IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN

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

ITA No. 6026/Del./2017 : Asstt. Year : 2013-14

Halliburton Offshore Services Inc., C/o Nangia & Company, A-109, Sector-136, Noida-201304	Vs	DCIT, International Taxation, Circle-1, Dehradun-248001
(APPELLANT)		(RESPONDENT)
PAN No. AAACH5154M		

ITA No. 6171/Del./2017 : Asstt. Year : 2013-14
ITA No. 6714/Del./2017 : Asstt. Year : 2014-15

DCIT, International Taxation, Circle-1, Dehradun-248001	Vs	Halliburton Offshore Services Inc., C/o Nangia & Company, 1st Floor, IDA, 46, E.C. Road, Dehradun
(APPELLANT)		(RESPONDENT)
PAN No. AAACH5154M		

Assessee by: Sh. Salil Kapoor, Sh. S. Lalchandani,
Sh. T. Chanana, Ms. Ananya Kapoor, Advs.
Revenue by: Sh. Mithun Shete, Sr. DR

Date of Hearing: 19.03.2025		**Date of Pronouncement: 07.05.2025**

ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal ITA No. 6026/Del/2017 with the Revenue's cross appeal ITA Nos. 6171/Del/2017 for Assessment Years 2013-14 and the latter's appeal ITA No.6714/Del/2017 for 2014-15, arise against the CIT(A)-2, Noida's in case Nos. 48 & 98/CIT(A)-2/2016-17, dated 17.07.2017 and 30.08.2017,

in proceedings u/s 143(3)/144C(3)(b) of the Income Tax Act, 1961 (in short "the Act"), appeal-wise; respectively.

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

Assessment Year 2013-14:

Assessee's appeal ITA No. 6026/Del/2017 and Cross appeal ITA No. 6171/Del/2017

3. Learned counsel submits at the outset that he has instruction from the assessee side not to press it's appeal ITA No. 6026/Del/2017. Dismissed as withdrawn subject to all just exceptions in very terms.

4. Next comes the Revenue's cross appeal ITA No. 6171/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 for the services provided by the assessee in respect of Annual Maintenance Contract Services, support for software and training, etc.*
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> *(ii) Whether on the facts and in the circumstances of the case and in law, 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. 4D of the Act.*

(iii) Whether on the facts and in the circumstances of the case and in law, 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 on the facts and in the circumstances of the case and in law, the CIT (A) has erred in ignoring the nature of activities and scope of work in respect of the Annual Maintenance Contract Services, support for software and training, etc provided by the assessee lead to the infallible conclusion that the receipts of the assessee were in the nature of FTS u/s 9(1)(vii) of the Act.

(v) Whether the CIT (A) has erred in overlooking that the assessee was not engaged in any construction, assembly, mining or like project and had only provided ancillary services, and thus did not fall in the exclusion clause of section 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 being prospecting, extraction or production of mineral oil, the ancillary ' works were held to be covered by the exclusion provided in Explanation to section 9(1)(vii) of the Act.

(vi) Whether the CIT (A) has erred in overlooking that the receipts of the assessee were not only in the nature of FTS u/s 9(1)(vii) of the Act, but were also not eligible to be excluded under Explanation 2 to section 9(1)(vii) since the "recipient" of FTS, the assessee in this case had not undertaken any construction, assembly, mining or like project.

(vii) Whether the CIT (A) has erred in overlooking that the dominant purpose of the contract of the assessee was not prospecting, extraction or production of mineral oil so as to fall under purview of Section 44BB of the Act.

(viii) Whether the CIT (A) has eared, on the facts and in the circumstances of the case, in holding that the amount received by the assessee on account of 'equipment lost in hole' is not includible in the gross revenue for the purpose of computation of profits under the presumptive provisions of section 44BB of the Act, when the said provisions are a complete code of taxation in themselves and do not distinguish between revenue and capital receipts having made allowance for expenditure including depreciation on capital assets to the extent of 90% of gross revenue.

(ix) Whether the CIT (A) has erred in not appreciating the fact that the amount received by the assessee on account of equipment lost in hole' is infact the reimbursement of expenses and hence includible in the gross revenue for the purpose of computation of profits as per the provisions of section 44BB of the Act in accordance with the spirit of the ratio of the judgment of Hon'ble Uttarakhand High Court in

the case of CIT Vs. Halliburton offshore Services Inc. (300 ITR 265).

(x) 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.

(xi) 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.

(xii) 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 part of the receipts from the total turnover as the same would amount to defeating the very purpose of providing for a presumptive scheme of taxation u/s 44BB of the Act and obviating the need for maintaining accounts for individual receipts, payments etc.

(xiii) 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."

5. We now advert to the basic relevant facts. This assessee is admittedly a company engaged in the business of providing drilling fluids, coring, completion, tubing & perforation, liner hanger, open hole logging, cementing services and supply of drilling bits, provision of software and AMC services etc. The first and foremost issue herein which has arisen between both the parties is that of assessment of it's revenue receipts derived from all services except provision of software, support and AMC activities which had been held by the learned

Assessing Officer as fee for technical services u/s 9(1)(vii) r.w.s. 115A r.w.s. 44DA of the Act. We wish to make it clear that the learned Assessing Officer had himself assessed the assessee's remaining services herein as assessable u/s 44BB of his assessment order dated 18.05.2016 in para 8 at page 12 thereof.

6. Now comes the dispute between the parties. The assessee challenged the learned Assessing Officer's action assessing it's foregoing three services, "revenue" receipts thereby claiming the same as taxable under the presumptive rate i.e. section 44BB of the Act. The CIT(A) impugned lower appellate discussion has reversed the assessment findings to this effect by placing reliance on ONGC Vs. CIT (2015) 376 ITR 306(SC) as under:

> *"5.3 I have considered the submissions of the Appellant in light of the assessment order passed by the Assessing Officer and the judgments cited by the appellant. Since Ground No. 1 to 2 are inter-related, both grounds are decided together.*
>
> *5.4 The issue under dispute is the section under which the receipts from provision of software and AMC, support services, training of software etc. ought to be brought to tax. The AO has treated receipts in the nature of fee for technical services and taxed the same u/s 44DA of the Act. On the other hand, the Appellant is of view that its receipts should have been brought to tax under section 44 BB of the Act, The Appellant has primarily relied upon the judgment of the Apex Court passed in the case of ONGC (Civil Appeal No.731 of 2007) to support its contention.*
>
> *5.5 Combined effect of the provisions of sections, 44BB, 44DA and 115A is that if the income nf a non-resident is in the nature of fee for technical services, it shall be taxable*

under the provisions of either section 44DA or section 115A irrespective of the business to which it relates. Section 44BB applies only in a case where consideration is for 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.

5.6 The chief question, therefore that arises, is whether the 'provision of software and AMC, support services, training of software etc' qualify as fee for technical services within the provisions of section 9(1)(vii) of the Act or the services were such which are covered within the provisions of section 44BB of the Act. This would depend upon facts of each case. As Memorandum to the Finance Bill, 2010, clarifies that it is not the kind of business which is material but it is the nature of services which is of importance to determine whether receipts are taxable as fee for technical services under section 44 DA of the Act or under section 44 BB of the Act. In order to ascertain the aforesaid, it would be pertinent to have a look at the contractual agreements and scope of work as provided in the contract.

5.7 The Assessing officer at para 6 of the assessment order has observed that these services cannot be considered as any activity relating to mining activity and basically in these activities assessee is providing technical and consultancy services and therefore covered under the definition of FTS as per provision of section 9 (1) (vii) of the Act."

5.8 On perusal of the judgment of Hon'ble Supreme court of India in civil appeal number 731 of 2007 in the case of ONGC Ltd vs. CIT and others it is found that the issue before the Hon'ble court was to decide whether certain services in connection with prospecting, extraction or production of mineral oil is chargeable to tax as "fees for technical services" under section 44D read with Explanation 2 to Section 9(1)(vii) of the Income Tax Act or will such payments be taxable on a presumptive basis under section 44BB of the Act"? The relevant portion of the judgment is reproduced as below:

