

## **Assessee couldn't challenge ITAT's order which was decided on basis of case cited by assessee only**

**Summary – The High Court of Uttarakhand in a recent case of Halliburton Offshore Services Inc., (the Assessee) held that where appeal was decided by Tribunal at instance of assessee in view of case law cited by him, further appeal by assessee before High Court against Tribunal's order would be dismissed.**

**JUDGMENT** - Certain amount of money was received by the assessee during the relevant assessment year under an award given by an arbitrator. The Assessing Officer found, as a fact, that the award was on account of loss of tools and equipments while carrying out well logging operation in oil well. This finding was not under challenge at any stage. The Assessing Officer as well as the first Appellate Authority felt that the loss of equipment/tools while executing the job assigned under the contract was very much incidental to the assessee's business activities, which involve such equipment loss in normal course. At the instance of the assessee, the matter went before the Tribunal. As will be evidenced from paragraph 4 of the order of the Tribunal, it was the assessee, who drew the attention of the Tribunal to a judgment of this Court, rendered in the case of *CIT v. Halliburton Offshore Services Inc.* [[2008](#)] [300 ITR 265/169 Taxman 138 \(Uttaranchal\)](#), and submitted that the case of the assessee is covered by the said decision. In that decision, it was decided that, from a perusal of Section 44BB, it is clear that all the payments, either paid or payable (whether in India or outside India) or received or deemed to be received (whether in India or outside India), are mutually inclusive and this amount is the basis of determination of deemed profits and gains of the assessee at 10 per cent and also that the amount paid or received refers to the total payment to the assessee or payable to the assessee or deemed to be received by the assessee; whereas, income has been defined under Section 2(24) of the Income Tax Act and Section 5 & Section 9 deal with income and accrued income and deemed income. In other words, an impression was given by the assessee, itself, to the Tribunal that any payment received by an assessee, who falls within Section 44BB, will be taxed in accordance with the mandate contained therein. On the basis of such submission, the Tribunal has passed the order upholding the assessment as well as the first appellate order. In other words, it is the assessee/appellant, who led the Tribunal to pass the order under appeal. At the instance of the assessee/appellant, no appeal lies against that order of the Tribunal, which the Tribunal has passed at the instance/invitation of the assessee/appellant. In the grounds of appeal, there is not even a single whisper that it was not the assessee, who had brought to the notice of the Tribunal the said judgment of this Court and it was not the assessee, who had submitted that the issue raised in the appeal before the Tribunal was covered by the said judgment.

The HC accordingly, refused to interfere and dismissed the appeal.