

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.620/Del/2014
Assessment Year : 2010-11

Eventure Global Technology,
B-407, Gallena Hiranandani
Gardens, Powai,
Mumbai.

Vs. ADIT,
International Taxation,
Dehradun.

PAN: AABCE2647K

(Appellant)

(Respondent)

Assessee By : Shri Amit Arora, CA
Department By : Shri Anuj Arora, CIT, DR

Date of Hearing : 17.11.2016
Date of Pronouncement : 18.11.2016

ORDER

PER R.S. SYAL, AM:

This appeal by the assessee is directed against the final order passed by the AO u/s 143(3) read with section 144C of the Income-tax

Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2010-11.

2. The first issue raised in this appeal is against invoking the provisions of section 115A and not allowing the benefit of section 44BB of the Act. Briefly stated, the facts of the case are that the assessee entered into two contracts with Oil and Natural Gas Corporation and Reliance Industries Ltd. The work to be executed by the assessee in the agreement with ONGC was of hiring of solid expandable casing technology services. As per the scope of the work, the assessee was to provide casing technology services to ONGC through best technicians and engineers. The equipments provided was to be re-exported back after the provision of services and on completion of the contract. The second Agreement with Reliance Industries Ltd. was for provision of tools and provision of personnel and technicians for operating the tools at RIL shore base or rigs in India. The assessee furnished its return declaring gross contractual receipts of Rs.5,97,79,224/- and computed income u/s 44BB of the Act. The AO, on perusal of the nature of

contract and scope of work, came to the conclusion that the assessee rendered technical services as defined in section 9(1)(vii) of the Act along with the provision of tools and its technical personnel and engineers, specialized in the specific jobs and technology sold expandable casing technology services. He, therefore, held that the case could not be covered u/s 44BB of the Act. Invoking the provisions of section 115A, the AO taxed such receipts @ 10%. The ld. CIT(A) upheld the assessment order on this point.

3. After considering the rival submissions and perusing the relevant material on record, we find that this issue is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in the case of *ONGC vs. CIT and Another (2015) 376 ITR 306 (SC)* in which it has been held that the receipts of the nature earned by the assessee, namely, for the services in connection with exploration and production of mineral oil, are taxable u/s 44BB of the Act as against section 115A. Respectfully following the precedent, we decide this issue in favour of the assessee.

4. The next issue is against the addition of reimbursement of service tax to the gross receipts for the purposes of taxation. The assessee in its computation of income did not include the amount of service tax received for the execution of contract amounting to Rs.1,95,19,881/-. On being called upon to explain as to why this amount was not included in the receipts chargeable to tax, the assessee contended that the service tax receipts from ONGC were paid to the Government at actual and, hence, could not be treated as the assessee's income. Not convinced, the AO included such amount in the receipts chargeable to tax. The Id. CIT(A) affirmed the action of the AO.

5. Having heard the rival submissions and perused the relevant material on record, we find that the Hon'ble Delhi High Court in *Director of Income-tax vs. Mitchill Drilling International (P) Ltd. (2016) 380 ITR 130 (Del)* has held that service tax cannot form part of gross receipts for section 44BB as it has no element of income. The reliance of the Id. DR on certain Tribunal orders favouring the view of the Revenue is misplaced because of the direct judgment of the Hon'ble High Court

on the point. No contrary decision from any other Hon'ble High Court has been brought to our notice by the ld. DR. Respectfully following the precedent, we hold that the service tax should be excluded from gross receipts for the purposes of section 44BB of the Act.

6. Issue no. 3 about interest u/s 234B is consequential and disposed of accordingly.

7. The last issue is against not allowing proper credit for tax deducted at source. We direct the AO to allow credit for the correct amount of TDS after due verification.

8. In the result, the appeal is allowed.

The order pronounced in the open court on 18.11.2016.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 18th November, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.