"8. A careful reading of the aforesaid provisions' of the Act goes to show that under Section 44BB(1) in case of a non-resident providing services or facilities in connection with or supplying plant and machinery used or to be used in prospecting, extraction or production of mineral oils the profit and gains from such business chargeable to tax is to be calculated at a sum equal to 10% of the aggregate of the amounts paid or payable to such non-resident assessee

as mentioned in Sub-section (2). On the other hand, Section 44D contemplates that if the income of a foreign company with which the government or an Indian concern had an agreement executed before 1.4.1976 or on any date thereafter the computation of income would be made as contemplated under the aforesaid Section 44D. Explanation (a) to Section 44D however specifies that "fees for technical services" as mentioned in Section 44D would have the same meaning as in Explanation 2 to Clause (vii) of Section 9(1). The said explanation as quoted above defines "fees for technical services" to mean consideration for rendering of any managerial, technical or consultancy services. However, the later part of the explanation excludes from consideration for the purposes of the expression i.e. "fees for technical services" any payment received for construction, assembly, mining or like project undertaken by the recipient or consideration which would be chargeable under the head "salaries". Fees for technical services, therefore, by virtue of the aforesaid explanation will not include payments made in connection with a mining project.

9. Before the High Court, a Circular No. 1862 dated 22.10.1990 having a bearing on the subject was placed for consideration by the appellant-assessee. The aforesaid instruction may be conveniently reproduced herein below.

"Subject: Definition of "fees for technical services" in Explanation to Section 9(1) (vii) of the Income Tax Act, 1961 whether prospecting for or extraction of production of mineral oil are "mining" operations-clarification regarding.

The expression "fees for technical services" has been defined in Explanation 2 to Section 9(1) (vii) of the Income Tax Act, 1961 as under:

"Explanation 2. - For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or tike project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

2. The question whether prospecting for, or extraction or production of, mineral oil can be termed as 'mining operations, was referred to the Attorney General of India for his opinion. The Attorney General has opined that such operations are mining operations and the expressions 'mining project' or 'like projects' occurring in Explanation 2

to Section 9 (1) (ii) of the Income Tax Act would cover to Section 9(1) (vii) of the Income Tax Act would cover rendering of services like imparting of training and carrying out drilling operations for exploration or exploitation of oil and natural gas.

3. In view of the above opinion, the consideration for such services will not be treated as fees for technical services for the purpose of Explanation 2 to Section 9(1) (vii) of the Income-tax Act, 1961. Payments for such services to a foreign company, therefore, will be income chargeable to tax under the provisions of section 44BB of the Income-tax Act, 1961 and not under the special provision for the taxation of fees for technical services contained in section USA read with section 44D of the Income-tax Act, 1961.

4. A copy of the statement of the case dated 16.3.1990 (without annexures) and a copy of the Attorney General's opinion dated 13.S.90 are enclosed.

5. These instructions may brought to the notice of all the officers in your region.

[F. No. 500/6/89-FTD dt.22.10.90from CBDT]"

10. Before us the opinion of the learned Attorney General has been placed by the learned counsel for the appellants at great length to contend that the views expressed by the learned Attorney which had been accepted by the CBDT were based on an exhaustive consideration of the provisions of the Mines Act, 1952 and the Mines and Minerals (Regulation and Development) Act, 1957 read with the relevant Entries in the Union and the State List in the 7th Schedule to the Constitution of India. It is urged that the eventual test is one of pith and substance of the agreement, namely, whether the works contemplated or services to be rendered under the agreement is directly and inextricably linked with the prospecting, extraction or production of mineral oil. It is submitted on behalf of the appellants that the agreements in question satisfy the above test for which purpose the appellants have categorized the different contracts under 8 heads which may be conveniently set out at this stage herein below.

1. *Carrying out seismic surveys and drilling for oil and gas*
2. *Services starting/re-starting/enhancing production of oil and gas from wells*
3. *Services for prospecting for exploration of oil and or gas*
4. *Planning and supervision of repair of wells*

5. *Repair, Inspection or Equipment used in the exploration, extraction or production of oil and gas*
6. *Imparting Training*
7. *Consultancy in regard to exploration of oil and gas*
8. *Supply, Installation, etc. of software used for oil and gas exploration"*

