IN THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH "DB"
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

I.T.A. No.35/DDN/2025 (A.Y 2022-23)

M/s. Sanco Holding As, C/o Tass Advisors LLP 2nd Floor, 13 Tower, 4A Race Course Opp Rinko Medicos Dehradun Dehradun	Vs.	**DCIT (International Taxation), Dehradun**
Appellant		**Respondent**

Appellant by	Sh. Taranpreet Singh, Advocate Sh. Sanjay Agarwal, Advocate
Respondent by	Sh. Mohal Lal Joshi, Sr. DR
Date of Hearing	10/09/2025
Date of Pronouncement	17/09/2025

ORDER

PER MANISH AGARWALAM:

The present appeal is filed by the assessee against the order final Assessment Order passed u/s. 143(3)/144C(13) of the Income Tax Act, 1961 (the Act, in short) dated 27.12.2024 passed after giving effect directions given by the DRP vide its order dated 19.12.2024 passed u/s. 144C (5) of the Act for the A.Y. 2022-23.

2. Brief facts of the case are that assessee is a company incorporated in Norway and tax resident of Norway engaged in providing seismic vessels on bareboat charter basis to Magseis FF LLC and Shearwater Geo

Servies Limited. The assessee is having fleet of 25 vessels which were provided for transportation.The return of income was filed electronically on 25.11.2022 declaring income at Rs.3,87,58,010/- wherein the tax was paid in terms of Article 21(4) of India-Norway DTAA. The case of the assessee was selected for scrutiny and transferred to international taxation Circle – 4 (2) (1), Mumbai. Thereafter the case is transferred to the present AO who passed the order having jurisdiction over the assessee. It is observed in the draft assessment order that during the year under appeal assessee executed contract with Magseis FF LLC and Shearwater Geo Services Limited for providing seismic vessels for transportation of the mineral explored in India. The assessee has reported receipts of Rs.5,41,59,371/- from Shearwater Geo Servies Limited and receipts of Rs.36,72,70,375/- were declared from Magseis FF LLC and on gross receipts of Rs. 42,12,29,746/- net income of 7.5% of 50% of receipts in terms of para 4 Article 21 of India-Norway DTAA was declared by the assessee. The AO was of the opinion that the assessee was not entitled to compute the income interms of clause 21 of Indian Norway treaty and para 2 and 3 of Article 21 is applicable and accordingly, the gross receipts were taken as taxable receipts u/s. 44BB of the Act and 10% of the same was taken as total income of the assessee.

3. Against this order, assessee filed objections before DRP, who vide its order dated 19.12.2024 rejected the objections filed by the assessee. Upon receipts of the order of ld. DRP, AO passed the final order u/s.143(3)/144C(13) of the Act vide order dated 27.12.2024 wherein the income computed in draft assessment order is assessed as the income of the assessee. Against the said order, assessee is in Appeal before the Tribunal by taking following grounds of appeal :-

1. *That, on the facts and circumstances of the case, the Learned Assessing Officer (Ld. AO) has erred in law and on facts in bringing to tax the revenues from the time charter contract with Shearwater GeoServices Limited under Section 4488 of the Income-tax Act, 1961 ('the Act"), without appreciating that the Appellant is eligible for the special provisions under Article 21 of the India Norway Double Tax Avoidance Agreement (DTAA)*

2. *That, on the facts and circumstances of the case, the Ld. AD has erred in law and in fact by applying Section 4488 of the Act, without appreciating that Article 21(4) of the India-Norway DTAA provides specific taxation provisions for income from the operation of vessels. The Ld. AO failed to consider that the special provisions under the DTAA should override the domestic tax provisions as per Section 90(2) of the Act.*

3. *That, on the facts and circumstances of the case, the Ld. AO has erred in disregarding the provisions of Section 90(2) of the Act, which grants the Appellant the right to choose between the provisions of the Act or the DTAA, whichever is more beneficial. The Ld. AO's action of applying Section 44BB instead of the DTAA results in undue hardship to the Appellant.*

