

## **Income from offshore supplies couldn't be taxed in India in the absence of 'business connection'**

**Summary – The Mumbai ITAT in a recent case of Whessoe Oil & Gas Ltd., (the Assessee) held that where assessee, a UK company was awarded a contract by RGPPL, an Indian company, and received certain sum for design and engineering service, import of equipments and procurements from within India and assessee did not offer income arising out of procurement of offshore equipments for taxation under section 44BBB, contractual revenue on account of offshore procurement could not be brought to tax under section 44BBB**

### **Facts**

- The assessee, a UK company, had jointly with bid for a contract awarded by Ratnagiri Gas and Power Private Ltd. (RPPGL) for the completion of RGPPL's LNG terminal at Dabhol. The work under the contract was to be completed on Engineering Procurement and Construction (EPC) basis.
- The assessee received the total sum of Rs. 16.69 crores for the work completed during the year as per the terms and conditions of the contract. It had bifurcated its receipts into three parts, namely, Engineering and Offshore Services, offshore services and commissioning and offshore procurements and it treated the offshore procurements for spare machine parts equipments as income not taxable in India, and offered the balance income for taxation under the provisions of section 44BBB.
- The Assessing Officer held that the secret contract was a composite contract, that the total consideration received for the assignment could not be broken into watertight and independent compartments as attempted by the assessee. The income from such contracts was chargeable in India as per the provisions of section 44BBB. Finally, he held that once the income of the assessee was chargeable to tax in India under section 44BBB, the entire contractual revenue, and not a portion of it, would be taxed in India.
- The assessee contended that entire contractual revenue on account of offshore procurement could not be brought to tax under section 44BBB.

### **Held**

- Contract entered into with RPPGL, in its consideration clause, had separately identified the aggregate consideration payable in respect of the different components of the contract, namely, design and engineering services (onshore/offshore), import of equipment/material as well as equipment/material to be procured from within India. The assessee had offered offshore/offshore services for taxation under section 44BBB. It is a fact that offshore procurement was being handled entirely from outside India. The Assessing Officer has not brought anything on record that purchase of material, made by the assessee, was linked to its PE in India. The establishment of the assessee was not a business connection, as alleged by the Assessing Officer, through which it had derived its income. Therefore, the sums included under the head offshore procurements included the sums

payable towards supply of equipment and machinery procured from outside India. There is no doubt that there was a clear demarcation in the work and cost between the members of the JV *i.e.* the assessee and PLL.

- Therefore, confirming his order, the income earned by the assessee on account of offshore procurement, is not taxable under section 44BBB.