11. It is also urged on behalf of the appellants that the instruction/Circular dated 22.10.1990 issued by the CBDT was binding on the primary authority on the ratio of the decision of this Court in K.P. Varghese Vs. Income Tax Officer, Emakulam and Others. It has been further pointed on behalf of the appellants that even under the provisions of Section 3D of the Oil Fields (Regulation and Development) Act 1948 a mining lease means a lease granted for the purposes of searching for, winning, working, getting, making merchandisable, carrying away or disposing of mineral oils or for the purpose connected therewith and such a lease includes an exploring or prospecting lease. Reference has also been made to the Petroleum and Natural Gas Rules, 1959 Framed under Section 5 of the aforesaid Act. Under Rule 4 of the said Rules no person can prospect for petroleum except pursuant to a Petroleum Exploration License (PEL) granted under the Rules and no person can mine petroleum except in pursuance of a Petroleum Mining License (PML) granted under the Rules. It is pointed out that under Rule 7 of the Rules of 1959 a petroleum mining license (PML) entitles the licensee to carry out construction and maintenance in and on such land, works, buildings, plants, waterways, roads, pipelines etc. as may be necessary for full enjoyment of the PML. On the said basis it is argued that rendering any service in connection with prospecting and extraction is an integral part of mining and that the expression "mining" in the Explanation 2 to Section 9(1) of the Income Tax Act, in the absence of any definition under the Income Tax Act, has to be understood as per the provisions of the Oil Fields (Regulation and Development) Act, 1948 read with the Petroleum and Natural Gas Rules, 1959.

12. Opposing the contentions advanced on behalf of the appellants, Shri Gurukrishna Kumar, learned senior counsel for the Revenue has urged that the opinion of the Attorney General relied upon and the CBDT Circular has no relevance to the present case inasmuch as the agreements between ONGC and the non-resident companies made it abundantly clear that what is paid to the non-resident company are fees for technical services rendered. Though such services may have some connection with the prospecting, extraction or production of mineral oil, the primary service rendered by the non-resident companies on the basis of the agreements is not for prospecting, extraction or production

of mineral oil but various ancillary services like training of personnel etc. which may have a somewhat remote connection with the business of prospecting, exploration or production of mineral oils. Learned Counsel for the revenue has even suggested that if it is held that the High Court ought to have examined each agreement or contract to find out its real purpose and intent the revenue would have no objection if the matters are remanded for a complete exercise to be made on the above basis.

13. The Income Tax Act does not define the expressions "mines" or "minerals". The said expressions are found defined and explained in the Mines Act, 1952 and the Oil Fields (Development and Regulation) Act 1948. While construing the somewhat pari materia expressions appearing in the Mines and Minerals (Development and Regulation) Act 1957 regard must be ha& to the provisions of Entries 53 and 54 of List 1 and Entry 22 of List II of the 7th Schedule to the Constitution to understand the exclusion of mineral oils from the definition of minerals in Section 3(a) of the 1957 Act. Regard must also be had to the fact that mineral oils is separately defined in Section 3(b) of the 1957 Act to include natural gas and petroleum in respect of which Parliament has exclusive gas and petroleum in respect of which Parliament has exclusive jurisdiction under Entry 53 of List I of the 7th Schedule and had enacted and earlier legislation i.e. Oil Fields (Regulation and Development) Act, 1948. Reading Section 2(j) and 2(jj) of the Mines Act, 1952 which define mines and minerals and the provisions of the Oil Fields (Regulation and Development) Act, 1948 specifically relating to prospecting and exploration of mineral oils, exhaustively referred to earlier, it is abundantly clear that drilling operations for the purpose of production of petroleum would clearly amount to a mining activity or a mining operation. Viewed thus, it is the proximity of the works contemplated under an agreement, executed with a non-resident assessee or a foreign company, with mining activity or mining operations that would, be crucial for the determination of the question whether the payments made under such an agreement to the non-resident assessee or the foreign company is to be assessed under Section 44BB or Section 44D of the Act. The test of pith and substance of the agreement commends to us as reasonable for acceptance. Equally important is the fact that the CBDT had accepted the said test and had in fact issued a circular as far back as 22.10.1990 to the effect that mining operations and the expressions "mining projects" or "like projects" occurring in Explanation 2 to Section 9(1) of the Act would cover rendering of service like imparting of training and carrying out drilling operations for exploration of and extraction of oil and natural gas and hence

payments made under such agreement to a non-resident/foreign company would be chargeable to tax under the provisions of Section 44BB and not Section 44D of the Act. We do not see how any other view can be taken if the works or services mentioned under a particular agreement is directly associated or inextricably connected with prospecting, extraction or production of mineral oil. Keeping in mind the above provision, we have looked into each of the contracts as culled out by the appellants and placed before the Court is correct. The said details are set out below.