4. *That, on the facts and circumstances of the case, the Ld. AO has failed to provide cogent reasons for denying the benefits under the DTAA, particularly when the Appellant had duly invoked the provisions of Article 21(4) of the India-Norway DTAA in its tax return. The rejection of the DTAA benefits is arbitrary and contrary to the principles of international tax law.*

5 That the Ld. AO has failed to consider all the relevant submissions and judicial precedents relied upon by the Appellant, thereby violating the principles of natural justice and fair assessment. The order passed without proper consideration of the Appellant's contentions is liable to be set aside.

4. Before us, Ld. AR of the assessee submits that assessee is entitled to compute the income interms of para 4 of Article 21 of India Norway treaty. He further submits that AO himself observed in the assessment order that assessee is not engaged in the business exploration and is providing services to M/s. Magseis FF LLC and Sheawater Geo Services Lts. of providing vessel for transportation, therefore, it is not directly engaged activity of exploration of any mineral for ONGC. He submits that once the assessee is not engaged in the exploration of exploitation of the seabed or subsoil or their natural resources as provided in para 2 and 3 Article 21 thus these para are not applicable to the case of the assessee. He further submits that para 4 of Article 21 of India Norway treaty refers two type of business/ services *first* transportation of supplies or personnel to or form a location or between locations, *second* operation of tugboats and other vessels auxiliary to such activities. Since the assessee is engaged in the operation of vessels and therefore, it'scase is fallen in the category provided in para 4 of Artcile 21 of India Norway Treaty and tax is to be paid as provided in the said para.

5. The ld. AR also placed reliance on the judgment of the coordinate Bench of the Tribunal in the case of ADIT Vs. M/s. Rolv Berg Drive, in ITA No. 3427/Del/2011 dated 14.02.2013 wherein the coordinate Bench has discussed the Article 23 of erstwhile India-Norway treaty which is now Article 21 (4) of present India Norway treaty under coperation and held that where the assessee is providing vessels i.e. tugboat for ONGC work, provision of Article 23 of Indian Norway treaty are applicable. This order of coordinate Bench was followed in ITA No. 4621/Del/2014 in the case of DDIT Vs. Rolv Berg Drive AS vide order dated 18.06.2019 and further by coordinate Bench of Tribunal Delhi in the case of DCIT Vs. M/s. Gaia Ship Management AS in ITA No. 7476/Del/2017 and ITA No. 5304/Del/2018 vide order dated 20.02.2023 wherein the coordinate Bench has taken consistent view that where the assessee is not engaged in the business of exploration or exploitation of seabed or susoil or their natural resources and only providing transportation services through its vessels, provisions of Article 21(4) are applicable and gross receipts cannot taxed u/s. 44BB of the Act.

6. On the other hand the Ld. Sr. DR vehemently supported the orders of the authorities below and submits that it is not the case where the AO applied section 44BB of the Act for the reason that assessee engaged in the business of exploration and exploitation of seabed or sin terms of

para 2 and 3 Article 21 of Indian Norway treaty and the activities of the assessee were not exceeding 30 days in aggregate in any twelve months period and assessee has not filed relevant details to controvert such findings, thus the AO was of the opinion that Article 21(4) are not applicable to the case of the assessee. He thus prayed for confirmation of orders of the lower authorities.

7. Heard both the parties and perused the material available on record. First we have to consider the Article 21 of Indian-Norway DTAA which reads as under :-

ARTICLE 21

1. *The provisions of this Article shall apply notwithstanding any other provision of this Agreement.*

2. *A person who is a resident of Contracting State and carried on activities off shore in the other Contracting State in connection with the exploration or exploitation of the seabed or subsoil or their natural resources situated in that other State shall, subject to paragraphs 3 and 4 of this Article, be deemed in relation to those activities to be carrying on business in that other State through a permanent establishment or fixed base situated therein.*

3. *The provisions of paragraph 2 shall not apply where the activities are carried on for a period not exceeding 30 days in the aggregate in any twelve months period commencing or ending in the fiscal year concerned. However, for the purposes of this*

   (a) where an enterprise of a Contracting State carrying on offshore activities in the Other Contracting State is associated with another enterprise carrying on substantially similar offshore activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, with the

exception of activities which are carried on at the same time as its own activities and

(b) two enterprises shall be deemed to be associated if one is controlled directly or indirectly by the other, on both are controlled directly or indirectly by a third person or person

4. *Profits derived by an enterprise of a Contracting State from the transportation of or between locations, where activities in connection with the exploration of the seabed or subsoil or their natural resources are being carried on in the other Contracting State, or from the operation of tugboats and other vessels 1 supplies or personnel to or from a location, auxiliary to such activities, shall be taxable only in the Contracting State of which the enterprise is a resident.*

Notwithstanding the provisions of this paragraph, profits derived from such operation may also be saved in the Contracting State in which the operation is carried on; but the tax so charged shall coed 50 per cent of the tax otherwise imposed by the domestic tow of that state. For the purposes of this paragraph, the amount of such profits subject in tax in India shall not exceed 7.5 per cent of the sums receivable.

5. (a) Subject to sub-paragraph (8) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the seabed or subsoil or their natural resources situated in the other Contracting State, to the extent that the duties are performed offshore in that other State, may be saved in that other State. However, such remuneration shall be taxable only in the first-mentioned State if the employment is carried on offshore for an employer who is not a resident of the other State and provided that the employment is carried on for a period or periods net exceeding in the aggregate 30 days in any twelve-month period commencing or ending in the fiscal year concerned.

(6) Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of supplies or personnel to or from a location, or between locations, where activities connected with the exploration or exploitation of the seabed or subsoil or their natural resources are being carried on in the other Contracting State, or in respect of an employment exercised aboard tugboats or other vessels operated auxiliary to such activities, may

be taxed, in the Contracting State of which the enterprise carrying on such activities is a resident.

8. The present India Norway treaty came to the effect w.e.f. 02.02.2011 and the old India Norway treaty was having the identical Article which was Article No. 23. Para 2 and 3 of Article 21 applied to the cases where the person is engaged in the offshore activity of exploration or exploitation of seabed or subsoil or their natural resources. Admittedly, in the present case the assessee is not engaged in any of such offshore and is providing its vessels for transportation to entities directly engaged in the exploitation / exploration of seabed or subsoil for ONGC as provided in para 2 and 3 of Article 21. This fact is admitted by the AO himself in the order in para 4.1 where reference of the agreement with both the companies is made by the AO. Therefore, it is clear that provision of Article 21 para 2 and 3 are not applicable to the present case. Now, coming to para 4 as per which income is to be computed in the manner provided therein if enterprises engaged in the operation of tugboat and other vessels. In the instant case assessee is providing vessels for transportation and received the consideration for such services, therefore, the provisions of Para 4 of Article 21 India Norway treaty are applicable to the facts of the case. This view is supported by the judgment of the coordinate Bench as referred to above. Further, the Advance Ruling authority in the case of Siem Offshore in A. A. A. R. NO.

875 of 2010 vide order dated 25.07.2011held that where the services are related to transportation through vessels, provisions of Article 21(4)of India Norway- India treaty are applicable, therefore, income is to be computed and tax is to be charged as per the said article.

9. In view of the above discussion, in our considered opinion the lower authorities have erred in computing the total income of the assessee as per section 44BB of the Act which orders are set aside and direct the AO to compute the income of the assessee in terms of Article 21 (4) of the India Norway treaty DTAA. The grounds raised by the assessee are allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17th September, 2025.

Sd/- ***Sd/-***

(YOGESH KUMAR U.S.) **(MANISH AGARWAL)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Date:- 17.09.2025
NEHA, Sr.P.S*

Copy forwarded to:

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

ASSISTANT REGISTR
ITAT, NEW DELHI