

## Presumptive taxation under sec. 44DA couldn't invoked if services were squarely covered by sec. 44BB

**Summary – The Delhi ITAT in a recent case of M.B. Petroleum Services LLC., (the Assessee) held that where services rendered by assessee squarely fall within scope of section 44BB, its income would be computed under section 44BB and not section 44DA.**

### Facts

- The assessee, a non-resident, entered into two contracts for providing drilling and well integrated services etc.
- The Assessing Officer determined the income of the assessee by applying section 44DA and estimated its net profit at 25 per cent of the gross receipt.
- On appeal, the Commissioner (Appeals) directed the Assessing Officer to determine the income as per section 44BB.
- On revenue's appeal:

### Held

- In the case of *DIT v. OHM Ltd.* [\[2013\] 352 ITR 406/212 Taxman 440/\[2012\] 28 taxmann.com 120 \(Punj. & Har.\)](#) it is held that the provision of section 44BB is a special provision while section 44DA is a general provision. Therefore, when the services rendered by the assessee fall within the scope of section 44BB, the said section would be applicable but, where the services are of the type which do not fall under that section but are more general in nature, then, section 44DA would be applicable.
- On reading section 44BB in the light of the scope of the contracts entered into by the assessee with ONGC, it is found that the scope of the work of the assessee falls squarely within the ambit of section 44BB because the first contract is for hiring of production testing surface equipment in operation condition for carrying out production testing of high pressure exploratory and development wells. The second contract is for providing of mud services on service contract to drill 17 nos. of horizontal and multilateral wells. Admittedly, such wells were drilled for the purpose of exploration/production of mineral oil. In view of the above, the services provided by the assessee squarely fall within the ambit of section 44BB(1) and, therefore, applying the ratio of Hon'ble Jurisdictional High Court's decision in the case of *OHM Ltd. (supra)*, held that the Commissioner (Appeals) rightly directed the Assessing Officer to compute the income under section 44BB. Accordingly, the order of learned Commissioner (Appeals) is sustained.