S.No.	***Civil Appeal No.***	***Work covered under the contract***
1.	*4321*	*Drilling of exploration wells and carrying out seismic surveys for exploratory drilling.*
2.	*740*	*Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.*
3.	*731*	*Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.*
4.	*1722*	*Furbishing supervisory staff with expertise in operation and management of Drilling unit.*
5.	*729*	*Capping including subduing of well, fire fighting.*
6.	*738*	*Capping including subduing of well, fire fighting.*
7.	*1528*	*Analysis of data to prepare job design, procedure for execution and details regarding monitoring.*
8.	*1532*	*Study for selection of enhanced Oil Recovery processes and conceptual design of Pilot Tests.*
9.	*1520*	*Engineering and technical support to ONGC in implementation of Cyclic Steam Stimulation.*
10.	*2794*	*Assessment and processing of seismic data along with engineering and technical support in implementation of Cyclic Steam Stimulation.*
11..	*1524*	*Conducting reservoir stimulation studies in association with personnel of ONGC.*
12.	*1535*	*Laboratory testing under simulated reservoir conditions.*
13.	*1514*	*Consultancy for optimal exploitation of hydrocarbon resources.*
14.	*2797*	*Consultancy for all aspects of Coal Bed Methane.*
15.	*6174*	*Analysis of data of welts to prepare a job design.*
16.	*1517*	*Geological study of the area and analysis of seismic information reports to design 2 dimensional seismic surveys.*
17.	*7226*	*Opinion on hydrocarbon resources and foreseeable potential.*
18.	*7227*	*Opinion on hydrocarbon resources and foreseeable potential.*
19.	*7230*	*Opinion on hydrocarbon resources and foreseeable potential.*
20.	*6016*	*Opinion on hydrocarbon resources and foresee able potential.*
21.	*6008*	*Evaluation of ultimate resource potential and presentations outside India in connection with*
22.	*1531*	*Review of sub-surface well data, provide repair plan of wells and supervise repairs.*
23.	*733*	*Repair of gas turbine, gas control system and inspection of gas turbine and generator.*

24.	*741*	*Repair and inspection of turbines.*
25.	*737*	*Repair, inspection and overhauling of turbines.*
26.	*736*	*Inspection, engine performance evaluation, instrument calibration and inspection of far turbines.*
27.	*1522*	*Replacement of choke and kill consoles on drilling rigs.*
28.	*1521*	*Inspection of gas generators.*
29.	*1515*	*Inspection of rigs.*
30.	*2012*	*Inspection of generator.*
31.	*1240*	*Inspection of existing control system and deputing engineer to attend, to any problem arising in the machines.*
32.	*1529*	*Inspection of drilling rig and verification of reliability of control systems in the drilling rig.*
33.	*2008*	*Expert advice on the device to clean insides of a pipeline.*
34.	*2795*	*Feasibility study of rig to assess its remaining useful life and to carry out structural alterations.*
35.	*925*	*Engineering analysis of rig.*
36.	*1519*	*Imparting training on cased hold production log evaluation and analysis.*
37.	*1533*	*Training on well control.*
38.	*1518*	*Training on implementation of Six Sigma concepts.*
39.	*1516*	*Training on implementation of Six Sigma concepts.*
40.	*6023*	*Training on Drilling project management.*
41.	*2796*	*Training in Safety Rating System and assistance in development and audit of Safety Management System.*
42.	*1239*	*To develop technical specification for 3D Seismic API modules of work and to prepare bid packages.*
43.	*1527*	*Supply supervision and installation of software which is used for analysis of flow rate of mineral oil to determine reservoir conditions.*
44.	*1523*	*Supply, installation and familiarization of software for processing seismic data.*

The above facts would indicate that the pith and substance of each of the contracts/agreements is inextricable connected with prospecting, extraction or production of mineral oil. The dominant purpose of each of such agreement is for prospecting, extraction or production of mineral oils though there may be certain ancillary works contemplated thereunder. If that be so, we will have no hesitation in holding that the payments made by ONGC and received by the non-resident assessees or foreign companies under the said contracts is more appropriately assessable under the provisions of Section 44BB and not Section 44D of the Act. On the basis of the said conclusion reached by us, we allow the appeals under consideration by setting aside the orders of the High Court passed in each of the cases before it and restoring the view taken by the learned Appellate Commissioner as affirmed by the learned Tribunal.

