

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**  
**[ DELHI BENCH : “DEHRADUN/ NEW DELHI”]**  
**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**  
**AND**  
**SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**I.T.A. No. 187/DDN/2024 (A.Y 2017-18)**

**I.T.A. No. 175/DDN/2024 (A.Y 2016-17)**

**I.T.A. No. 188/DDN/2024 (A.Y 2018-19)**

Dy. Commissioners of Income Tax Aayakar Bhawan, 13-A, Subhash Road, Dehradun Uttarakhand,	Vs	Halliburton Off Shore Services Inc, C/o. Nangia and Company 1 <sup>st</sup> Floor, IDA, 46, EC Road, Uttarakhand <b>PAN: AAACH5154M</b>
<b>Appellant</b>		<b>Respondent</b>
Assessee by	Sh. Salil Kapoor, Adv, Sh. Amit Arora, Adv, Sh. ShivamYadav, Adv and Ms.Ananya Kapoor, Adv	
Revenue by	Sh. Mohan Lal Joshi, Sr. DR	
Date of Hearing	07/08/2025	
Date of Pronouncement	10/09/2025	

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

The captioned appeals are filed by the Revenue against the order of CIT(A)/National Faceless Appeal Centre ('Ld. CIT(A)/NFAC' for short), Delhi dated 27/07/2024 (A.Y 2016-17), 20/08/2024 (A.Y 2017-18 and 2018-19)respectively.

**I.T.A. No. 187/DDN/2024 (A.Y 2017-18)**

2. Identical issues are involved in the above Appeals, for the sake of convenience, grounds of Appealof the Revenue for Assessment Year 2017-18 are reproduced as under:-

*1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in ignoring the distinct scheme of taxation of fee for Technical Services and Royalty and disregarding the insertion of provisos in section 44BB/ 44DA/115A and the rationale behind the*

*introduction of said amendments in the Finance Bill 2010 in holding that the income of the assessee company from 'technical services' from non-PSC Partners was covered under the presumptive provisions of section 44BB?*

*2. Whether on the facts and circumstances of the case, the Ld. CIT (A) has erred in considering interest income as taxable and chargeable to tax as per provision of article 11 of DTAA@15%.*

*2.1 Whether the Ld. CIT(A) has erred in considering the interest income as taxable and chargeable to tax as per provision of article 11 of DTAA @ 15%? The interest income has been earned in respect of income tax refund which is attributable to the income of the assessee by virtue of existence of PE in India and carrying out of business activity in India through that PE. Therefore, interest income u/s 244A is treated as business income. Moreover, the jurisdictional Hon'ble High Court of Uttarakhand, in the case of BJ Services Co. ME Limited denied the claim of DTAA in respect of interest income and has held this interest to be business income. 3. The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time of or before the hearing of appeal."*

3. The Ground No. 1 of the Revenue is on the issue of taxability of the Assessee's receipts as Royalty/FTS covered u/s 9(1)(vi)/9(1)(vii) r.w.s 44DA of the Act treated by the Assessing Officer (A.O) as against such receipts offered by the Assessee under the ambit of Section 44BB of the Act.

4. The Department found that the Assessee has a Permanent Establishment (PE) in India through which the Assessee has carried out its operations in India. The contracts entered into by the Assessee run into several years and there is also addition of the new contracts. The A.O. after examining the various contracts and the scope and nature of work therein, has held that the receipts largely qualified for

taxability u/s 44BB of the Act, but not all receipts were covered u/s 44BB of the Act and gave a finding that the receipts emanating from such service contracts are covered under the definition of Royalty/FTS as the receipts from the nature of activities, covered under those contracts were considered as FTS and not having any connection with mining activity.

5. The Ld. CIT(A) vide orders impugned relying on the ratio laid down by the Hon'ble Supreme Court in the case of ONGC Vs. CIT and another in Civil appeal No. 731/2007 dated 01/07/2015 decided the issue in favour of the Assessee. Aggrieved by the orders of the Ld. CIT(A), the Revenue preferred the captioned appeals.

6. The Ld. Department's Representative submitted that the Ld. CIT(A) committed error in allowing the Assessee's Appeals by completely overlooking the amended provision of Section 9(1)(i), 9(1)(vii), 44AB, 44DA of the Act which are applicable to the years under consideration. Thus, sought for allowing the appeal.

7. Per contra, the Ld. Assessee's Representative submitted that the issues under consideration is no more res-integra, the Co-ordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2013-14 ad 2014-15 in ITA No. 6026/Del/2017, 6171/Del/2017 &

6714/Del/2017 vide order dated 07/05/2025, decided the issues in favour of the Assessee. Therefore, sought for allowing the Appeal.

8. We have heard both the parties and perused the material available on record. The issue regarding taxability of the Assessee's receipts as Royalty/FTS covered u/s 9(1)(vi)/9(1)(vii) r.w.s 44DA of the Act by the Assessing Officer (A.O) as against such receipts offered by the Assessee under the ambit of Section 44BB of the Act has been decided by the Co-ordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2013-14 ad 2014-15 in ITA No. 6026/Del/2017, 6171/Del/2017 & 6714/Del/2017 vide order dated 07/05/2025, wherein while deciding the issue in favour of the Assessee, the Co-ordinate Bench of the Tribunal of the Tribunal held as under:-

*“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 of 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 or 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 like 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 parimateria 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.*

<b>S.No.</b>	<b>Civil Appeal No.</b>	<b>Work covered under the contract</b>
1.	4321	<i>Drilling of exploration wells and carrying out seismic surveys for exploratory drilling.</i>
2.	740	<i>Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.</i>
3.	731	<i>Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.</i>
4.	1722	<i>Furbishing supervisory staff with expertise in operation and management of Drilling unit.</i>
5.	729	<i>Capping including subduing of well, fire fighting.</i>
6.	738	<i>Capping including subduing of well, fire fighting.</i>
7.	1528	<i>Analysis of data to prepare job design, procedure for execution and details regarding monitoring.</i>
8.	1532	<i>Study for selection of enhanced Oil Recovery processes and conceptual design of Pilot Tests.</i>
9.	1520	<i>Engineering and technical support to ONGC in implementation of Cyclic Steam Stimulation.</i>
10.	2794	<i>Assessment and processing of seismic data along with engineering and technical support in implementation of Cyclic Steam Stimulation.</i>
11..	1524	<i>Conducting reservoir stimulation studies in association with personnel of ONGC.</i>
12.	1535	<i>Laboratory testing under simulated reservoir conditions.</i>
13.	1514	<i>Consultancy for optimal exploitation of hydrocarbon resources.</i>
14.	2797	<i>Consultancy for all aspects of Coal Bed Methane.</i>
15.	6174	<i>Analysis of data of welts to prepare a job design.</i>
16.	1517	<i>Geological study of the area and analysis of seismic information reports to design 2 dimensional seismic surveys.</i>
17.	7226	<i>Opinion on hydrocarbon resources and foreseeable potential.</i>
18.	7227	<i>Opinion on hydrocarbon resources and foreseeable potential.</i>
19.	7230	<i>Opinion on hydrocarbon resources and foreseeable potential.</i>
20.	6016	<i>Opinion on hydrocarbon resources and foresee able potential.</i>
21.	6008	<i>Evaluation of ultimate resource potential and presentations outside India in connection with</i>
22.	1531	<i>Review of sub-surface well data, provide repair plan of wells and supervise repairs.</i>
23.	733	<i>Repair of gas turbine, gas control system and inspection of gas turbine and generator.</i>
24.	741	<i>Repair and inspection of turbines.</i>
25.	737	<i>Repair, inspection and overhauling of turbines.</i>

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 assesseees 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:

#### *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 geophysical 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 from 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. MithunShete, 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 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. Considering the fact that the all the services rendered by the Assessee are inextricably linked with extraction and exploration of mineral oil in India, once the nexus of the business activities with oil exploration is proved, there can be no hesitation in holding that the relevant revenues deserve to be taxed u/s 44BB of the Act. Further, by respectfully following the above ratio laid down by the Tribunal in

Assessee's own case for Assessment Year 2013-14 and 2014-15, we find no reason to interfere with the findings of the Ld. CIT(A). Accordingly, we dismiss the Ground No. 1 of the Revenue.

10. The Ground No. 2 and its sub grounds of the Revenue are on the taxability of interest u/s 244A of the Income Tax Refund. It was the case of the Assessee that said income Royalty/FTS is liable to be taxed at 15% under DTAA as against the Department's stand of maximum of marginal right under the Income Tax Act.

11. The Assessee offered the interest on income tax refund at 15% as per Article 11 of DAA between India and USA. The Ld. A.O. taxed the interest on income tax refund at maximum marginal rate instead of Article 11 of DTAA with USA as claimed by the Assessee. The Ld. CIT(A) followed the order of the Tribunal dated 08/12/2022 in the case of Expro Gulf Limited in ITA No. 4198/Del/2017 and C.O. No. 165/Dle/2018 held that interest on income tax refund shall be taxed as per the provisions of DTAA. Aggrieved by the order of the Ld. CIT(A), the Department preferred the present Appeal.

12. The Ld. Departmental Representative submitted that the Ld. CIT(A) committed error in considering the interest income as taxable and chargeable to tax as per the provision of Article 11 of DTAA at 15%, by relying on the assessment order sought for allowing the Appeal.

13. Per contra, the Ld. Assessee's Representative submitted that there is no error in the approach of the Ld. CIT(A) in following the ratio laid down by the Tribunal in the case of Expro Gulf Ltd. (supra), wherein the Tribunal followed the Judgment of Hon'ble High Court in the case of B. J. Services ME Limited, thus sought for dismissal of the Ground No. 2 and 2.1 of the Revenue.

14. We have heard both the parties and perused the material available on record. In view of the fact that the Ld. CIT(A) has followed the order of the Co-ordinate Bench of the Tribunal in the case of Expro Gulf Ltd. (supra), wherein the Tribunal followed the Judgment of Hon'ble High Court in the case of B. J. Services ME Limited and held that the interest income on income tax refunds shall be liable to be taxed @15% as per Article 11 of tax treaty between India and USA, in the absence of any contrary precedent brought on record, in view of the settled principals of law, we find no error or infirmity in the order of the Ld. CIT(A). Accordingly, finding no merits in Ground No. 2 and 2.1 of the Revenue, the same are dismissed.

**ITA No. 188/DDN/2024 (A.Y 2018-19)**

15. The Ground No. 1 of the Revenue is on the issue of taxability of the Assessee's receipts as Royalty/FTS covered u/s 9(1)(vi)/9(1)(vii) r.w.s 44DA of the Act treated by the Assessing Officer (A.O) as against such receipts offered by the Assessee under the ambit of Section 44BB of the Act.

16. We have already decided the above issue of taxability of Assessee's receipt as Royalty/FTS and held that the said revenues deserve to be taxed u/s 44BB of the Act by following the ratio laid down by the Tribunal in Assessee's own case for Assessment Year 2013-14 and 2014-15. Accordingly, by applying the said findings and the conclusion *mutatis mutandis* in the present Appeal, we dismiss the Ground No. 1 of the Revenue.

17. The Ground No. 2 and its sub grounds of the Revenue are on the taxability of interest u/s 244A of the Income Tax Refund. It was the case of the Assessee that said income Royalty/FTS is liable to be taxed at 15% under DTAA as against the Department's stand of maximum of marginal right under the Income Tax Act.

18. We have already decided the above issue in Assessment Year 2017-18 (supra) in favour of the Assessee holding that the interest income on income tax refunds shall be liable to be taxed @15% as per Article 11 of tax treaty between India and USA. Accordingly, by applying the said findings and the conclusion *mutatis mutandis* in the present Appeal, we dismiss the Ground No. 2 of the Revenue.

**ITA No. 175/DDN/2024 (A.Y 2016-17)**

19. Solitary issue involved in the above Appeal of the Revenue urged in Ground No. 1 to 5 is regarding taxability of the Assessee's receipts as Royalty/FTS covered u/s 9(1)(vi)/9(1)(vii) r.w.s 44DA of the Act

treated by the Assessing Officer (A.O) as against such receipts offered by the Assessee under the ambit of Section 44BB of the Act.

20. We have already decided the above issue of taxability of Assessee's receipt as Royalty/FTS and held that the said revenues deserve to be taxed u/s 44BB of the Act by following the ratio laid down by the Tribunal in Assessee's own case for Assessment Year 2013-14 and 2014-15. Accordingly, by applying the said findings and the conclusion *mutatis mutandis* in the present Appeal, we dismiss the Ground No. 1 to 5 of the Revenue.

21. In the Result, appeals of the Revenue in ITA Nos., 187/DDN/2024, 175/DDN/2024 and 188/DDN/2024 are dismissed.

**Order pronounced in the open court on 10<sup>th</sup> September, 2025**

Sd/-

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

Date:- 10 .09.2025  
R.N, Sr.P.S\*

**Copy forwarded to:**

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

Sd/-

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**

