IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L", MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI JOGINDER SINGH, JUDICIAL MEMBER

ITA NO. 8694/MUM/2010	:	**(A.Y : 2007-08)**
Valentine Maritime (Gulf) LLC C/o Vinod Agnani 2004-2005, Montreal, B-31, Shastri Nagar, Andheri (W), Mumbai 400 053 (Appellant) **PAN : AABCV1070B**	Vs.	Asst. Director of Income Tax (International Taxation) – 2(2), Mumbai (Respondent)
ITA NO. 9239/MUM/2010	:	**(A.Y : 2007-08)**
Asst. Director of Income Tax (International Taxation) – 2(2), Mumbai (Appellant)	Vs.	Valentine Maritime (Gulf) LLC C/o Vinod Agnani 2004-2005, Montreal, B-31, Shastri Nagar, Andheri (W), Mumbai 400 053 (Respondent) **PAN : AABCV1070B**

Assessee by : Shri Hiro Rai
Revenue by : Shri M.C. Omi Ningshen

Date of Hearing : 13/01/2017
Date of Pronouncement : 18/01/2017

O R D E R

PER G.S. PANNU, AM :

These are cross-appeals filed by the assessee and the Revenue against the order of CIT(A)-11, Mumbai dated 04.10.2010, pertaining to

the Assessment Year 2007-08, which in turn has arisen from the order passed by the Assessing Officer dated 15.02.2010 under section 143(3) r.w.s 144C(1) of the Income Tax Act, 1961 (in short 'the Act').

2. The Grounds of appeal raised by the assessee and Revenue in their respective appeals are as under :-

ITA No. 8694/Mum/2010 (Assessee's appeal)

"1. The learned CIT(A) has erred in taxing the revenues earned from Arcadia Shipping Limited for Charter Hire of Tug Boat Valentine III & Zakher King U/s 44 BB of Income Tax Act, 1961 instead of Business Income under Article 7 of DTAA between India & U.A.E. Even though CIT(A) held that Valentine Maritime (Gulf) LLC is entitled to tax benefits and since the assessee did not have PE in India the same is not taxable.

2. The learned CIT(A) has erred in taxing the revenues earned from Leighton Contractor (I) Private Limited for Time Charter Hire Tug Boat JU 251 as "Royalty" under section 9(1)(vi) of the Act instead of Business Income under Article 7 of DTAA between India & U.A.E, Even though CIT(A) held that Valentine Maritime (Gulf) LLC is entitled to tax benefits and since the assessee did not have PE in India the same is not taxable."

ITA No. 9239/Mum/2010 (Revenue's appeal)

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in directing the deletion of interest u/s 234B.

2. The Appellant prays that the order of the ld. CIT(A) on the above ground be set aside and that of the Assessing Officer restored."

3. Notably, in this case assessee as well as Revenue have preferred additional Grounds of appeal also, which are as under :-

Assessee's additional Ground of appeal :-

"The learned CIT(A) was not justified in holding that the amount of Rs.11,77,55,535 received from Leighton Contractor (I) Private Limited was not taxable u/s. 44 BB of the Income Tax Act, 1961."

Revenue's additional Grounds of appeal :-

"1. On the facts and in the circumstances of the case and in law, whether the Id. CIT (A) has erred in direction the assessing officer to treat the assessee as eligible for the benefit of DTAA between India and UAE.

2. On the facts and in the circumstances of the case and in law, whether the Id. CIT(A) erred in directing AO to assess the income of the assessee on the gross receipts of Rs. 3,92,36,846/-/- under provisions of section 44 BB of the Act ignoring the fact that total gross receipts of Rs. 15,69,92,381/- is taxable as royalty as per the provisions of section 9(I)(vii) of the I.T. Act,1961.

3. The Appellant prays that the order of the Id. CIT (A) on the above ground(s) be set aside and that of the Assessing Officer restored."