14. Consequently, all the appeals are allowed with no order as to the casts."

5.9 In the said order the Hon'ble Court had examined the contracts involved in the group of cases and summarized the

brief description of the works covered under each of the said contracts in a table between pg 19-21 of the said order. In view of the ratio of the above judgement, it is to be seen whether the receipts on account of "provision of software and AMC, support services, training of software etc" is covered within the scope of work under the contracts examined by the Hon'ble Supreme court in the said order. It is the scope of work and nature of service that determines taxability under section 44 BB and 44DA of the Act.

5.10 Along with the submission, the appellant has provided a copy of the brochure of WellCat Software, Decision Space Software (Seismic Analysis / Attributes /Interpretation/ Velocity Modelling Software) and Open Wells Software as per annexure 1, 2 ,3 & 4 of the submission. On going through the brochure, the key features of the software were found to be as below:

1. WELLCAT Software

i. Comprehensive suit of casing and tubing analysis tools that address a wide variety of challenges, calculates precise down hole temperature and pressure profiles to improve well design. Essential for modelling complex loading conditions and trap annular pressure that can occur in High pressure/High-temperature environments.

2.Decision Space Software (Seismic Analysis / Attributes /Interpretation/ Velocity Modelling Software)

i. Large-volume pre-stack interpretation and analysis suit provides the seismic interpreter with dynamic access to large prestack volumes for processing, analysis and correlation with other reserve data types. The software also empowers workflows for calibrating assessment data to geology for the extraction of essential information to better generate quality prospects, seek by past reserves, or to enhance reservoir characterization work inflows.

ii.Seismic attribute software provides the functionality to calculate seismic attributes from seismic data volumes as well as perform additional post processing signal enhancements of an attribute or seismic volume. It includes a comprehensive range of volume attribute calculations including continuity, curvature and sweetness, along with other industry standard calculations that can all be efficiently executed via the Decision Space Geosciences Suite.

iii. Seismic interpretation software provides the core seismic interpretation workflows for mapping subsurface geology. The application provides the geohysical interpreter

with full 2D/3D seismic interpretation workflows from basic visualization in multiple views to advanced multi-attribute analysis. The application includes robust horizon and fault interpretation for trap definition workflows along with amplitude extraction for fill prediction.

iv. Velocity modelling application provides a solution for building velocity models that incorporates raw, detailed and interpreted data, as well as existing velocity model information to build geologically sound velocity models between well control. It can be used in a multitude of workflows, such as seismic imaging, depth conversion, seismic inversion, AVO analysis, fracture detection, pore pressure prediction and reservoir modeling.

3. Open Wells Software

i. The open Wells operations reporting system offers a comprehensive solution to track, report, and analyze rig operations from site sourcing through to abandonment. It provides simple, visual solutions, to speed up data entry and leverages the industry standard EDM to store, manage and share data with Landmark suit of integrated engineering applications.

5.11 It is clear from the description of the key features of the software supplied by the appellant that all such software were used for the purpose of exploration of mineral oil. It, is clear enough form the description of work at serial no. 10, 11,12,15, 15, 43 and 44 of the table inserted in the ONGC Ltd case (supra) that the purpose of the software supplied by the appellant is squarely covered with the scope of work involved in the contracts examined by the Hon'ble Supreme court in the above said order. The scope of work does not indicate that the services provided were exclusively in the nature of technical, consultancy and managerial in nature as per section 9(1)(vii) of the Act. The services provided by the Appellant were very much in connection with exploration of mineral oil.

5.12 The appellant has also relied upon the decision of Ld ITAT, Delhi in the case of Paradigm Geophysical Pty limited (ITA No. 2753/Del/ 2016) wherein the activities of the appellant of providing software, operation of software, new enhancement in provisional license used for software, maintenance support and training services have been considered as activities falling within the ambit of section 44BB of the Act. The relevant portion of the decision is reproduced below:

"7. Further, we find that in the case of ONGC vs CIT (supra) the Hon'ble Supreme Court held that if the pith and

substance of each contracts/ agreement is inextricably connected with prospecting, extraction or production of mineral oil, then payment received by the non-resident assessee Or foreign companies under the said contract is more appropriately assessable under the provisions of section 44BB and not u/s 44D of the Act. The list of contracts, in the said appeal before the Supreme Court included following contracts:

1.Contract of supply, installation and familiarization of software for processing seismic data

2.Contract of supply, supervision and installation of software which is used for analysis of flow rate of mineral oil to determine reservoir conditions.

8.In the case in hand also the software is supplied and maintained were related to various activities of exploration including for reservoir navigator, upgradation of the Geo log multimin etc.

9.In view of the above, respectfully following the decision of the Hon'ble Supreme Court in the case of ONGC versus CIT (supra) and the decision of the Tribunal (supra) in the case of the assessee itself, we hold that the services provided with assessee falls within the ambit of section 44BB of the Act."

5.13 In view of the above discussion and respectfully relying upon the decision of Hon'ble Supreme Court in the case of ONGC versus CIT (supra) and the decision of Ld ITAT, Delhi in the case of Paradigm Geophysical Pty limited (ITA No. 2753/Del/ 2016) it is held that the receipts .of the Appellant on account of provision of software, support services, training of software etc. were taxable under section 44 BB of the Act. The Grounds of Appeal No. 1 and 2 are, therefore, allowed."

6.1 This leaves the Revenue aggrieved.

7. Mr. Mithun Shete, Sr. DR vehemently argues during the course of hearing that the CIT(A) lower appellate discussion extracted hereinabove has erred in law and on facts in reversing the assessment findings assessing the assessee's three impugned services of software support services and AMC

etc. u/s 9(1)(vii) r.w.s. 115A r.w.s. 44DA of the Act. The assessee's case on the other hand invites our attention to pages 24 to 25 in the paper book comprising of the tribunal's learned Third Member's order(s) deciding the issue against the department in DCIT Vs. Western Geco International Ltd. (2023) 157 taxmann.com 736 (Del.-Trib.) as under:

> *"2. On account of difference of opinion between the Learned AM and Learned JM of ITAT, C Bench, New Delhi this matter was referred to the learned third member of ITAT for consideration and disposal u/s. 255(4) of the Act by the Hon'ble President ITAT.*
>
> *3. The Learned third member ITAT vide order dated 30.09.2022 considered the following questions arising from the difference of opinion between two differing members in this case:-*
>
> *"1. Whether, in view of the facts and circumstances of the case and in law, the revenue received by the assessee on account of provision of facilities and services of seismic data acquisition, planning and carrying out of pre-survey study, taking marine data and confirming prospects, maintenance/ upgrading/support of software licenses etc, is taxable as FTS u/s. 44DA r.w.s. 9 (1)(vii) or is taxable under Section 44B of the Income Tax Act, 1961 ('the Act')?*
>
> *2. Whether, the amount received as reimbursement of 'service tax' includible in gross turnover for the purpose of 3 computing taxable income under Section 44BB of the Act?"*
>
> *4. After hearing the arguments of both the sides the Learned third member held as under:-*
>
> > *"35. Having regard to all the facts of the case and keeping in view the legal position emanating from the judicial pronouncements as discussed above, I am of the view that the revenue received by the assessee company during the year under consideration on account of provision of facilities and services of seismic data acquisition, planning and carrying out of pre-survey study, taking marine data and confirming prospects, maintenance/ upgradation / support of*

software licenses, etc, is not in the nature of fees for technical services as the same is covered by the exclusion provided in Explanation (2) to Section 9 (1) (vii) of the Act being consideration received for "mining or like projects" and the same, therefore, is not taxable under Section 44DA of the Act. The said services or facilities provided by the assessee actually are inextricably connected with prospecting for, or extraction or production of, mineral oils as held by the Hon'ble Supreme Court in the case of ONGC (supra) under the similar facts and circumstances and the revenue received for the same accordingly is taxable under Section 44BB of the Act.

