

Sum received by US Co. for services in connection with prospecting for mineral oils is taxable u/s 44BB

Summary – The Delhi ITAT in a recent case of Viking Maritime Inc., (the Assessee) held that where services carried on by assessee were in connection with prospecting for mineral oils, it was taxable on presumptive basis under section 44BB

Facts

- The assessee, a US company, rendered services in geophysical exploration and interpretation and its complete scope of work was entailing acquisition of 2D/3D seismic data and basic seismic data processing onboard by employing seismic vessel and qualified and experienced personnel in the prospecting for mineral oil.
- The assessee had received gross receipts and had offered its income for taxation as per section 44BB.
- Assessing Officer observed that section 44BB was applicable for computing profit and gains in connection with the business of exploration etc. of mineral oils in the case of non-resident and since assessee was rendering technical services, section 44BB was not applicable. The Assessing Officer, after considering the provisions of section 44BB and also taking into consideration, the amendments brought in with effect from 1-4-2011 by Finance Act, 2010, concluded that assessee's receipts were effectively connected with the project office of the assessee in India and, therefore, taxable under section 44DA and article 7 of DTAA between India and USA.
- On appeal, the assessee submitted that the gross receipts of assessee are taxable under section 44BB because insertion of section 44DA in the proviso to section 44BB with effect from 1-4-2011 had been held to be prospective in nature.

Held

- All the years under consideration including the assessment year 2006-07 are prior to assessment year 2010-11. The insertion of section 44DA in the proviso to section 44BB with effect from 1-4-2011, has been held to be prospective in nature, and, therefore, it would suffice to observe to refer to the decision of Delhi High Court in the case of *DIT v. OHM Ltd.* [\[2013\] 352 ITR 406/212 Taxman 440/28 taxmann.com 120](#), wherein it has been held that amendment made by the Finance Act, 2010 with effect from 1-4-2011 in both sections, viz., 44DA and 44BB cannot have the effect of altering or effacing the fundamental nature of both the provisions and their respective spheres of operation or to take away the separate identity of section 44BB.
- Supreme Court in the case of *Oil & Natural Gas Corpn. Ltd. v. CIT* [\[2015\] 376 ITR 306/233 Taxman 495/59 taxmann.com 1](#) has set at rest the entire controversy by holding that provisions of various services in connection with the prospecting for, or extraction or production of mineral oils is taxable on presumptive basis under section 44BB. The services carried on by assessee were in connection

with the prospecting for mineral oils and, therefore, following the decision of Supreme Court, the assessee's appeal deserves to be allowed.