4. Before we proceed to determine the respective Grounds of appeal, the brief background of the manner in which assessment has been made by Assessing Officer can be summarized as follows. The assessee before us is a foreign company incorporated in Abu Dhabi, United Arab Emirates (UAE). The assessee-company has been established in 1996 and is operating in the field of oil & gas construction industry. In the earlier years, assessee had been engaged in providing technical services as well as laying/installation of line pipes for three pipeline projects in Bombay High North field as a sub-contractor of M/s. Engineers India Ltd. The precise facts in relation to the disputes before

us relate to the earning from hiring of vessels to two concerns, namely M/s. Aracadia Shipping Ltd. and M/s. Leigthton Contractors India Pvt. Ltd. Firstly, assessee was owning a tug boat by the name of Valentine III, which it had given on hire to M/s. Aracadia Shipping Ltd. for Bombay High Offshore field at D1 location for the purpose of revamping/modification of ONGC D1 platform. The said tug boat has been given by the assessee on time charter basis including staff manning the boat, i.e., on wet lease basis for the period 1.11.2005 to 31.5.2006. For said hiring, assessee received a sum of USD 352413 as hire charges. Secondly, assessee has given another boat by the name of Zakher King to M/s. Aracadia Shipping Ltd. for the period 25.12.2006 to 31.3.2007 (contract continued till 7.5.2007) against which it received a sum of Rs.2,40,47,846/- as hire charges. The said boat was used by M/s. Aracadia Shipping Ltd. in the Mumbai High Offshore Field (Bassein field) for the purpose of topside modification of ONGC platform. The third vessel, namely Barge JU-251 was also given on hire to one M/s. Leigthton Contractors India Pvt. Ltd. for the period 10.11.2006 to 31.3.2007 (contract continued upto 6.6.2007), against which it received hire charges of Rs.11,77,55,535/-. This barge was used for offshore accommodation/construction activities near Jamnagar, Gujarat. In the return of income filed, the total sum of Rs.15,69,92,381/- earned by assessee on hiring out of aforesaid two boats and one barge was claimed as exempt in terms of Article 7 read with Article 5 of the Double Taxation Avoidance Agreement (DTAA) between India and UAE. Even in the assessment proceedings, assessee claimed that aforesaid earnings were by way of contractual receipts, which are in the nature of 'business profits' covered by Article 7 of DTAA between India and UAE

and, therefore, in the absence of any Permanent Establishment (PE) in India within the meaning of Article 5 of DTAA, such receipts were exempt. It was also pointed out that the said contracts were for a period of less than 9 months and, therefore, in the absence of any PE in India, the said earnings were not taxable in India in view of Article 7 read with Article 5 of DTAA between India and UAE.

5. The Assessing Officer for the reasons elaborated by him in paras 6 & 7 of the assessment order held that the assessee was not eligible to claim the benefit of DTAA between India and UAE. In nutshell, the stand of Assessing Officer was that assessee could not be considered as "liable to tax" as per India-UAE DTAA and thus could not be treated as a 'resident of contracting state' within the meaning of Articles 1 and 4 of the DTAA on the basis of the Residency certificate issued by the Ministry of Finance and Industry, UAE. Having held the assessee not eligible for the benefits envisaged under India-UAE DTAA, the Assessing Officer proceeded to examine the alternate plea of assessee that the impugned earnings be taxed in terms of Sec. 44BB of the Act. The claim of assessee was that with respect to the three contracts in question it was engaged in providing specialised vessels on charter-hire basis to be used in connection with prospecting for or extraction or production of mineral oils and, therefore, said earnings were liable to be taxed in terms of Sec. 44BB of the Act. In this manner, the alternate claim of assessee was that the earnings should be taxed at a deemed profit rate of 10% prescribed in Sec. 44BB of the Act. The said alternative plea of the assessee has also been negated by the Assessing Officer on the ground that assessee does not fulfil the conditions prescribed in

Sec.44BB of the Act. According to the Assessing Officer, from the details furnished it could not be satisfactorily proved that the vessels were indeed used by M/s. Aracadia Shipping Ltd. and M/s. Leigthton Contractors India Pvt. Ltd. for the purpose of prospecting of or extraction or production of mineral oils, which was a requirement of Sec. 44BB of the Act. In this manner, assessee's claim for assessment of the impugned income u/s 44BB of the Act was also rejected. Thereafter, the Assessing Officer held that such earnings were in the nature of Royalty in terms of Sec. 9(1)(vi) of the Act and, accordingly he treated the aforesaid earnings by way of hire charges as payments received by assessee for use of its commercial equipment as Royalty within the meaning of Sec. 9(1)(vi) of the Act. Accordingly, the receipts of Rs.15,69,92,381/- was taxed as Royalty @ 10% in terms of Sec. 115A of the Act.