36. As regards the issue involved in question No.2, the learned representatives of both the sides have agreed that the same is squarely covered in favour of the assessee by the 4 decision of the Hon'ble Uttarakhand High Court in the case of Director of Income-tax International Taxation Vs. Schlumberger Asia Services Ltd. [2019] 414 ITR 1, wherein it was held that the amount reimbursed to assessee (service provider) by ONGC (service recipient), representing service tax paid earlier by assessee to Government of India, not being an amount paid to assessee on account of providing services and facilities in connection with prospecting for, or extraction or production of, mineral oils in India, would not form part of aggregate amount referred to in clauses (a) and (b) of sub-section (2) of Section 44BB of the Act. To the similar effect is the decision of Hon'ble High Court in the case of Director Income-tax Vs. Mitchell Drilling International (P.) Ltd. [2016] 380 ITR 130 (Del.), wherein it was held that the service tax collected by the assessee for passing it on to Government was not to be included in gross receipt in terms of Section 44BB(2) read with Section 44BB (1) of the Act for the purpose of computing presumptive income of the assessee under Section 44BB of the Act. Respectfully following the decision of Hon'ble Jurisdictional High Court in the case of Schlumberger Asia Services Ltd. (supra) as well as that the Hon'ble Delhi High Court in the case of Mitchell Drilling International (P.) Ltd. (supra), I hold that the amount received by the assessee in the present case as reimbursement of service tax is not including in the gross turnover for the purpose of computing taxable income under Section 44BB of the Act.

37. I accordingly agree with the view taken by the learned judicial Member on both the issues and answer

both the 5 questions referred under Section 255 (4) of the Act in favour of the assessee."

5. In the light of the decision of the learned third member the captioned cross appeals are decided in favour of the assessee and against the revenue."

8. Coupled with this, learned counsel further quotes the tribunal's order in all preceding assessment years deciding the instant issue in assessee's favour and against the department thereby holding assessment of it's entire revenues u/s 44BB of the Act. Mr. Shete at this stage seeks to draw a distinction in light of the Revenue's substantive ground no. (iii) that the Memorandum of Finance Bill 2010 makes it amply clear that any service(s) which falls within the ambit of section 44DA, even if it is not for prospecting or production of mineral oils as stipulated in section 44BB of the Act. We are of the considered view that once the learned co-ordinate bench in assessee's case itself in A.Y. 2011-12 i.e. subsequent to the above statutory amendment, has settled the issue against the department, there is hardly much a need for us to revisit the entire finding once again. More so, when the issue indeed in A.Y. 2011-12 had reached upto learned "third member" which stood ultimately decided in assessee's favour. We thus reject the Revenue's instant first and foremost substantive ground in very terms.

9. The Revenue's second substantive ground raised in the instant appeal seeks to revive the Assessing Officer's action taxing the assessee's revenues on account of equipment loss in whole as per section 44BB of the Act whereas the CIT(A) has followed various case laws i.e. DIT Vs. Schlumberger Asia Services Ltd. (2019) 414 ITR 1 (UK) settling the same in the assessee's favour and against the department. There is no indication in the case records at the Revenue's behest which could distinguish the same during the course of hearing. We thus reject the Revenue's instant second substantive ground in very terms.

10. Lastly comes the Revenue's third substantive ground seeking to include the assessee's service tax component as part of receipts liable to be assessed u/s 44BB of the Act. Suffice to say, it not only emerges that the assessee has succeeded on the very issue in all preceding assessment year but also case laws DIT Vs. Schlumberger Asia Services Ltd. (supra) and PCIT Vs. Mitchell Drilling International Pvt. Ltd. (2016) 380 ITR 130 (Del) have settled the issue against the department. We thus see no reason to interfere with the CIT(A)'s detailed discussion reversing the impugned assessment findings. This Revenue's former appeal ITA No. 6026/Del/2017 fails.

11. We are now left with the Revenue's latter appeal ITA No. 6714/Del/2017 for A.Y. 2014-15 raising identical three substantive grounds herein which already stand adjudicated in assessee's favour in the preceding assessment year 2013-14 hereinabove. The Revenue very fairly submits that there is no distinction in both these assessment years so far as these three identical issues are concerned. Rejected in very terms.

12. No other ground or argument has been pressed before us.

13. To sum up, this assessee's appeal ITA No. 6026/Del/2017 is dismissed as not pressed and Revenue's twin case ITA Nos. 6171 & 6714/Del/2017 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 07/05/2025.

Sd/-	Sd/-
(M. Balaganesh)	**(Satbeer Singh Godara)**
Accountant Member	**Judicial Member**

Dated: 07/05/2025

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

ASSISTANT REGISTRAR