

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6536/Del/2014
Assessment Year: 2011-12

DCIT Circle II International Taxation Dehradun	Vs	Western Geco International Ltd. C/o SRBC & Association LLP 4th & 5th Floor, Plot No.2B, Noida 201304 PAN No.AAACW4324J
(APPELLANT)		(RESPONDENT)

ITA No.6436/Del/2014
Assessment Year: 2011-12

Westerngeco International Ltd. 14th Floor, Tower C Building No.10, DLF Cyber City, Phase-II, Gurgaon-122002 PAN No.AAACW4324J	Vs	DDIT International Taxation Dehradun
(APPELLANT)		(RESPONDENT)

Appellant by	Mohd. Gaysuddin Ansari, CIT DR
Respondent by	Sh. Salil Kapoor, Advocate

Date of hearing:	29/05/2023
Date of Pronouncement:	31/05/2023

ORDER**PER N. K. BILLAIYA, AM:**

ITA No.6436/Del/2014 and 6536/Del/2014 are cross appeals by the assessee and the revenue preferred against the order of the CIT(A)-2, Dehradun dated 23.09.2014 pertaining to A.Y.2011-12.

2. On account of difference of opinion between the Learned AM and Learned JM of ITAT, C Bench, New Delhi this matter was referred to the learned third member of ITAT for consideration and disposal u/s. 255(4) of the Act by the Hon'ble President ITAT.

3. The Learned third member ITAT vide order dated 30.09.2022 considered the following questions arising from the difference of opinion between two differing members in this case :-

“1. Whether, in view of the facts and circumstances of the case and in law, the revenue received by the assessee on account of provision of facilities and services of seismic data acquisition, planning and carrying out of pre-survey study, taking marine data and confirming prospects, maintenance/ upgrading/support of software licenses etc, is taxable as FTS u/s. 44DA r.w.s. 9 (1)(vii) or is taxable under Section 44B of the Income Tax Act, 1961 (‘the Act’) ?

2. Whether, the amount received as reimbursement of ‘service tax’ includible in gross turnover for the purpose of

computing taxable income under Section 44BB of the Act ?”

4. After hearing the arguments of both the sides the Learned third member held as under :-

“35. Having regard to all the facts of the case and keeping in view the legal position emanating from the judicial pronouncements as discussed above, I am of the view that the revenue received by the assessee company during the year under consideration on account of provision of facilities and services of seismic data acquisition, planning and carrying out of pre-survey study, taking marine data and confirming prospects, maintenance/ upgradation / support of software licenses, etc, is not in the nature of fees for technical services as the same is covered by the exclusion provided in Explanation (2) to Section 9 (1) (vii) of the Act being consideration received for “mining or like projects” and the same, therefore, is not taxable under Section 44DA of the Act. The said services or facilities provided by the assessee actually are inextricably connected with prospecting for, or extraction or production of, mineral oils as held by the Hon’ble Supreme Court in the case of ONGC (supra) under the similar facts and circumstances and the revenue received for the same accordingly is taxable under Section 44BB of the Act.

36. As regards the issue involved in question No.2, the learned representatives of both the sides have agreed that the same is squarely covered in favour of the assessee by the

decision of the Hon'ble Uttarakhand High Court in the case of Director of Income-tax International Taxation Vs. Schlumberger Asia Services Ltd. [2019] 414 ITR 1, wherein it was held that the amount reimbursed to assessee (service provider) by ONGC (service recipient), representing service tax paid earlier by assessee to Government of India, not being an amount paid to assessee on account of providing services and facilities in connection with prospecting for, or extraction or production of, mineral oils in India, would not form part of aggregate amount referred to in clauses (a) and (b) of sub-section (2) of Section 44BB of the Act. To the similar effect is the decision of Hon'ble High Court in the case of Director Income-tax Vs. Mitchell Drilling International (P.) Ltd. [2016] 380 ITR 130 (Del.), wherein it was held that the service tax collected by the assessee for passing it on to Government was not to be included in gross receipt in terms of Section 44BB(2) read with Section 44BB (1) of the Act for the purpose of computing presumptive income of the assessee under Section 44BB of the Act. Respectfully following the decision of Hon'ble Jurisdictional High Court in the case of Schlumberger Asia Services Ltd. (supra) as well as that the Hon'ble Delhi High Court in the case of Mitchell Drilling International (P.) Ltd. (supra), I hold that the amount received by the assessee in the present case as reimbursement of service tax is not including in the gross turnover for the purpose of computing taxable income under Section 44BB of the Act.

37. *I accordingly agree with the view taken by the learned judicial Member on both the issues and answer both the*

questions referred under Section 255 (4) of the Act in favour of the assessee.”

5. In the light of the decision of the learned third member the captioned cross appeals are decided in favour of the assessee and against the revenue.

Order pronounced in the open court on 31.05.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .05.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi