IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No.-1967/Del/2014
(Assessment Year: 1995-96)

DCIT Circle-1, Dehradun	vs	Oil & Natural Gas Corporation Ltd. Corporate Tax Division, Tel Bhawan, Dehradun. AAACO1598A
Assessee by		**Sh. Ajay Vohra, Sr. Adv.** **Mr. Gaurav Jain, Adv.** **Ms. Manisha Sharma, Adv.**
Revenue by		**Ms. Shefali Swaroop, CIT DR**

Date of Hearing	**13.09.2017**
Date of Pronouncement	**26.09.2017**

ORDER

PER SHRI K.N. CHARY, JUDICIAL MEMBER

Revenue is in appeal before us challenging the order dated 16.01.2014 in appeal no. 172/DDN/2007-08 passed by the Ld. Commissioner of Income Tax (Appeals)-I, Dehradun (hereinafter for short called as the "Ld. CIT (A)"), on the following grounds:

1. *"The Ld.CIT (Appeals) erred in law and on facts in holding that the income arising from transfer of petroleum exploration/ mining rights by ONGC to certain private companies was assessable not under the head "Profit & Gains of business or profession" but under the head "Capital Gains". Since the cost of acquisition of the rights had been claimed as revenue expenditure, the*

consideration accruing on transfer of the same had been correctly treated as revenue receipt and taxed as part of profit of business by the AO.

2. *Even while holding that the income arising from transfer of petroleum exploration/mining rights by ONGC to certain private companies was assessable under the head "Capital gains". The Ld. CIT (A) erred in holding that the 'book value' of the assets of the business in question had to be deducted from the amount of 'signature bonus'. The asset transferred was exploration/mining rights; not the asset of business. Hence, even if the income had to be taxed as capital gains, it was the cost of acquisition of such rights that was to be deducted from full value of consideration arising on transfer of such rights by the assessee.*
3. *Even if the assets of the business had been transferred, it was the 'written down value' not the 'book value' of the assets that could be deducted. In this case, the assessee was capitalizing the cost of exploration/development in the books of account but was claiming deduction for the same u/s 42 of the I.T. Act. Hence, for purposes of Income Tax, a substantial part of those assets had not been capitalized at all."*

2. Briefly stated facts are that the assessee was granted a mining lease to mine petroleum for 20 years effective from the date 01.01.1987 in respect of Basing Offshore Area vide Ministry of Petroleum dated 10.10.1985, in respect of Mukta Field Area effective from 15.11.1990 vide letter dated 24.06.1991. Vide letter dated 03.07.1992 of the Joint Secretary, Ministry of Petroleum, the assessee intimated the proposal of Joint Venture Development in field of Mukta Panna in western offshore and Ravva in the Krishna Godawari Offshore India on the condition of the companies paying the assessee in consideration of the right to commence and carried out exploration and drilling activities. Assessee agreed with the

other companies to receive 40% of the share in the production and in addition to the sum of certain amounts depending upon the achievement of certain level of production. During the AY 1995-96, assessee received a sum of Rs. 219.76 crores as 'Signature bonus' for demitting 60% share in the oil fields and the AO treated the same as Revenue receipt and brought it to tax. However, in appeal Ld. CIT (A) held that the transfer by the assessee was a Revenue yielding asset i.e. the oil mines and that any transfer of capital asset would lead to capital gain or capital loss but in so far as this particular case on hand is concerned what the assessee received was Rs. 219.76 crores for transfer of 60% of shares in the oil fields the book value of which was 882.86 crores, as such, the transaction did not lead to any capital gain. On this premise, Ld. CIT (A) allowed the appeal of the assessee and deleted the addition of Rs. 2,19,75,65,000/- made by the AO. Thus, Revenue is before us in this appeal aggrieved by the impugned order.

3. It is the argument of the Ld. DR that the amount of Rs. 219.76 crores was received by the assessee in the course of business activities because the business for which joint operating

agreement was entered into was already yielding Revenue to the assessee and the assessee would have also claimed expenses u/s 42(1) of the Act in respect of the Revenue of these fields, and the signature bonus received by the assessee is nothing but a payment towards the compensation to the assessee for the profit it was supposed to lose as a consequence of production sharing contract. She further supported the assessment order stating that by a transfer of the oil fields the assessee has not sold any asset, nor the source of business of the assessee seized to exist. On this premise, Ld. DR submits that the surplus lumpsum so received by the assessee was liable to tax as Revenue receipt. Per contra, Ld. AR supported the impugned order on two grounds. Firstly, the so called transfer of remaining rights in three oil fields by the assessee agreeing to receive 40% of signature bonus does not result in any capital gain in as much as, as observed by the Ld. CIT (A) as against the 60% of shares in the oil fields book worth of which is about 882.86 crores, the assessee received only a sum of Rs. 219.76 crores. Secondly, he submitted that here what was transferred was an ongoing concern with all the lock, stock and barrel including the employees and all other attendant and

ancillary maters, as such, this type of slump sale transaction cannot be brought to tax because there were no computation provisions prior to 1.4.2000 that could be brought to tax as capital gains the consideration received in slump sale. He placed relied on the decision reported in PNB Finance Ltd. vs. Commissioner of Income Tax (2008) 307 ITR 75 (SC) & CIT vs. DLF Ltd. 2017-TIOL-1818-HC-DEL-IT.

4. As could be seen from the record, it is evident that ONGC transferred 60% of rights in three fields to receive the signature bonus and the commercial activities have already been started at those three fields. As rightly held by the Ld. CIT (A) when the Revenue yielding ongoing concern was transferred there will only be capital gain or capital loss and the observation of the AO that since the joint operating agreement was entered into in respect of a business which is already yielding Revenue the amounts received by the assessee are Revenue in nature is not correct. Record does not support the observation of the AO that the signature bonus was a payment towards compensation to the assessee for the profit which it loses, as a consequence of production sharing contract.

Signature bonus was received by the assessee in lieu of the transfer of 60% of rights in the oil fields, as such, by no stretch of imagination could it be said that the receipts on that account would be to receive the compensation for loss or profit. Under the joint operation agreement ONGC surrendered 60% of the rights to the other companies agreeing to receive signature bonus. We, therefore, hold that the amount of Rs. 219.76 crores received by ONGC is for transfer of 60% of shares in the Revenue yielding oil fields, as such, is capital in nature.

5. Here in this case, the transfer was in the nature of slump sale and as is held by the Hon'ble Apex Court in PNB Finance Ltd. (supra) while referring to the decision in CIT vs. B.C. Sriniwas Shetty (1981) 128 ITR 294, and holding that the ratio of Artex Manufacturing Co. (1997) 227 ITR 260 (SC) has no application to the facts of the case and prior to 1.4.2000 there was no computation provision that could be brought to tax as capital gains the consideration received in slump sale. The Hon'ble Jurisdictional High Court followed this principle in CIT vs. DLF Ltd. (supra). While respectfully following the same, we are of the

considered opinion that the amount of Rs. 219.76 crores received by the assessee as signature bonus for demitting 60% shares in the three oil fields cannot be brought to tax. Even otherwise, as is held by the Ld. CIT (A) in this matter the transaction did not result in any capital gain in as much as by demitting 60% of share in three oil fields the book value of which is Rs. 882.86 crores the assessee received only a sum of Rs. 219.76 crores. Viewing from any angle the amount received by the assessee as signature bonus is not liable for tax. We, therefore, dismiss the grounds of appeal of the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.09.2017

Sd/-	Sd/-
(N.K. SAINI)	**(K.N. CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 26.09.2017
*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

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