IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN

Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Manish Agarwal, Accountant Member

ITA No. 152/DDN/2025 : Asstt. Year: 2016-17
ITA No. 153/DDN/2025 : Asstt. Year: 2018-19

DCIT, 13A, Subhash Road, Income Tax Officer, Dehradun-248001	Vs	Intecsea Asia Pacific SDN BHD, Road No. 11, Barijara Hills, Hyderabad-500034
(APPELLANT)		(RESPONDENT)
PAN No. AABCI3002L		

Assessee by : Sh. Siddesh Choudhary, Adv.
Revenue by : Sh. Mohan Lal Joshi, Sr. DR

Date of Hearing: 13.01.2026		**Date of Pronouncement: 13.01.2026**

ORDER

Per Satbeer Singh Godara, Judicial Member:

These Revenue's twin appeals ITA Nos. 152& 153/DDN/2025 for Assessment Years 2016-17 and 2018-19, arise against the CIT(A)-2, Noida's DIN & order No. ITBA/APL/S/250/2025-26/1076592231(1) & 1077786776(1) dated 30.05.2025 and 25.06.2025, in proceedings u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961, respectively.

2. Heard both the parties at length. Case files perused.

3. The Revenue raises the following identical substantive grounds in it's instant appeal:

> *"1. Whether on the facts and in the circumstances of the case, the CIT (A) has erred in law by overlooking that the*

activities carried out by the assessec did not fall in the exclusion clause of section 9(1)(vi) and 9(1)(vii) of the Act.

2. Whether on the facts and in the circumstances of the case, the CIT (A) has erred in law in ignoring the nature of activities and scope of work as per the contracts of the assessec in arriving at conclusion that the receipts of the assessee were not in the nature of FTS u/s 9(1)(vii) of the Act.

3. Whether on the facts and in the circumstances of the case, the CIT (A) has erred in law in failing to note that the Memorandum to Finance Bill, 2010 makes it clear that any service which falls within the ambit of section 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.

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

5. Whether on the fact and circumstances of the case, the Ld. CIT(A) has erred in law in ignoring the finding of Hon'ble Delhi High Court in the case of Paradigm Geophysical Pty. Ltd. Vs. CIT(IT)-3, New Delhi that the judgment of Hon'ble Supreme Court has been discussed in the ONGC case and it has been made amply clear that the nature of receipts in lieu of the contract is defined by the nature of specific activity.

6. Whether on the facts and in the circumstances of the case, the CIT (A) has erred in law in allowing the appeal of the assessee by allowing the services being nature of mining and to be taxable u/s 44BB of the Income Tax Act."

4. We next note that the learned CIT(A) has followed the tribunal's order in assessee's appeal ITA No. 5577/Del/2018 (Assessment Year 2015-16) itself whilst concluding that it's

venue realized herein does not amount to Fee for Technical Services ("FTS") u/s 9(1)(vii) of the Act as under:

> *"8. We have heard both the parties and also perused the relevant finding of the impugned order as well as material preferred to before us. During the relevant assessment year the appellant assessee has received consideration from ONGC and Leighton India for providing engineering consultancy services. During the course of assessment proceeding the AO had asked the Appellant to show cause why the receipts from ONGC (and Leighton) should not be treated as FTS. The Appellant explained that the consideration received by it from ONGC and Leighton India were in relation to the exploration and production of oil and natural gas and did not fall within the definition of FTS under section 9(1) (vii) of the Act. Since the consideration received by the Appellant was covered by the exclusion provided in the definition of FTS for "mining or like projects", the same should not be treated as FTS under section 9(l)(vii) of the Act. The Appellant relied on the decision of the Hon'ble Supreme Court in case of ONGC v CIT [(2015) 59 taxmann.com 1 (SC)], wherein the Hon'ble Supreme Court has held that where the pith and substance of an agreement is providing services for prospecting, extraction or production of mineral oils, payments made to non-resident companies are assessable under the provisions of section 44BB of the Act and not under section 44D of the Act. Relevant extracts of the judgment is reproduced as under:*
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> > *"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."

9. Ld. Counsel Shri Ajit Jain before us submitted that the scope of services covered under the ONGC ruling were similar to those rendered by the Appellant. The Appellant also relied upon the Instruction issued by Central Board of Direct Taxes No 1862 dated 22 October 1990, wherein 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 rendering of services like imparting of training and carrying out drilling operations for exploration or exploitation of oil and natural gas.

10. Further, relying on the provisions of section 44BB of the Act, he submitted that the services or facilities provided to ONGC and Leighton India were in connection with prospecting for, or extraction or production of mineral oils. Accordingly, the amount payable by ONGC and Leighton India to the Company should be covered by the provisions of section 44BB of the Act. Also, the Hon'ble Supreme Court in the case of ONGC (supra), held that any payments made by ONGC towards services in connection with extraction and mining of mineral oil and received by the non-resident assessee or foreign companies under the said contracts should be assessed under section 44BB of the Act.

11. In addition to the above ONGC ruling and the Instruction issued by CBDT, Ld. Counsel also relied upon the following decisions in support of its claim that services in relation to "mining or like activity" are excluded from the definition of FTS vide Explanation 2 under section 9(1)(vii) of the Act and therefore taxable under section 44BB of the Act:

- *Corpro Systems Limited, UK, In re [(2016) 389 ITR 0029];*
- *Addl. DIT (International Taxation) vs Halliburtan Offshore Services Inc. [(2016) 47 CCH 0425] (Delhi ITAT);*
- *ITO (International Taxation) vs. ONGC [(2016) ITA No. 1596, 1597, 1598 & 1599/Del/2012] (Delhi ITAT);*
- *National Oil Well Maintenance Company vs DCIT [(2018) (89 taxmann.com 24)];*
- *Production Testing Services Inc. Vs DCIT [(2018) (89 taxmann.com 416)];*
- *PGS Exploration (Norway) AS vs Addl. DIT [(2016) (68 taxmann.com 143)];*
- *DIT vs. Jindal Drilling & Industries Ltd. [(2009) (182 Taxman 59)];*
- *Siem Offshore Inc, In re. [(2011) 12 taxmann.com 374]*

12. Apart from above, he also relied upon the following decisions in support of its clam that consideration received for services rendered in connection with prospecting, extraction or production of mineral oils shall be taxable under section 44BB of the Act:

- *Technip UK Ltd vs DIT (International Tax) [(2017) 81 taxmann.com 311];*
- *JSC SMNG- Centre, Russia In Re [(2016) 74 taxmann.com 248 (AAR)];*
- *ADIT vs International Technical Services LLC [(2016) 71 taxmann.com 351 (ITAT Delhi)];*
- *B.J. Services Company Middle East Ltd. vs. ADIT [(2017) 77 taxmann.com 218 (ITAT Delhi)];*
- *Viking Maritime Inc. vs DCIT [(2016) 69 taxman.com 303 (ITAT Delhi)]*
- *Geofizyka Torun Sp. Zo.o, In re [(2010) (186 Taxman 13)];*
- *Marine Geology Services LLP, UK In Re [(2016) 73 taxmann.com 107] (AAR);*
- *Pride Offshore International LLC vs ADIT [(2015) 59 taxmann.com 23] (ITAT Delhi)*

13. Thereafter Ld. Counsel drew our attention to the relevant facts and the findings of the Ld. CIT(A) and the agreements entered with ONGC and Leighton India submitted that the issue stands squarely covered by the decision of the Hon'ble Supreme Court in the case of ONGC and the receipts ought to have been taxed u/s 144BB of the Act.

14. Ld. DR on the other hand submitted that in view of the amendment vide Finance Act 2010 and the decision of Hon'ble Delhi High Court in the case of Paradigm Geophysical Pty Limited cannot be treated as same.

15. From the perusal of the services and the nature of scope of work, we find that duties carried out by the appellant on contract with ONGC in fact has mining activity which was excluded from the definition of FTS u/s 9(1)(vii) as they are essential to the development and exploration of the oil and gas fields of ONGC. These services ostensibly is to be regarded as exclusion to FTS under section 9(1)(vii) and such activities need not itself be of mining or like nature so long as they are related to 'mining or like project' as has been clarified in the Circular No. 1862 dated 22.10.1990, that 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.

16. Thus in parting of training is a part of mining activity only carried out by his appellant in his contract to the aforesaid parties. In so far as the reliance placed by the Ld. DR on the decision of Paradigm Geophysical Pty Limited, was on different facts as the assessee therein was involved in providing software services definition of which is covered under section 9(1)(vi) of the Act whereas Appellant's case is that of FTS under section 9(1)(vii) read with section 44DA of the Act. AR further explained that section 44DA of the Act can be applied only if the income in the first-place falls within the definition of FTS under section 9(1)(vii). In the Appellant's case, since the services are covered by the exclusion in section 9(1)(vii), they do not qualify as FTS for invoking section 44DA of the Act.

17. Accordingly we hold that not only receipt of accounts of services which has been accepted by the Ld. CIT (A) was also other scope of work relating to attending meetings but also the other activities are inextricably linked with the contract of design and engineering of submarine pipeline. Therefore the entire receipts for the ONGC as well as Leighton India are taxable u/s 44BB. Accordingly the appeal of the assessee is allowed."

5. The Revenue is equally fair during the course of hearing that there is no distinction on fact s or in law, as the case may be, in all these assessment years raising an identical issue. We thus reject the Revenue's foregoing substantive ground as well as the assessee's twin appeal in very terms.

6. These Revenue's twin appeals ITA Nos. 152 & 153/DDN/2025 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 13/01/2026.

Sd/-
(Manish Agarwal)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Dated: 13/01/2026

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

ASSISTANT REGISTRAR