

## No separate deduction of expenditure while computing income on presumptive basis under sec. 44BB

**Summary – The Mumbai ITAT in a recent case of Fugro Rovtech Ltd., (the Assessee) held that where profits and gains of business carried out by assessee-company were to be computed at 10 per cent of gross receipts as per deeming provisions of section 44BB, it could not claim separate deduction of fuel cost incurred in respect of contract undertaken for construction of offshore facilities for development of certain gas fields**

**in terms of section 44BB, demobilisation revenue of entire transit period had to be included in gross receipts**

### Facts - I

- The assessee was a foreign company incorporated in United Kingdom. It was engaged in the business of providing services in connection with prospecting, extraction and exploration of oil and gas. Another company named 'Allseas' was awarded a contract by Reliance Industries Ltd to undertake construction of offshore facilities for development of certain gas fields.
- Allseas entered into a contract with the assessee for provision of certain services to it. The assessee filed its return of income for the year under consideration declaring total income as per the provisions of section 44BB of the Act. In the computation of income, the assessee deducted certain amount towards fuel cost from the gross revenue.
- The assessee's case was that since the fuel cost was required to be borne by it as per the contract, amount so paid was to be allowed as deduction.
- The Assessing Officer as well as DRP rejected assessee's claim.
- On appeal:

### Held - I

- As per section 44BB(1), 10 per cent of the aggregate amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax. The amounts referred to in sub-section (1) shall be the amount paid or payable to the assessee or received or deemed to be received in India by the assessee.
- The provisions of section 44BB of the Act provide for determination of profits and gains of business at a flat rate of 10 per cent of the gross amount of contract. The section does not contemplate allowing any deduction.
- There is no dispute with regard to the fact that the assessee is entitled to receive operational day rent at the rate of GBP 52,050 from Allseas. Hence, under the provisions of section 44BB the above said amount of GBP 52,050 per day is the gross amount referred to in sub-section (2) and 10 per cent of the same shall be taken as the profits and gains of business of the assessee under sub-

section (1) of section 44BB of the Act. The assessee has claimed deduction of the credit note issued by it to Allseas in respect of fuel supplied by Allseas to the assessee.

- No doubt, the fuel cost is an item of expenditure for the assessee and hence the same is required to be allowed as deduction while computing profits and gains of business. However, such a claim can be allowed only if the profits and gains of business is computed under normal provisions of the Act. In the instant case, the profits and gains was to be computed at 10 per cent of the gross receipts as per the deeming provisions of section 44BB of the Act.
- When the profits and gains of business is computed under deeming provisions, then the same is required to be computed strictly in accordance with the methodology specified in that section. Section 44BB does not provide for deduction of any of the expenditure. Hence, even though the cost of fuel supplied by Allseas to the assessee herein constitutes an allowable expenditure, the same cannot be deducted from the gross receipts, since section 44BB of the Act does not provide for deduction of any of the expenditure.
- The question of issuing credit note arises in this case, since the party receiving the (Allseas) services has supplied the fuel to the assessee. If the assessee has purchased the fuel from an outside party, the question of issuing credit note does not arise at all. If the assessee had so purchased from a third party, it would not have claimed deduction of cost of fuel and would have computed income on the day rent of GBP 52,050. Hence, the same position should prevail, even if the fuel is supplied by Allseas, as the gross amount does not undergo a change. Thus, the credit note issued by the assessee is a case of adjustment or settlement of the amount payable/receivable by the parties and the same shall not have any effect on the gross amount of day rent of GBP 52,050.
- In view of the above, the assessee is not entitled to claim deduction of Rs. 11.65 crores from the gross amount of the contract, since it is a case of adjustment of payments receivable/payable between the parties. Though it is stated that the deduction has been claimed to the extent of Rs. 7.96 crores, the assessee has actually claimed deduction of Rs. 11.65 crores. The claim of the assessee may be admissible, if the income is computed under section 28 to section 43 of the Act. Since the income is computed as per the provisions of section 44BB of the Act and since the said section provides a deeming fiction for computing the profits and gains of provisions, the claim of the assessee is not admissible. Accordingly, there is no merit in the contentions of the assessee and accordingly the same is rejected.