6. The aforesaid assessment was carried in appeal before the CIT(A) on various Grounds. Firstly, the assessee canvassed that the Assessing Officer was not justified in denying the applicability of India-UAE DTAA while determining the tax liability. With regard to the revenue earned from M/s. Aracadia Shipping Ltd. for hiring of tug boat Valentine III and Zakher King, assessee contended that the Assessing Officer erred in denying the benefits of DTAA and alternatively contended that the income ought to have been assessed in terms of Sec. 44BB of the Act and not as Royalty within the meaning of Sec. 9(1)(vi) of the Act. With regard to the action of Assessing Officer in taxing the earnings from M/s. Leigthton Contractors India Pvt. Ltd. for the time charter hire of barge JU-251, assessee contended that the Assessing Officer erred in

denying the benefits of DTAA of India-UAE and that such income was wrongly assessed as Royalty u/s 9(1)(vi) of the Act. The CIT(A) has considered the aforesaid aspects. Inasmuch as the plea of assessee for applicability of provisions of India-UAE DTAA is concerned, the CIT(A) upheld the stand of assessee by following the earlier appellate order in assessee's own case for Assessment Year 2006-07. The CIT(A) held that assessee-company was eligible for the benefits of DTAA between India and UAE and that in view of the provisions of Sec. 90(2) of the Act, it was open for the assessee-company to chose between the taxation as per the India-UAE DTAA or as per the Act, whichever was more beneficial to it. Such decision of the CIT(A) has been challenged by the Revenue by way of additional Grounds of appeal no. 1 stated above.

7. Secondly, insofar as hire charges earned by assessee with respect to tug boats Valentine III and Zakher King to M/s. Aracadia Shipping Ltd. are concerned, CIT(A) held that so far as domestic taxation is concerned, i.e., under the Act, same is covered within the scope of taxation envisaged u/s 44BB of the Act and not as Royalty u/s 9(1)(vi) of the Act. So however, in the context of India-UAE DTAA, the CIT(A) disagreed with the stand of assessee that such earnings were to be considered as business profits within the meaning of Article 7 of DTAA. The CIT(A) has made out a case that Article 7 of DTAA would apply only to the profits earned from leasing of ship on a bareboat charter basis, i.e., without crew (on dry lease basis) whereas assessee-company had hired out its two boats on wet lease basis, i.e., including the crew. Therefore, he ruled out the applicability of Article 7 of DTAA between India and UAE. CIT(A) also referred to Article 8 of DTAA which covers

profits derived from operation of ships in international traffic and ruled out applicability of same since the tug boats of assessee were not operating in international waters. CIT(A) concluded that in terms of India-UAE DTAA, the impugned earnings fell within the scope of Royalty covered by Article 12(3) of the DTAA and, therefore, such earnings were taxable in India. Since the CIT(A) found that the tax liability under the domestic law, i.e., under the Act in terms of Sec. 44BB of the Act was more favourable than the tax laws under the DTAA, he invoked Sec. 90(2) of the Act and directed the Assessing Officer to tax the sum u/s 44BB of the Act. This decision of CIT(A) has been assailed by Revenue before us by way of additional Ground of appeal no. 2 stated above.

8. Now, insofar as the earning received by the assessee from M/s. Leigthton Contractors India Pvt. Ltd. for lease of barge JU-251 amounting to Rs.11,77,55,535/- is concerned, the CIT(A) held that assessee was not able to prove that the same was actually used by the hirer in connection with prospecting for or extraction or production of mineral oils in Jamnagar. According to the CIT(A), the barge was used for offshore accommodation of the employees of M/s. Leigthton Contractors India Pvt. Ltd. and was not directly involved in connection with prospecting of mineral oil. For the said reasons, he affirmed the stand of Assessing Officer to deny the taxation of such receipts in terms of Sec. 44BB of the Act. Instead, he upheld the stand of Assessing Officer that the income earned from hiring out of barge JU-251 fell within the scope of Article 12(3) of the DTAA between India and UAE and amounted to Royalty. It was also noticed by CIT(A) that since the tax liability under the DTAA and the domestic law would remain the

same as Royalty, the action of Assessing Officer of taxing the sum of Rs.11,77,55,535/- as Royalty income was affirmed. The said decision of CIT(A) of denying the taxability of sum of Rs.11,77,55,535/- earned from M/s. Leigthton Contractors India Pvt. Ltd. u/s 44BB of the Act has been assailed by the assessee by way of aforesaid additional Ground of appeal. Insofar as the two Grounds of appeal raised by assessee in its Memo of appeal are concerned, the same relate to the stand of assessee that earnings from lease of vessels to M/s. Aracadia Shipping Ltd. and M/s. Leigthton Contractors India Pvt. Ltd. are assessable as business profits within the meaning of Article 7 of India-UAE DTAA. Insofar as the Grounds of appeal raised by the Revenue in its Memo of appeal are concerned, the same arises from the action of CIT(A) in deleting the interest charged u/s 234B of the Act for shortfall in the payment of advance tax.

9. In the above background, we have heard the rival counsels and perused the relevant material on record.

10. Insofar as the issue relating to eligibility of assessee for benefit of DTAA between India and UAE is concerned, the said issue had come up before the Tribunal in the preceding Assessment Year of 2006-07 and vide order in ITA Nos. 8693 & 9238/Mum/2010 dated 19.3.2015, following the earlier decision of Tribunal dated 29.11.2013 in ITA No. 7616/Mum/2011, same was decided in favour of assessee. A copy of the said order has been placed on record and it was a common point between the parties that the precedents continue to hold the field as the same have not been altered by any higher authority. As a

consequence, the additional Ground of appeal no. 1 raised by Revenue is decided in favour of assessee and against the Revenue. Thus, Reveue fails on additional Ground of appeal no. 1.

11. The issues raised in additional Ground of appeal no. 2 of Revenue and the additional Ground of appeal raised by assessee relate to the same issue, namely application of Sec. 44BB of the Act in order to compute assessee's tax liability. Since the cross-grounds relate to the same issue, they have been taken up together.

12. At the time of hearing, the learned representative for the assessee pointed out that the stand of assessee that income from hiring of vessels be assessed in terms of Sec. 44BB of the Act has been in-principle, upheld by the Tribunal in Assessment Years 2005-06 and 2006-07, and in this regard he referred to the decision of Tribunal dated 19.3.2015 (supra) wherein the earlier decision of Tribunal for Assessment Year 2005-06 has been followed. Of course, it is seen that the said decision of Tribunal was rendered in connection with the income earned from laying and installation of pipelines in Bombay High North field. The incomes in the instant year are by way of hiring of vessels for use by the hirer in the business of prospecting for or extraction or production of mineral oils. It is pointed out that the CIT(A) made no mistake in treating the earnings from hiring of tug boats to M/s. Aracadia Shipping Ltd. as being eligible for taxation in terms of Sec. 44BB of the Act. In fact, as per the assessee, even the earnings from M/s. Leigthton Contractors India Pvt. Ltd. for hire of barge JU-251 should also be eligible for taxation in terms of Sec. 44BB of the Act. In

this context, the learned representative pointed out that in the subsequent Assessment Year of 2008-09, vide assessment finalised u/s 144C(3) r.w.s 143(3) of the Act dated 22.2.2011, the Assessing Officer has himself accepted that the earnings from hiring of vessels to M/s. Aracadia Shipping Ltd. and M/s. Leigthton Contractors India Pvt. Ltd. are liable to be assessed in terms of Sec. 44BB of the Act. In particular, it is pointed out that in Assessment Year 2008-09 the earning from M/s. Leigthton Contractors India Pvt. Ltd. was with respect to barge JU-251, which is also the subject matter of consideration in the instant year. Apart from the aforesaid, the learned representative pointed out that the decision of the Delhi Bench of the Tribunal in the case of *M/s. SBS Marine Ltd. in ITA No. 107/Del/2012 dated 13.2.2015* clearly covers the controversy in favour of assessee. It is pointed out that as per the Delhi Bench of Tribunal, even if it was found that the income was being derived by simply hiring of vessels, same would also be covered by the scope of Sec. 44BB of the Act. It is pointed out that in the present case, assessee had indeed leased out the vessels on wet lease basis. By referring to the decision Delhi Bench of Tribunal, it is sought to be pointed out that there was no requirement that the leased vessel should actually be used in the prospecting for or extraction or production of mineral oils and that it would be sufficient if such vessel is used for the purposes of business of prospecting for or extraction or production of mineral oils. In the context of understanding of Sec. 44BB of the Act provided by the Delhi Bench of the Tribunal, the learned representative pointed out that the CIT(A) ought to have held that even the receipts of Rs.11,77,55,535/- from hire of barge JU-251 to M/s.

Leigthton Contractors India Pvt. Ltd. was also to be taxed in terms of Sec. 44BB of the Act.

13. On this aspect, the ld. DR appearing for the Revenue has primarily relied upon the reasoning taken by the lower authorities, which we have already adverted to in the earlier paragraphs and is not being repeated for the sake of brevity.

14. We have carefully considered the rival submissions. Sec. 44BB of the Act deals with provision for computing profits and gains in connection with the business of exploration, etc. of mineral oils. Sec. 44BB of the Act seeks to provide a presumptive determination of profits and gains of businesses referred therein. It is applicable in the case of an assessee, being a non-resident, which is engaged in the business of providing services or facilities in connection with or supplying of plant and machinery on hire or to be used in prospecting for or extraction or production of mineral oils. In the instant, the case set-up by the assessee is that it has hired out two tug boats and a barge to M/s. Aracadia Shipping Ltd. and M/s. Leigthton Contractors India Pvt. Ltd. respectively to be used in the prospecting for or extraction or production of mineral oils. At pages 9 and 10 of Paper Book assessee has placed certificates issued by M/s. Aracadia Shipping Ltd., wherein it is confirmed that the two tug boats hired from the assessee have been used for the anchor handling operations at Bombay High Offshore field (basin field) and at Bombay High Offshore field (D1). In the context of the use of barge JU-251 hired out to M/s. Leigthton Contractors India Pvt. Ltd. at Jamnagar, assessee has furnished a Naval Security Clearance

Certificate dated 17.1.2007, copy of which has been placed at page 78 of the Paper Book. The Naval clearance prescribes that barge JU-251 at Jamnagar is cleared for operations relating to pipeline laying and SPM installation, pre-commissioning and commissioning work. On the basis of the aforesaid, the case of assessee is that all the three vessels hired out have been used in the business of prospecting for or extraction or production of mineral oils and, therefore, such earnings ought to have been taxed in terms of Sec. 44BB of the Act. We find that on the basis of aforesaid, CIT(A) has concluded that only so far as the earnings from M/s. Aracadia Shipping Ltd. are concerned, the same are eligible for taxation in terms of Sec. 44BB of the Act and not the earnings from M/s. Leigthton Contractors India Pvt. Ltd. With regard to the earnings from M/s. Leigthton Contractors India Pvt. Ltd., the CIT(A) found that the hired barge was used for offshore accommodation/construction activities at Jamnagar, which was an activity "*not directly involved*" in connection with prospecting for or extraction or production of mineral oils.

15. Insofar as the earnings from M/s. Aracadia Shipping Ltd. is concerned, in our view, the fact-situation clearly brings out that the tug boats have been used in connection with prospecting for or extraction or production of mineral oils. The finding of CIT(A) in this regard is supported by not only the certificate issued by M/s. Aracadia Shipping Ltd., but also by the terms of arrangement of hiring with the said concern. Copies of such arrangements have been placed in the Paper Book at pages 1 to 4. In the absence of any cogent material brought out

by the Revenue, we hereby affirm the said finding of CIT(A) and accordingly, Revenue fails on this aspect.

16. Now, we may take up the plea of assessee with respect to the earnings from M/s. Leigthton Contractors India Pvt. Ltd. for hiring of barge JU-251. As per the terms of arrangement, copy of which is placed at pages 5 and 6 of Paper Book, the said vessel has been used for offshore accommodation/ construction activities at Jamnagar. As per the Revenue, use of the vessel for "offshore accommodation/construction activities" does not fall within the scope of Sec. 44BB of the Act. In our considered opinion, the factum of the vessel being used for the business of operation of prospecting for or extraction or production of mineral oils is enough to cover it within the scope of Sec. 44BB of the Act and that the phraseology of Sec. 44BB of the Act does not envisage only direct use of the plant and machinery in the prospecting for or extraction or production of mineral oils. In this context, we may refer to the decision of the Authority for Advance Ruling (AAR) in the case of *Lloyd Helicopters International Pty Ltd., 249 ITR 162 (AAR)* wherein even the income derived from providing of helicopter to facilitate operation of extraction and production of mineral oil was held to be eligible for assessment Sec. 44BB of the Act. In the instant case, it is not in dispute that the assessee is indeed engaged in the business activity of providing facilities and/or services in connection with prospecting for or extraction or production of mineral oils and, therefore, hiring of barge JU-251 is done in the course of such business by the assessee. The ratio of the decision of Delhi Bench of Tribunal in the case of M/s. SBS Marine (supra), which has been relied

upon by the assessee before us is also to the same effect. In this context, we may reproduce hereinafter the relevant discussion in the order of Tribunal dated 13.2.2015 (supra) :-

> *"20. Be that as it may, even if one were to consider that the assessee was engaged in simple hiring of vessels, the same, in our opinion, would still be covered by the second limb of section 44BB which deals with supplying plant and machinery on hire used or to be used in the prospecting for or extraction or production of mineral oils. As per the Explanation to section 44BB, the term 'plant' includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business. Thus, an aircraft or vehicle given on hire and used / to be used in the prospecting for or extraction or production of mineral oil is an eligible activity under section 44BB. There can be no dispute that an aircraft or a vehicle cannot be directly used in the prospecting for or extraction or production of mineral oils. Thus, section 44BB does not envisage direct use of the plant or machinery in the prospecting for or extraction or production of mineral oil. It is sufficient if the plant or machinery is used for the purposes of the business of prospecting for or extraction or production of mineral oil.*
>
> *21. In Lloyd Helicopters International Pty. Ltd., In re (249 ITR 162), the Authority for Advance Ruling ruled that the consideration received by the assessee from Command Petroleum India Pty. Ltd. by way of a charter hire for providing helicopters for transporting men and material to an offshore location would be governed by the provisions of section 44BB. In WavefieldInsesis ASA In re: (320 ITR 290), the Authority for Advance Ruling held that the charter hire payable by Wavefield to P.F. Thor for taking on hire a chase vessel which was used by Wavefield in providing seismic services to ONGC would have to be assessed in terms of section 44BB and, therefore, Wavefield would be justified in deducting taxes at source from payment made to P.F.Thor at the rate of 4.23%. Similarly, in Siem Offshore Inc. In re: (337 ITR 207) the Authority for Advance Ruling held that the*

consideration received for providing marine logistic services have to be dealt under section 44BB.

22. The revenue has unduly stressed on the word 'in the' forming part of the expression 'supplying plant and machinery on hire used, or to be used, in the prospecting for or extraction or production of, mineral oils' A plain reading of the above expression only provides that the assessee should be engaged in the business of supplying plant and machinery on hire and such plant or machinery are used or to be used in the prospecting for or extraction or production of, mineral oils. The activity for which the plant or machinery are used or to be used is the only criteria and that activity is prospecting for or extraction or production of, mineral oils. There is no requirement under section 44BB that the services or facilities or supplying of plant and machinery should be provided only to the main person who is engaged in prospecting for or extraction or production of, mineral oils i.e., ONGC in the present case. In other words, the applicability of section 44BB is not only restricted to the assessee (first leg contractors) who has directly entered into a contract with the person who is engaged in prospecting for or extraction or production of, mineral oils i.e., ONGC in the present case. The revenue's argument is that the words 'used or to be used' are used in terms of the 'Plant and Machinery' and not to specify the person who shall use it, i.e. the clause 'used, or to be used' is in conjunction with the clause 'in the prospecting for, or extraction or production of, mineral oils'. This argument actually support the case of the assessee since what really matters is the activity for which the plant and machinery is used i.e., prospecting for or extraction or production of, mineral oils irrespective of who uses the plant and machinery whether (it is used) by first leg contractors i.e., hirers, or by the person actually engaged in prospecting for, or extraction or production of, mineral oils i.e., ONGC in the present case.

23. Further, there is no requirement of a direct contract or agreement with the person actually engaged in prospecting for, or extraction or production of, mineral oils as canvassed by the revenue for the applicability of section 44BB. One may refer other provisions

of the statue which insists on an agreement. For instance, section 42 deals with allowances allowable in computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation which the Central Govt. has entered into an agreement. Section 80IA(4)(i)(b) provides that the enterprise carrying on the business of developing, operating and maintaining any infrastructure facility has to enter into an agreement with the Central Government of a State Govt. or a local authority etc. In the absence of any requirement in section 44BB that the person providing services, facilities or plant and machinery on hire should have directly entered into a contract or agreement with the person actually engaged in prospecting for or extraction or production of, mineral oils, one cannot curtail the scope or applicability of section 44BB to second leg contractors whose contracts or agreements are with first leg contractors but whose services or facilities or plant and machinery are used in connection with prospecting for or extraction or production of, mineral oils as required under section 44BB. The Hon'ble Supreme Court in ICDS Ltd v CIT [2013] 350 ITR 527 held that the assessee leasing the vehicles to others who use the said vehicles in their business of running them on hire is entitled for higher rate of depreciation on the vehicles given on lease. It was held by the Hon'ble Supreme Court that the lessor need not himself use the vehicles in the business of running them on hire. The rationale of the aforesaid decision of the Supreme Court may be applied in the context of section 44BB in as much as section 44BB does not mandate that the assessee should directly enter into contract with the person engaged in the business of prospecting for or extraction or production of, mineral oils or the services or facilities or plant and machinery on hire should be directly provided to the said person alone. We have already given a finding of fact that the services and facilities provided by the assessee along with plant and machinery are used in offshore drilling operations i.e., the activity of prospecting for or extraction or production of mineral oils. Consequently, the requirements of section 44BB are satisfied in the present case.

24. In view of the above, there is no merit in the contentions of the revenue that the assessee is not an eligible assessee under section

44BB since it has not directly entered into contract with the ONGC and it is not undertaking the activities specified in section 44BB itself and being second leg contractors they are not eligible under section 44BB."

Therefore, following the aforesaid precedent and the phraseology of Sec. 44BB of the Act, in our considered opinion, even the earnings from hiring of barge JU-251 to M/s. Leigthton Contractors India Pvt. Ltd. are eligible for assessment u/s 44BB of the Act. In coming to such a conclusion, we are also conscious of the stand of Assessing Officer as manifested in the assessment order for Assessment Year 2008-09, wherein hiring receipts from M/s. Leigthton Contractors India Pvt. Ltd. on account of hire of barge JU-251 in terms of same contract have been accepted to be assessable u/s 44BB of the Act. Therefore, considering the facts and circumstances of the case, we allow the additional Ground raised by assessee that the amount of Rs.11,77,55,535/- received from M/s. Leigthton Contractors India Pvt. Ltd. is also liable to be taxed in terms of Sec. 44BB of the Act. Thus, assessee succeeds on its additional Ground of appeal.

17. Now, we may take up the respective Grounds raised in the original Memos of appeal. In the appeal of Revenue, the only issue is with respect to the interest charged u/s 234B of the Act, which has been directed to be deleted by the CIT(A). In this context, it was a common point between the parties that a similar Ground was raised by the Revenue in Assessment Year 2006-07, which has been dismissed by the Tribunal vide order dated 19.3.2015 (supra). Notably, in terms of the judgment of Hon'ble Bombay High Court in the case of *DIT(IT) vs.*

NGC Network Asia LLC, 313 ITR *187 (Bom.)*, wherein following the decision of the Hon'ble Uttarakhand High Court in the case of *CIT vs. Sedco Forex International Drilling Co. Ltd. & Ors., 264 ITR 320 (Uttaranchal)*, it has been held that where the duty is cast on the payer of income to deduct tax at source, the failure of the payer to do so would not result in imposition of interest u/s 234B of the Act in the case of the assessee recipient. Thus, following the judgment of Hon'ble Bombay High Court in the case of *DIT(IT) vs. NGC Network Asia LLC (supra),* the decision of CIT(A) on this aspect is affirmed and accordingly, Revenue fails on this aspect.

18. In the result, insofar as appeal of Revenue is concerned, the same is dismissed.

19. In the appeal of assessee, the two Grounds raised in the Memo of appeal have not been seriously pursued at the time of hearing and are accordingly dismissed.

20. Resultantly, whereas the appeal of assessee is partly allowed, that of the Revenue is dismissed.

Order pronounced in the open court on 18th January, 2017.

Sd/-	Sd/-
(JOGINDER SINGH)	**(G.S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Date : 18th January, 2017

SSL

Copy to :

1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, "L" Bench, Mumbai
6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai