Heard arguments of both sides and perused the material on record. Learned AR submitted that the issue relates to the 2 treatment of income from PSC and non PSC contracts for taxability as per provisions of Section 44BB of the Act had come up for consideration before a coordinate bench of this Tribunal in ITA Nos.5290/Del/2010, 419/De1/2012 and 6391/De1/2013 for the Asstt. Years 2007-08, 2008-09 and 2009-10 respectively wherein it has been held that the income on account of provision of equipment and services earned by the assessee company shall be taxable as per the provisions of Section 44BB of the Act. He further submitted that the appeal preferred by the revenue against the said order was dismissed by the Hon'ble Uttarakhand High Court. At the very threshold, he further submitted that the Hon'ble Apex Court in the case of ONGC vs. CIT. 376 ITR 306 held that the services in connection with exploration and production of mineral oil shall fall within the purview of S.44 BB and outside the purview of fees for technical services as defined in Section 9(1)(vii) of the Act. He also brought it to our notice that in the assessment order for the Asstt. Year 2014-15, learned AO had accepted the taxability of revenue as per provisions of Section 44BB. Learned OR placed reliance on the assessment order.

5. We have perused the order dated 11.7.2014 by a coordinate bench of this Tribunal in ITA No.5282 of 2012 and batch wherein the assessee is also a party in ITA No.5290/0el/2010. Vide paragraph 227 of this order, the Bench while dealing with the addition qua equipment rental, service charges and sale of consumables and services rendered by assessee in connection with exploration/prospecting/extraction of mineral oil held that the income arising on account of royalty/FTS, letting out of equipment etc. was to be taxed u/s 44BB. Appeal preferred against this order by the revenue in ITA No.76/14 and Income-tax Appeal No.27/15 was dismissed by the Hon'ble Uttarakhand High Court by order dated 6.8.15 and vide para No.6(i), the Hon'ble High Court decided the issue against the revenue. Since the issue of assessment of the revenue from PSC and non PSC contracts was substantially involved in ITA No.5282/2012 and batch and decided by the Tribunal and also by the Hon'ble High Court in favour of the assessee, while respectfully following the same, we

answer this issue that the income on account of provision of equipment and services earned by the assessee company shall be taxable as per the provisions of Section 44BB of the Act.

6. Now, coming to the second issue relating to the service tax, learned AR placed reliance on the decision of the Hon'ble Jurisdiction High Court in the case of CIT vs. Mitchell Drilling International P. Ltd. 380 ITR 130 in support of his contention that the service-tax being statutory levy, should not form part of gross receipts as per provision of Section 44BB of the Act. He further placed reliance on the decision of the coordinate bench in the case of DDIT vs. Sundowner Offshore International (Bermuda) Ltd. ITA 1067/De1/2016 for a similar principle. We find that the principle laid down in the above decision squarely applies to the facts of this case also, as such, while respectfully following the same, we answer the issue that the service-tax does not form part of the gross receipts for computation u/s 44BB of the Act."

7. Respectfully following the same, we do not find any infirmity in the observations of Ld. CIT (A) and the same is upheld.

8. Accordingly ground raised by revenue stands dismissed."

10. A perusal of the case file further indicates that hon'ble jurisdictional high court (Uttarakhand) had also declined the Revenue's tax appeal. We thus conclude in these facts and circumstances that the CIT(A)'s detailed discussion directing the assessee's assessment u/s 44BB of the Act does not warrant any inference going by judicial consistency. We thus reject the Revenue's instant first and foremost substantive ground in very terms.

11. The Revenue's latter substantive ground raised in the instant cross appeal seeks to include the assessee's service tax

component as part of its revenue receipts for the purpose of assessment u/s 44BB/44DA of the Act. We find that the earlier learned co-ordinate bench's order in assessee's case itself for A.Y. 2012-13 (supra) has already considered and decided the instant issue against the department going by DIT Vs. Mitchell Drilling International (P.) Ltd. (2016) 380 ITR 130 and DIT Vs. Schlumber Asia Services (2019) 414 ITR 1 (Uttarakhand) that service tax does not partake the character of a revenue receipt. We thus reject the Revenue's instant latter substantive ground in very terms. So as the outcome of the instant cross appeal ITA No. 7477/Del/2017 which is hereby declined.

A.Y. 2014-15

ITA No. 7848/Del/2017 (Assessee's appeal)

ITA No. 417/Del/2018 (Revenue's cross appeal)

12. Coming to the assessee's appeal ITA No. 7848/Del/2017, both the parties are very much *ad idem* during the course of hearing that the assessee's former substantive ground seeking to assess its income on account of offshore sale of equipment to be assessed @2% or 3.98% as per CIT(A)'s lower appellate discussion, stands on identical footing as in the preceding assessment year 2013-14. We make it clear that we have already decided the instant issue against the department hereinabove. We thus adopt judicial consistency and accept the

assessee's instant former substantive ground as well as the main appeal in very terms.

13. Learned counsel next takes us to the assessee's latter substantive ground raising the issue of taxability of interest on the assessee's income tax refunds which stands decided in the department's favour, in the impugned lower appellate discussion reading as under:

"5.25 The appellant claims that it is a tax resident of UAE and entitled to benefits of the Double Tax Avoidance Agreement DTAA") between India and UAE. The interest received on the income-tax refund was claimed to be chargeable in terms of Article 11 of the Indo-UAE DTAA. The appellant has relied upon the decision of the Tax Appellate Tribunal, New Delhi (Special Bench B) in the case of Assistant Commissioner of Income Tax, Range-1, Dehra Dun v. M/s Clough Engineering Ltd. (ITA No. 4771(Del)/2007) wherein the ITAT, New Delhi held that the interest on income-tax refund to be taxable on gross basis under the provisions of Article 11. Identical ground of appeal was there in the assessment year 2014-15 also.

Submission and Adjudication

5.26 The contention of the Appellant has been examined. However, it is not found Sustainable in view of the Judgments of the Jurisdictional High Court of Uttarakhand in the case of Pride Foramer SAS (ITA No. 16 of 2009) and BJ Services Co. Middle East Limited vs. ACIT (ITA No. 1 of 2010). Since there was PE of the Appellant in India, the income earned out of interest on refunds from Income Tax Department cannot be brought to tax on gross basis under DTAA. Hence, the Appeal on this ground is, therefore, dismissed."

14. Suffice to say, it has already come on record that the CIT(A) has followed hon'ble jurisdictional high court decision to confirm the Assessing Officer's impugned action. We thus reject

the assessee's vehement contentions quoting DIT vs. Credit Agricole Indosuez (2015) 377 ITR 102 (Bom.) as the same has to make way for hon'ble jurisdictional high court's decision. This assessee's instant latter substantive ground fails therefore. It's main appeal ITA No. 7848/Del/2017 is partly accepted in very terms.

15. Coming to the Revenue's cross appeal ITA No. 417/Del/2018, both the learned representatives submit very fairly that it's twin substantive ground i.e. the issue of assessee's assessment u/s 44BB and inclusion of service tax thereunder, stand on an identical footing as in A.Y. 2013-14 which we have already decided in assessee's favour. We thus reject the Revenue's instant cross appeal ITA No. 417/Del/2018 in very terms.

A.Y. 2015-16

ITA No. 5647/Del/2018 (Assessee's appeal)

ITA No. 5696/Del/2018 (Revenue's cross appeal)

16. Both the learned representative submits herein as well that the assessee's sole substantive ground seeking to assess it's income derived from offshore sale of equipment taxable @3.98% or 2% based on profit attribution report and the Revenue's twin substantive ground of the former assessment

u/s 44BB and inclusion of service tax thereunder, already stand decided in preceding paragraphs since based on identical set off facts. We thus accept the assessee's foregoing sole substantive ground as well as the main appeal ITA No. 5647/Del/2018 and decline the Revenue's pleadings in the main case ITA No. 5696/Del/2018 in very terms. Ordered accordingly.

17. No other ground or arguments has been pressed before us.

18. To sum up, these assessee's three appeals ITA No. 7334/Del/2017, 7848/Del/2017 and 5647/Del/2018 are allowed and the Revenue's as many cross appeals ITA Nos. 7477/Del/2018, 417/Del/2018 and 5696/Del/2018 are dismissed, respectively, in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 28/04/2025.

Sd/-

Sd/-

(M. Balaganesh)
Accountant Member

(Satbeer Singh Godara)
Judicial Member

Dated: 28/04/2025

Subodh Kumar, Sr. PS
Copy forwarded to:
Appellant
1. Respondent
2. CIT
3. CIT(Appeals)
4. DR: ITAT

ASSISTANT REGISTRAR