

**IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH
MUMBAI**

**BEFORE SHRI LALIET KUMAR, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.1215/Mum/2019
(Assessment Year: 2014-15)**

&

**ITA No.1216/Mum/2019
(Assessment Year : 2015-16)**

Deputy Commissioner of Income Tax, (International Taxation)-3(3)(1) R.No.1630, 16 th Floor Air India Building, Nariman Point, Mumbai – 400 021	Vs.	M/s. Nabors Drilling International Limited C/o. Nangia & Co CA's 1101, Tower-B, Peninsula Business Park, Ganpat Rao Kadam Marg, Lower Parel Mumbai - 400013
PAN/GIR No.AADCN7265N		
(Appellant)	..	(Respondent)

**ITA No.1321/Mum/2019
(Assessment Year: 2014-15)**

Deputy Commissioner of Income Tax, (International Taxation)-3(3)(1) R.No.1630, 16 th Floor Air India Building, Nariman Point, Mumbai – 400 021	Vs.	M/s. Jet Drilling(s) Pte.Ltd 1 st Floor, Ajanta Executive Centre, 8, Juhu Tara Road Juhu, Mumbai-400 064
PAN/GIR No.AABCJ9895N		
(Appellant)	..	(Respondent)

**ITA No.1214/Mum/2019
(Assessment Year: 2014-15)**

Deputy Commissioner of Income Tax, (International Taxation)-3(3)(1) R.No.1630, 16 th Floor Air India Building, Nariman Point, Mumbai – 400 021	Vs.	M/s. Novodrill Limited C/o. Nangia & Co. CA's 1101, Tower-B, Peninsula Business Park, Ganpat Rao Kadam Marg, Lower Parel Mumbai – 400 013
PAN/GIR No.AADCN0630M		
(Appellant)	..	(Respondent)

Revenue by	Shri Avaneesh Tiwari
Assessee by	Shri Neeraj Agarwal
Date of Hearing	04/03/2020
Date of Pronouncement	05/03/2020

आदेश / ORDER

PER BENCH:

These appeals in ITA Nos. 1215/Mum/2019, 1216/Mum/2019, 1321/Mum/2019 & 1214/Mum/2019 for A.Yrs.2014-15 & 2015-16 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-57, Mumbai in appeal dated 27/12/2018, 28/12/2018 & 20/12/2018 respectively (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 144C(3) & 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 respectively (hereinafter referred to as Act) dated, 27/12/2016 27/12/2017, 08/02/2017 & 29/12/2016 respectively by the Id. Dy.Commissioner of Income Tax(IT)-3(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. Identical issues are involved in all these appeals and hence taken up together and disposed off by this common order for the sake of convenience. The dispute in the case of Nabors Drilling International Ltd for the Asst Year 2014-15 in ITA No. 1215/Mum/2019 is taken as the lead case and the decision rendered thereon would apply with equal force for other assessment year of the same assessee and also for the other assessee mentioned hereinabove, except with variance in figures, in respect of identical issues.

3. The first identical issue involved in all these appeals is as to whether the Id CITA was justified in holding that the service tax component cannot be included as part of total turnover while computing income u/s 44BB(1) of the Act in the facts and circumstances of the case.

4. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a company incorporated under the laws of Bermuda and engaged in the business of providing services or facilities in connection with the prospecting or extraction or production of mineral oils and natural gas. We find that there is no dispute that the income of the assessee is computed in accordance with provisions of section 44BB of the Act wherein 10% on receipts would be deemed to be the income of the assessee for the year under consideration. For the purpose of computation of deemed income thereon, the Id AO had considered the Gross revenue as per return and had added a sum of Rs 15,35,87,717/- being the receipts on account of service tax and computed 10% thereon and completed the assessment. We find that before the Id CITA, the assessee pleaded that the service tax portion should not be included as part of the total turnover while computing income u/s 44BB of the Act. We find that the Id CITA had placed reliance on the decision of Hon'ble Delhi High Court in the case of DIT vs Mitchell Drilling International P Ltd in ITA No. 403/2013 and the decision of this tribunal in the case of Jet Drilling (S) Pte Ltd for Asst Year 2011-12 and decided the issue in favour of the assessee .

4.1. We find that the co-ordinate bench of this tribunal in the case of DCIT vs Nabors Drilling International Ltd in ITA No. 2419/Mum/2017 for Asst Year 2012-13 dated 30.8.2018 had an occasion to consider the very same issue and held as under:-

“4. We find that this issue is squarely covered in favour of assessee by the decision of Hon’ble Delhi High Court in the case of DIT vs. Mitchell Drilling International Pvt. Ltd. [2016] 380 ITR 130 (Del) and also CBDT Circular No. 1/2014 dated 13.01.2014, wherein it is clarified as under: -

“2. Attention of CBDT has also been drawn to the judgement of the Hon'ble Rajasthan High Court dated 1-7-2013, in the case of CIT (TDS) Jaipur v. Rajasthan Urban Infrastructure (Income-tax Appeal No.235, 222, 238 and 239/2011), holding that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and was not included in the fees for professional services or technical services, no TDS is required to be made on the service tax component u/s 194J of the Act.

3. The matter has been examined afresh. In exercise of the powers conferred under section 119 of the Act, the Board has decided that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component”

5. Further, the CBDT has also clarified its position vide its earlier Circular No. 4/2008 dated 28.04.2008 and the clarification reads as under: -

“18. the Court further notes that the position has been made explicit by the CBDT in itself in two of its circulars. In Circular No. 4/2008 dated 28th April 2008 it vis: clarified that “Service tax paid by the tenant doesn’t partake the nature of "income" of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, it has been decided that tax deduction at source (TDS) under sections 194-I of Income-tax Act would be required to be made on the amount of rent paid/payable without including the service tax.’ In Circular No. 1/2014 dated 13th January 2014, it has been clarified that service tax is not to be included in the fees for professional services or technical services and no TDS is required to be made on the service tax component under section 194J of the Act.”

6. Further, we find that the Uttarakhand High Court in the case of DIT vs. Schlumberger Asia Services Ltd. (2009) 317 ITR 156 (Uttarakhand) had held that customs duty, unlike amounts received towards reimbursement, would not be includible in the total turnover for computing profits u/s.44BB of the Act

7. When these were pointed to the learned Sr. Departmental Representative, he stated that the issue is covered. As the issue is squarely covered in favour of assessee, we find that the CIT(A) has rightly directed the AO to exclude the service tax from the gross receipts of the assessee for the purpose of determining taxable income under

section 44BB of the Act. We find no infirmity in the order of CIT(A) and hence, the appeal of Revenue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.”

4.2. Respectfully following the said decision, we hold that the service tax component need not be included in the total turnover for the purpose of computing income u/s 44BB of the Act. Accordingly, the grounds raised by the revenue in this regard are dismissed.

5. The last issue to be decided in the case of Jet Drilling (S) Pte Ltd for Asst Year 2014-15 in ITA No. 1321/Mum/2019 is as to whether the Id CITA was justified in holding that the receipts on account of reimbursement of equipment Lost in Hole are not forming part of gross receipts for the purpose of section 44BB of the Act, in the facts and circumstances of the case.

5.1. We have heard the rival submissions and perused the materials available on record. We find that the Id AO observed in his order that the assessee had received a sum of Rs 80,89,684/- on account of reimbursement of equipment Lost in Hole which was not offered to tax by the assessee. We find that the Id AO had observed that once an assessee opts for determination of income u/s 44BB(1) of the Act, there is no further scope of splitting the income components for separate and individual tax treatment and hence the entire amount would be taxable u/s 44BB(1) of the Act. With this observation, the Id AO sought to include the reimbursement portion of Rs 80,89,684/- as part of gross receipts for

computing the deemed income at 10% of gross receipts in terms of section 44BB of the Act and completed the assessment.

5.2. Before the Id CITA, the assessee submitted that the reimbursement received on account of equipment Lost in Hole is in the nature of capital receipt and therefore not to be included as part of gross receipts for the purpose of section 44BB of the Act. The assessee submitted before the Id CITA that as the name signifies, Lost in Hole means destruction and loss of capital assets like drilling equipment which are provided by the assessee to oil exploration and production companies and therefore, the amount received on account of loss of equipment does not form part of income in the hands of the assessee , rather it is a mere reimbursement of the cost of equipment destroyed in the process of oil extraction. We find that the Id CITA duly appreciated the contentions of the assessee and by placing reliance on the decision of Hon'ble Uttarakhand High Court in the case of CIT vs Schlumberger Asia Services Ltd reported in 317 ITR 156 and the decision of Hon'ble Apex Court in the case of Sedco Forex International Inc. vs CIT reported in 399 ITR 1 (SC) decided the issue in favour of the assessee. Before us, the Id AR placed on record the said decision of the Hon'ble Apex Court in 399 ITR 1 (SC) supra wherein it was held as under:-

“51) In this batch of appeals, Civil Appeal No. 3695 of 2012 is the solitary appeal which is preferred by the Director of Income Tax, New Delhi (Revenue) against the judgment of the High Court of Uttarakhand. The computation of income of the assessee was done under [Section 44BB](#) of the Act. However, the amount which was sought to be taxed was reimbursement of cost of tools lost in hole by ONGC. It is, thus, clear that this was not the amount which was covered by sub-section (2) of [Section 44BB](#) of the Act as ONGC had lost certain tools belonging to the assessee, and had compensated for the said loss by paying the amount in question. On these facts, conclusion of the High Court is correct. Even otherwise, the tax effect is Rs.15,12,344/-. Therefore, Civil Appeal No. 3695 of 2012 filed by the Revenue is dismissed.”

5.3. Respectfully following the said decision, we do not find any infirmity in the order of the Id CITA granting relief to the assessee . Accordingly, the Ground No. 2 raised by the revenue in ITA No. 1321/Mum/2019 is dismissed.

6. The other grounds raised by the revenue for all the appeals are general in nature and does not require any specific adjudication.

7. In the result, all the appeals of the revenue are dismissed.

Order pronounced in the open court on this 05/03/2020

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 05/03/2020

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai