

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI H.S. SIDHU: JUDICIAL MEMBER

ITA no. 5745/Del/2012

A.Y. 2006-07

Siem Offshore Inc.
601, Gateway Plaza,
Hiranandani Garden, Powai,
Mumbai-400076.
PAN: AAKCS 6466 R

Vs. Dy. Director of Income-tax,
International Taxation,
Dehradun.

(Appellant)

(Respondent)

Appellant by : Shri Amit Arora
Respondent by : Ms. Poonam Khera Sidhu CIT(DR)

Date of hearing : 05-06-2015

Date of order : 08-06-2015.

ORDER

PER S.V. MEHROTRA, A.M.:-

This appeal, preferred by the assessee, is directed against CIT(A)'s order dated 7-8-2012 relating to A.Y. 2006-07.

2. Brief facts of the case are that the assessee, a non-resident company, during the year under consideration offered its revenues on account of time

chartered agreement dated 31-10-2005, vide which it had agreed to lease a vessel to EMGS (another non-resident company). The gross receipts received by the assessee had been offered to tax @ 10% as per the provisions of section 44BB of the I.T. Act. The assessee made submissions dated 11-11-2008, wherein it was, inter alia, submitted that assessee had inadvertently returned the income at Rs. 8,95,72,982/- instead of Rs. 8,31,60,337/- on the ground that it had inadvertently included two invoices in gross revenues that did not pertain to Indian operations. The assessee's claim was that these two invoices pertained to reimbursement of expenditure incurred by assessee on behalf of EMGS.

3. The AO did not accept the assessee's contention, inter alia, observing that as per the TDS certificates which had been furnished along with its submissions dated 31-10-2008 issued by M/s EMGS, a total sum of Rs. 14,84,30,505/- had been paid to assessee in respect of which TDS had been made by EMGS. Accordingly, the whole amount was brought to tax u/s 44BB. He further pointed out that assessee's plea that these expenses had been reimbursed for the operations carried out outside India, was also not acceptable because the income had been offered u/s 44BB. He pointed out that the reimbursements were on account of providing services or facilities in connection with, or supply of plant and machinery on hire, or to be used,

in prospecting for, or extraction or production of mineral oils outside India, hence includible as per provisions of section 44BB. He relied on the decision of Hon'ble Uttarakhand High Court in the case of CIT Vs. Halliburton Offshore Services Inc. 300 ITR 265 that reimbursement of expenditure was includible in the revenue as contemplated by sec. 44BB of the I.T. Act.

4. Ld. CIT(A), while partly allowing the assessee's appeal, confirmed the AO's action on this issue. Being aggrieved, the assessee's is in appeal before us and has taken following grounds of appeal:

“1. The Ld. CIT(A) erred in bringing to tax the two invoices amounting to Rs. 64,12,645/- not relating to Indian operations, as reimbursements chargeable to tax in India u/s 44BB of the Act.

2. The Ld. CIT(A) erred in upholding the addition of Rs. 5,88,57,523 to the revenues relating to the period prior to the vessel entering India i.e. 200 nautical miles from Indian shoreline, as liable to tax u/s 44BB of the Act.”

3. The Ld. CIT(A) erred in upholding the levy of interest of Rs. 9,93,168/- u/s 234A of the Act.

5. We have considered the submissions of both parties and have perused the record of the case. Facts are not disputed. Ld. CIT(DR) has filed written submissions pointing out that both the issues raised by the assessee in its grounds of appeal are covered against the assessee. In all the case laws it has been held that

the receipts like mobilization fee, reimbursement of cost of spare parts; reimbursement of freight and transportation charges; reimbursement on account of supply of plant & machinery; reimbursement on account of catering expenses and fuel expenses are to be included in gross receipts u/s 44BB. In the case of CIT Vs. Halliburton Offshore Services Inc. (supra), the Hon'ble Uttrakhand High Court has, inter alia, observed as under:

“In that decision, it was decided that, from a perusal of section 44BB, it is clear that all the payments, either paid or payable (whether in India or outside India) or received or deemed to be received (whether in India or outside India), are mutually inclusive and this amount is the basis of determination of deemed profits and gains of the assessee at 10 per cent and also that the amount paid or received refers to the total payment to the assessee or payable to the assessee or deemed to be received by the assessee; whereas, income has been defined under section 2(24) of the Income-tax Act and section 5 & section 7 deal with income and accrued income and deemed income. In other words, an impression was given by the assessee, itself, to the Tribunal that any payment received by an assessee, who falls within section 44BB, will be taxed in accordance with the mandate contained herein.”

6. The order of the CIT(A) being in conformity with the decision of Hon'ble Uttrakhand High Court in the case of Halliburton Offshore Services Inc. (supra), we see no reason to interfere with the same. Ground nos. 1 & 2 stand rejected accordingly.

7. Apropos ground no. 3, ld. CIT(A) has observed in para 6 of his order that the return for AY 2005-06 was filed on 28-3-2008 and, therefore, interest u/s 234A had been correctly charged. We do not find any reason to interfere with the order of the ld. CIT(A) on the issue in question. Ground is dismissed.

8. In the result, assessee's appeal is dismissed.

Order pronounced in open court on 08-06-2015.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER
Dated: 08-06-2015.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

MP: Copy to :

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR