

Income from providing personnel for drilling operations for mineral oil is taxable under sec. 44BB and not sec. 44DA

Summary – The Delhi ITAT in a recent case of International Technical Services LLC., (the Assessee) held that Payment for providing various services in connection with prospecting, extraction or production of mineral oil, would be assessed under section 44BB, and not under section 44DA

Facts

- The revenue preferred the instant appeals against the order of the Dispute Resolution Panel whereby it directed the Assessing Officer to apply the deemed profit rate of 10 per cent under section 44BB on the revenues earned by the assessee from a non-resident company on account of provision of technical personnel for executing contracts with ONGC.
- The assessee submitted that the issue was squarely covered in its favour by the order of the Supreme Court in the case of *ONGC v. CIT* [2015] 376 ITR 306/233 Taxman 195/59 taxmann.com 1 wherein it has been held that the payments for providing various services in connection with prospecting, extraction and production of oil would be assessed under section 44BB and not under section 44DA.
- The revenue however contended that the DRP was not justified in directing the Assessing Officer to apply the deemed profit rate of 10 per cent under section 44BB.

Held

- From the order of the DRP dated 18-12-2013 passed under section 144C(5), it is observed that the DRP granted relief to the assessee and observed that under the provisions of section 44BB the presumptive rate of taxation is applicable to a non-resident engaged in the business of providing services or facilities in connection with or supplying plant and machinery on hire used, or to be used in the prospecting for, or extraction or production of, mineral oils. In fact, the assessee provided key technical personnel for conducting actual drilling operation under its contract with Pride Foramer, viz senior tool pusher, barge manager, rigs superintendent, chief electrician, rigs safety training advisor. These operations of highly specialized offshore of personnel provided by the assessee are an integral part of the drilling operation in connection with prospecting etc. of mineral oil. No where it is mandated that the services should be provided directly by the party who is engaged in prospecting etc. of mineral oil or is directly a member of the Production Sharing Contract. The payments have been received from another non-resident company and hence cannot be brought under the purview of section 44DA. The income derived by the applicant from an activity in connection with prospecting etc for mineral oil from another foreign company would be subject to tax under section 44BB and not under section 44DA/115A. In view of the above, the DRP is of the

considered opinion that the amount received by the assessee during the year under consideration on account of services rendered should be brought to tax by applying the deemed profit ratio of 10 per cent under section 44BB.

- The DRP after considering the relevant decisions of the High Court including the decision of the Jurisdictional High Court of Delhi in the case of *DIT v. OHM Ltd.* [\[2012\] 212 Taxman 440/28 taxmann.com 120/\[2013\] 352 ITR 406](#) held that section 44BB being a more specific provision shall prevail over the general provisions of the Act and that the services rendered by the sub-contractor at the off shore rigs of a contractor is part and parcel of activities for extraction *etc* of mineral oils and would be covered under section 44BB. It is noted that in the case of *ONGC v. CIT* [\[2015\] 376 ITR 306/233 Taxman 195/59 taxmann.com 1 \(SC\)](#), it was categorically held that payments for providing various services in connection with prospecting, extraction or production of mineral oil would be assessed under section 44AB and not under section 44D. On the basis of aforesaid discussion, it is to be held that the issue is squarely covered in favour of the assessee and the DRP was justified and correct in directing the Assessing Officer to assess income of the assessee from non-resident company on account of provision of technical person for executing contract with ONGC shall be taxed applying due profit rate of 10 per cent under section 44BB. Finally, in the light of above noted discussion, there is no hesitation to hold that there is no ambiguity, perversity or any other valid reason to interfere with the impugned order of the DRP and the same is upheld. Consequently, the sole effective ground of the revenue being devoid of merits in both the appeals is dismissed.
- In the result, both the appeals of the revenue stand dismissed.