आयकर अपीलीय अधिकरण, देहरादून पीठें, देहरादून
INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN BENCH, DEHRADUN

BENCH: 'DB'

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 139/DDN/2025 (निर्धारण वर्ष/Assessment Year: **2020-21**)		
HALLIBURTON OFFSHORE SERVICES INC 6TH FLOOR, UNIT NO. 603, SATELITE GAZEBO, GURU HARGOBINDJI MARG, ANDHERI EAST MUMBAI, CHAKALA MIDC S.O, MUMBAI, MAHARASHTRA, INDIA, 400093	**Vs.**	**DEPUTY COMMISSIONER OF INCOME TAX** CIRCLE-1, INTERNATIONAL TAXATION, INCOME TAX OFFICE, SUBHASH ROAD DEHRADUN-248001, UTTARAKHAND
अपीलार्थी / **Appellant**		प्रत्यर्थी / **Respondent**
PAN of Assessee: **AAACH5154M**		

With **ITA No. 174/DDN/2025** (निर्धारण वर्ष/Assessment Year: **2020-21**)		
DEPUTY COMMISSIONER OF INCOME TAX 13-A, SUBHASH ROAD, INCOME TAX OFFICE,DEHRADUN-248001, UTTARAKHAND		**HALLIBURTON OFFSHORE SERVICES INC** 6TH FLOOR, UNIT NO. 603, SATELITE GAZEBO, GURU HARGOBINDJI MARG, ANDHERI EAST MUMBAI, CHAKALA MIDC S.O, MUMBAI, MAHARASHTRA, INDIA, 400093
अपीलार्थी / **Appellant**		प्रत्यर्थी / **Respondent**

Assessee represented by:	**Sh. Salil Kapoor (Adv), Sh. Amit Arora (CA), Ms. Ananya Kapoor (Adv), Ms. Soumya Singh (Adv) and Ms. Sejal Arora (Adv)**
Revenue represented by:	**Sh. Tvara Misra, JCIT**

सुनवाई की तारीख / Date of conclusion of hearing:	**17-Aug-2026**

घोषणा की तारीख / Date of pronouncement:	**21-Oct-2026**

आदेश / ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:

The above filed cross appeals by the assessee as well as by the Revenue are directed against the order of the learned Commissioner of Income Tax, Appeal CIT(A), Noida-2 dated 23.06.2025 arising from the assessment order dated 27.05.2022 passed under section 143(3) r.w.s 144C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by DCIT, (Intl. Taxn.) Circle-1, Dehradun for Assessment Year 2020-21.

2. Since common issues are involved in both the appeals therefore, for the sake of convenience, these appeals are clubbed together for the purpose of hearing and adjudication.

3. Grounds of appeal filed by the assessee in ITA No.139/DDN/2025 are as under:

> ***"Ground No. 1 Revenues in respect of contracts for provision of services and facilities in relation to prospecting/ extraction and production of oil and gas in India held to be in the nature of Fees for Technical Services/ royalty***
>
> *On both the facts and as per the law the Ld. AO erred in holding that the revenues in respect of contracts with the Directorate General of Hydrocarbons to be categorized as fees for technical services/ royalty of the Act without appreciating that the activities are inextricably linked with the oil and gas exploration and production and thus, clearly falls under the ambit of Section 44BB of the Act.*
>
> *In doing so the Ld. AO has ignored the decision of the Honorable Supreme Court in the case of Oil and Natural Gas Corporation Ltd. Vs CIT. [2015] 59 taxmann.com 1 (SC).*

Ground No. 2 – Determination of Income at an arbitrary rate of 25 per cent

On the facts and circumstances of the case the Ld. AO erred in law in holding that the income of the appellant to be chargeable to tax under section 44DA of the Act applying an arbitrary profit rate of twenty-five per cent without any factual or legal basis.

In doing so, Ld. AO has failed to appreciate that the estimation of income should be done at maximum of ten per cent of gross contractual revenues as it is the effective safe harbour estimation rate prescribed by the Income-tax Act for the oil and gas exploration and production service providers.

Ground No. 3 – Interest on income-tax refund held chargeable to tax at Maximum Marginal Rate of 40 per cent

On the facts and circumstances of the case, the Ld. AO has erred in holding that the receipts aggregating to INR 68,375,838 on account of interest on Income-tax refund be taxed at Maximum Marginal Rate of 40 per cent as opposed to the claim of appellant that the same be taxable at the rate of 15 per cent in terms of Article 11 of India-USA Double Taxation Avoidance Agreement."

4. Grounds of appeal filed by the Revenue in ITA No.174/DDN/2025 are as under:

"1. Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in overlooking that the assessee was engaged in consulting services and thus, these services did not fall in the exclusion clause of section 9(1)(vi) and 9(1)(vii) of the Act, in distinction to the lead case of Foramer inter alia covered by the Hon'ble Apex Court in ONGC case where the dominant purpose of the contract was prospecting, extraction or production of mineral oil, the ancillary works were held to be covered by the exclusion provided in explanation to section 9(1)(vii) of the Act.

2. Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in ignoring the nature of activities and scope of work as per the contracts of the assessee thus arriving at conclusion that the receipts of the assessee were not in the nature of FTS u/s 9(1)(vii) of the Act.

3. Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in failing to note that the Memorandum to Finance Bill 2010 makes it clear that any service which falls within the ambit of 44DA, even if it is in connection with

prospecting for, or extraction or production of mineral oils as stipulated in section 44BB, has to be assessed u/s 44DA of the Act.

4. *Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in allowing the appeal of the assessee by completely overlooking the amended provisions of section 9(1)[vii), 44AB, 44DA of the Act, which were applicable to the assessment year under consideration.*

5. *Whether on the fact and circumstances of the case and in law, the CIT(A) has erred in ignoring the finding of Hon'ble Delhi High Court in the case of Paradigm Geophysical Pty. Ltd. Vs. CIT(IT)-3, New Delhi that the judgment of Hon'ble Supreme Court has been discussed in the ONGC case and it has been made amply clear that the nature of receipts in lieu of a contract is defined by the nature of specific activity.*

6. *Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in allowing the appeal of the assessee by allowing the services being nature of mining and to be taxable u/s 44BB of I.T. Act.*

7. *Whether on the fact and in the circumstances of the case and in law, the CIT(A) has erred in ignoring the fact brought into by the AO that the comparables relied upon by the assessee were functionally different form the activities/sale carried out by the assessee.*

8. *Whether on the fact and in the circumstances of the case and in law, the CIT(A) was erred in ignoring the facts that the average profit rate of last 3 years of Global Account Statement has been taken as per provisions of Rule 10 of Income Tax Rule, 1962 and data has been provided by the assessee.*

9. *Whether on the fact and in the circumstances of the case and in law, the CIT(A) was erred in ignoring the facts that the assessee generates profit from sale is attributable to the business connection in India. The assessee with the situs of contract in India and sale concluded in India that the risk over the goods stayed over the assessee up to the delivery. which did not pass outside India. All essential certificates from DGH (Director General Hydrocarbon) to be obtained in India and Inspection of goods concluded in India.*

10. *Whether on the fact and in the circumstances of the case and in law, the CIT(A) was erred the ignoring the facts that the Hon'ble ITAT in the appeal of the assessee in ITA No.5894/Del/2017 for A.Y. 2013-14 and CO. No.132/Del/2018 (in ITA No.1883/Del/2018) for A.Y. 2014-15 has restored the issue to the AO for re-examination on the issue of taxability of supply.*

11. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal."

5. The brief facts of the case are that the assessee is engaged into providing drilling fluid services, coring services, completion services, tubing and perforation services, liner hanger services, open hole logging services, cementing services, supply of drilling bits, provision of open well consultancy services, services to operate real time operating centre, services for logging unit & tools, consultancy services for field development plan, provision of drilling software, assisting DGHC for preparation of NDR and software AMC services etc. The Assessee filed its return of income declaring income of 2,02,58,30,750/- on 15.02.2021.

6. The assessee has declared gross revenues from Contracts for Rs.24,80,75,54,579/- from which the assessee has deducted the following receipts:-

a. Service Tax amounting to Rs. 2,44,29,02,242/-
b. Lost in hole amounting to Rs. 70,79,30,446/-
C. Offshore sales amounting to Rs. 264,89,73,124/-

Thus a total amount of Rs.579,98,05,811/- has been deducted to arrive at total receipts of Rs. 19,00,77,48,762/- on which the assessee has applied deemed profit rate of 10% of such total receipts and

income of Rs. 190,07,74,876/- has been computed u/s 44BB I.T. Act, 1961.

7. Apart from the contractual receipts, the assessee has declared Income on account of interest u/s 244A from other sources in the nature of Interest on income tax refund which has been offered for tax @ 15% in accordance with Article 11 of India- US DTAA.

8. The AO has proposed a draft assessment order Rs 2,54,50,86,760/- u/s 143(3)/144C and upon approval from DRP, passed the final order on 31.03.2022 as per provision of section 44BB of the Act. The Ld. AO has taxed the Revenue earned from all services except consultancy services for field development plan, assisting DGHC for preparation of NDR income as taxable as per provision of section 44BB. The AO has further assessed the Consultancy services for field development plan, assisting DGHC for preparation of NDR as taxable as Fees for technical services as per provision of section 115A/44DA. The AO has also taxed the Offshore supplies as income u/s 44BB and has taxed the Interest on income tax refund @ maximum marginal rate of 40% as against 15% offered by the assessee.

9. On the issue of taxability of contract revenues u/s 44BB, upon appeal, the CIT(A) following the decision of Hon'ble Supreme Court in the case of ***ONGC vs. CIT*** 376 ITR 306 (civil appeal no. 1535 of 2008 pertains to assessee) and decision of Hon'ble ITAT allowed the appeal

of the assessee and has held that revenue earned by the assessee from consultancy services for preparation of field development plan shall be taxable as per provision of section 44BB of the Act.

10. On the issue of taxability of Interest on Income tax refund, Ld. AO has taxed the interest on income tax refund at maximum marginal rate of 40% instead of rate of 15% as per Article 11 of the DTAA with USA. Upon appeal, the CIT(A) followed the ruling of Hon'ble Uttarakhand High Court in the case of ***BJ Services ME Limited*** and held that the interest on income tax refund shall be treated as business income under Article 7 of the DTAA and be taxed as per maximum marginal rate.

11. The ground 1 to 6 of Revenue as well as ground 1 & 2 of the Assessee, before us, is on the issue of whether income of the assessee shall be taxed as per provision of section 44BB or not. At the outset, the ld counsel of the assessee submitted that the impugned issue has been decided by Hon'ble ITAT in favour of the Assessee for the A.Y 2005-2006, 2007-2008, A.Y 2008-2009, A.Y 2009-2010, A.Y 2010-2011 (CO No.148/Del/2014 in ITA No. 5936/Del/2013) and A.Y 2011-2012 wherein the Hon'ble ITAT follows the order of Hon'ble Supreme Court and held that entire revenue earned by the assessee company shall be taxable as per provision of section 44BB of the Act. The ld AR further mentions that the Ld. Assessing officer has accepted the taxability of

entire revenue as per provision of section 44BB in the A.Y 2005-2006, A.Y 2007-2008, A.Y 2008-2009, A.Y 2009-2010, A.Y 2010-2011 and A.Y 2011-2012 as no appeal is filed before the Hon'ble High Court against the favorable order of Hon'ble ITAT on impugned issue.

12. The ld AR further stated that the Hon'ble ITAT in the Assessee case for the A.Y 2013-2014 & A.Y 2014-2015 follows the order of Hon'ble Supreme Court & Third Member decision of Hon'ble ITAT, and has held that revenue earned by the assessee company on account of provision of provision of drilling software and AMC services etc. shall be taxable as per provision of section 44BB of the Act. Further, Hon'ble ITAT in the Assessee for the A.Y 2016-2017, A.Y 2017-2018 & A.Y 2018-2019 follows the order of Hon'ble Supreme Court & Third Member decision of Hon'ble ITAT and has held that revenue earned by the assessee company on account of provision of provision of drilling software and AMC services etc. shall be taxable as per provision of section 44BB of the Act.

13. Ground No.3 of assessee regarding whether interest on income tax refund earned by the assessee shall be taxed as per provision of DTAA or maximum marginal rate as per Act, the ld AR submitted that the impugned issue is decided in favour of the assessee company following cases.

1. ACIT vs. Clough Engineering Ltd. [2011] 11 taxmann.com 70 (Delhi) (SB)
2. Bechtel International Inc. vs ADIT, in ITA 5198/Mum/2010 (Mumbai ITAT)
3. DHL Operations B.V vs DIT in ITA 183/Mum/2010 (Mumbai ITAT)
4. DIT vs DHL Operations B.V in ITA No. 431 of 2012 (Bombay High Court)
5. DIT vs Credit Agricole Indosuez (2015) 377 ITR 102 (Bombay High Court)
6. Aker Solutions India SDN BHD v. DCIT (IT Appeal No. 1004 (Mum) of 2022, dated 7-11-2022) (Mum - Trib.).
7. MSC Mediterranean Shipping Company, S.A. v. Dy. DIT (International - Taxation) [2015] 59 taxmann.com 264/154 ITD 478 (Mum-Trib.) - Approved by Hon'ble Bombay HC Pr. CIT v. Mediterranean Shipping Co. [IT Appeal No. 896 of 2016, dated 14-1-2019).
8. International Global Networks BV v. Dy. DIT [2012] 19 taxmann.com 155/(50 SOT 433) (Mum. Trib.) Issue not challenged by the department before the Hon'ble Bombay HC DIT(IT) v. International Global Networks B.V. [ITA No. 1579 of 2012 dated 12-12-2014).
9. Rolls Royce Industrial Power (1) Ltd., in ITA No.3929/Del/2016

14. With respect to Ground Nos. 7 to 10 in Departmental Appeal regarding Taxability of offshore supply (Pure Import Contract), we find that the ld AO has taxed the revenue from ONGC on off-shore supply as per provision of section 44BB of the Act whereas the Ld. CIT(A) after scrutinizing the imports documents has held that the revenue on account of offshore supply of goods (pure import contract) is not taxable in India in view of decision of Hon'ble Apex Court in case of ***Ishikawajima Harima Heavy Industries*** 288 ITR 408.

15. The ld AR submitted that the impugned issue is decided in favour of the assessee company following cases.

- Linde AG, Linde Engineering Division vs. DDIT [2014] 44 taxmann.com 244, Hon'ble Jurisdictional Delhi High Court
- Air Liquide Global EC Germany GMBH vs. ACIT [2401/Del/2023],
- Baker Hughes Energy Technologies UK Lid. vs. ACIT, International Taxation [2023] 151 taxmann.com 78 (Delhi -
- Trib)/[2023] 201 ITD 509 (Delhi-Trib.) [06-06-2023]
- Deputy Commissioner of Income-tax, (International Taxation) vs. Clough Projects International Pty. Ltd. [2022]
- 145 taxmann.com 613 (Mumbai-Trib.) [30-05-2022] DIT vs. LG Cable Limited [2011] 197 Taxman 100 (Delhi)
- POSCO Engineering and Construction Company vs. ADIT [2014] 42 taxmann.com 500 (Delhi - Trib.)
- DIT vs. XELO Pty. Ltd. [2011] 16 taxmann.com 173 (Bombay)
- Hyosung Corporation vs. DIT [2009] 181 Taxman 270 (AAR)
- CTCI Overseas Corporation limited [2012] 18 taxmann.com45 (AAR-New Delhi)
- Technip Italy Spa vs. ACIT [(2010) 136 TTJ 403 (Delhi))
- Samsung Heavy Industries Co. Ltd. vs. DCIT [2018] 93 taxmann.com 224 (Delhi - Trib.)
- SEPCO III Electric Power Construction Corpn., In re (2012) 18 taxmann.com 44 (AAR-New Delhi)
- DIT vs. Ericsson A.B. [2011] 16 taxmann.com 371 (Delhi)
- Nippon Steel Engineering Co. Ltd., In re [2021] 124 taxmann.com 382 (AAR - New Delhi)
- Sumitomo Corporation vs. DDIT [2019] 108 taxmann.com 528 (Delhi - Trib.) DIT vs. LS Cable Ltd. [2016] 76 taxmann.com 9 (Delhi)
- Joint Stock Company Foreign Economic Association 'Technopromexport', In re [2010] 189 Taxman 337 (AAR-New Delhi)
- Deepak Cables (India) Ltd., In re [2011] 12 taxmann.com 366 (AAR) Atomstroy Export vs. DDIT [2017] 80 taxmann.com 178 (Mumbai
- Trib.) Michelin Tamil Nadu Tyres (P.) Ltd., In re [2018] 401 ITR 164 (AAR-New Delhi)
- Outotec GmbH vs. DDIT [2015] 58 taxmann.com 232 (Kolkata - Trib.)

- Baker Hughes Energy Technology UK Ltd. vs. ACIT, (International Taxation) [2024] 160 taxmann.com 500 (Delhi-Trib.)/[2024] 206 ITD 436 (Delhi - Trib.) [05-03-2024]

16. We have heard the rival submissions and have perused the materials on record. We find that the coordinate bench of ITAT in assessee's own case in ITA 87/DDN/2024 for AY 2017-18, referring to the decision of ITAT in ITA 6171/DDN/2017 for AY 2013-14 has held as under:

"8. We have heard both the parties and perused the material available on record. The issue regarding taxability of the Assessee's receipts as Royalty/FTS covered u/s 9(1)(vi)/9(1)(vii) r.w.s 44DA of the Act by the Assessing Officer (A.O) as against such receipts offered by the Assessee under the ambit of Section 44BB of the Act has been decided by the Co-ordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2013-14 ad 2014-15 in ITA No. 6026/Del/2017, 6171/Del/2017 & 6714/Del/2017 vide order dated 07/05/2025, wherein while deciding the issue in favour of the Assessee, the Co-ordinate Bench of the Tribunal of the Tribunal held as under:-

"5. We now advert to the basic relevant facts. This assessee is admittedly a company engaged in the business of providing drilling fluids, coring, completion, tubing & perforation, liner hanger, open hole logging, cementing services and supply of drilling bits, provision of software and AMC services etc. The first and foremost issue herein which has arisen between both the parties is that of assessment of it's revenue receipts derived from all services except provision of software, support and AMC activities which had been held by the learned Assessing Officer as fee for technical services u/s 9(1)(vii) r.w.s. 115A r.w.s. 44DA of the Act. We wish to make it clear that the learned Assessing Officer had himself assessed the assessee's remaining services herein as assessable u/s 44BB of his assessment order dated 18.05.2016 in para 8 at page 12 thereof.

6. Now comes the dispute between the parties. The assessee challenged the learned Assessing Officer's action assessing it's foregoing three services, "revenue" receipts thereby claiming the same as taxable under the presumptive rate i.e. section 44BB of the Act. The CIT(A) impugned lower appellate discussion has reversed the assessment findings to this effect by pl acing reliance on ONGC Vs. C IT (2015) 376 IT R 306(S C) as under:
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8. In the case in hand also the software is supplied and maintained were related to various activities of exploration including for reservoir navigator, upgradation of the Geo log multimin etc.

9. In view of the above, respectfully following the decision of the Hon'ble Supreme Court in the case of ONGC versus CIT (supra) and the decision of the Tribunal (supra) in the case of the assessee itself, we hold that the services provided with assessee falls within the ambit of section 44BB of the Act."

5.13 In view of the above discussion and respectfully relying upon the decision of Hon'ble Supreme Court in the case of ONGC versus CIT (supra) and the decision of Ld ITAT, Delhi in the case of Paradigm Geophysical Pty limited (ITA No. 2753/Del/2016) it is held that the receipts of the Appellant on account of provision of software, support services, training of software etc. were taxable under section 44 BB of the Act. The Grounds of Appeal No. 1 and 2 are, therefore, allowed."

6.1 This leaves the Revenue aggrieved.

7. Mr. MithunShete, Sr. DR vehemently argues during the course of hearing that the CIT(A) lower appellate discussion extracted hereinabove has erred in law and on facts in reversing the assessment findings assessing the assessee's three impugned services of software support services and AMC etc. u/s 9(1)(vii) r.w.s. 115A r.w.s. 44DA of the Act. The assessee's case on the other hand invites our attention to pages 24 to 25 in the paper book comprising of the tribunal's learned Third Member's order(s) deciding the issue against the department in DCIT Vs. Western Geco International Ltd. (2023) 157 taxmann.com 736 (Del.-Trib.) as under:

> *"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.*
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> *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:-*
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> *"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 3 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.*
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> *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 4 decision of the Hon'ble Uttarakhand High Court in the 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 International (P.) Ltd. (supra), I hold that the amount case of Mitchell Drilling 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 5 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."

8. Coupled with this, learned counsel further quotes the tribunal's order in all preceding assessment years deciding the instant issue in assessee's favour and against the department thereby holding assessment of it's entire revenues u/s 44BB of the Act. Mr. Shete at this stage seeks to draw a distinction in light of the Revenue's substantive ground no. (iii) that the Memorandum of Finance Bill 2010 makes it amply clear that any service(s) which falls within the ambit of section 44DA, even if it is not for prospecting or production of mineral oils as stipulated in section 44BB of the Act. We are of the considered view that once the learned co-ordinate bench in assessee's case itself in A.Y. 2011-12 i.e. subsequent to the above statutory amendment, has settled the issue against the department, there is hardly much a need for us to revisit the entire finding once again. More so, when the issue indeed in A.Y. 2011-12 had reached upto learned "third member" which stood ultimately decided in assessee's favour. We thus reject the Revenue's instant first and foremost substantive ground in very terms."

9. Considering the fact that the all the services rendered by the Assessee are inextricably linked with extraction and exploration of mineral oil in India, once the nexus of the business activities with ol exploration is proved, there can be no hesitation in holding that the relevant revenues deserve to be taxed u/s 44BB of the Act. Further, by respectfully following the above ratio laid down by the Tribunal in Assessee's own case for Assessment Year 2013-14 and 2014-15, we find no reason to interfere with the findings of the Ld. CIT(A). Accordingly, we dismiss the Ground No. 1 of the Revenue.

10. The Ground No. 2 and its sub grounds of the Revenue are on the taxability of interest u/s 244A of the Income Tax Refund. It was the case of the Assessee that said income Royalty/FTS is liable to be taxed at 15% under

DTAA as against the Department's stand of maximum of marginal right under the Income Tax Act.

11. The Assessee offered the interest on income tax refund at 15% as per Article 11 of DAA between India and USA. The Ld. A.O. taxed the interest on income tax refund at maximum marginal rate instead of Article 11 of DTAA with USA as claimed by the Assessee. The Ld. CIT(A) followed the order of the Tribunal dated 08/12/2022 in the case of Expro Gulf Limited in ITA No. 4198/Del/2017 and C.O. No. 165/Dle/2018 held that interest on income tax refund shall be taxed as per the provisions of DTAA. Aggrieved by the order of the Ld. CIT(A), the Department preferred the present Appeal.

12. The Ld. Departmental Representative submitted that the Ld. CIT(A) committed error in considering the interest income as taxable and chargeable to tax as per the provision of Article 11 of DTAA at 15%, by relying on the assessment order sought for allowing the Appeal.

13. Per contra, the Ld. Assessee's Representative submitted that there is no error in the approach of the Ld. CIT(A) in following the ratio laid down by the Tribunal in the case of Expro Gulf Ltd. (supra), wherein the Tribunal followed the Judgment of Hon'ble High Court in the case of B. J. Services ME Limited, thus sought for dismissal of the Ground No. 2 and 2.1 of the Revenue.

14. We have heard both the parties and perused the material available on record. In view of the fact that the Ld. CIT(A) has followed the order of the Co-ordinate Bench of the Tribunal in the case of Expro Gulf Ltd. (supra), wherein the Tribunal followed the Judgment of Hon'ble High Court in the case of B. J. Services ME Limited and held that the interest income on income tax refunds shall be liable to be taxed @15% as per Article 11 of tax treaty between India and USA, in the absence of any contrary precedent brought on record, in view of the settled principals of law, we find no error or infirmity in the order of the Ld. CIT(A). Accordingly, finding no merits in Ground No. 2 and 2.1 of the Revenue, the same are dismissed."

17. In view of the decisions of ITAT as referred above in assessee's own case, we hold that revenues from all services including consultancy services for field development plan, assisting DGHC for preparation of NDR, are income taxable as per provision of section 44BB of the Act. We also note that the claim of the assessee that the Ld. Assessing officer has accepted the taxability of entire revenue as

per provision of section 44BB in the A.Y 2005-2006, A.Y 2007-2008, A.Y 2008-2009, A.Y 2009-2010, A.Y 2010-2011 and A.Y 2011-2012, as no appeal is filed before the Hon'ble High Court, has not been rebutted by the Revenue. Ground 1 to 6 of Revenue appeal is therefore, dismissed while ground 1 & 2 of assessee's appeal is allowed.

18. On the issue of taxability of interest on income tax refund, we find that the CIT(A) has followed the decision of jurisdictional Uttarakhand High Court in the case of ***M/s B.J. Services*** reported at 60 taxmann.com 246 (Uttrakhand). In the instant case, the taxation of interest is governed by Article 11 of India US DTAA. In this context, it is therefore, prudent to reproduce the relevant provisions of India-US DTAA as under:

ARTICLE 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed :

a)10 per cent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company) ; and

*b)**15 per cent of the gross amount of the interest in all other cases***

****

*5. The provisions of paragraphs 2 and 3 shall not apply if **the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein**, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment*

*or fixed base. **In such case the provisions of Article 7 (Business Profits)** or Article 15 (Independent Personal Services), as the case may be, shall apply.*
****

19. In the instant case, the assessee has not rebutted the ld AO findings that the assessee has a PE in India during the year. In such situation, we find that the hon'ble jurisdictional Uttarakhad High Court in the case of ***M/s B.J. Services*** (supra), squarely applies. We have not been appraised of any contrary decision of the jurisdictional High Court or the Hon'ble Supreme Court. The hon'ble Uttarakhand Court in the case of ***M/s B.J. Services*** (supra), in the context of India UK DTAA, where paragraph 6 of Article 12 is pari-materia with paragraph 5 of Article 11 of India US DTAA in respect of taxability of Interest Income, has held that interest received on an income tax refund under Section 244A of the Income-tax Act, 1961, constitutes business income if it is effectively connected with the assessee's Permanent Establishment (PE) in India as under:

" 7. We will consider whether there is any merit in the contention of the appellant that the appellant should have been taxed at the rate of 15 per cent on the gross amount of the interest under Clause 2 of Article 12. Under Clause 1 of Article 12, interest arising in a Contracting State and paid to the resident of the other Contracting State may be taxed in the other State. In the facts of this case, interest which was received in India can be taxed in England. However, Clause 2 provides that the said interest can also be taxed in the Contracting State in which it arises (which in this case is India) as tax was paid by the Government of India in the Income Tax Department on the excess tax paid on behalf of the assessee/appellant's employees. It is to be taxed according to the law in India, namely, the Income Tax Act, 1961, as it stands. The limitation which is cast is that when the beneficial owner of the interest so charged is a resident of the other

State which means that since the appellant is resident of England, the tax so charged should not exceed 15 per cent of the gross amount of the interest. Therefore, the appellant would contend that the tax should have been charged at 15 per cent of the interest received which the appellant became entitled to on the basis of excess tax paid.

8. As matters stood there if there was no other provision to consider, the appellant would indeed be justified in offering 15 per cent to taxation. But if we come to Clause 6, we notice that Clause 6 expressly provides that provisions of paragraph 1, inter alia, will not apply, if the beneficial owner of interest (the appellant in this case) is the resident of the Contracting State carries on business in the other Contracting State (in India) in which the interest arises through a permanent establishment situated therein. There is not much dispute raised before us that the appellant was indeed carrying on business through a permanent establishment in India. Since the word 'or' figures immediately thereafter, we need not be concerned with the further provisions as the requirement of the Clause that interest arises through a permanent establishment situated therein as fulfilled in this case. To continue with the requirement of Clause 6 of Article 12, it contemplates that the debt claim in respect of which interest paid is effectively connected with such permanent establishment on fixed rates. In this case, appellant paid excess tax on behalf of its employees. The Income Tax Officer, after assessment, apparently has ordered refund. There was the delay and interest was paid under the Act at the statutory rate fixed. So there arises a debt claim and the interest is effectively connected with the permanent establishment on fixed rates. In such an eventuality, Clause 6 of Article 12 provides that the provisions of Article 7, which relate to Business profits, or Article 15 (Independent personal services) of this Convention, as the case may be, shall apply. This will be assessed as business profits and in regard to business profits, the rate of tax is 48 per cent. It is on the said basis that, in fact, the Assessing Officer in the first assessment and also in the further assessment after proceedings under Sec. 147 of the Act had assessed the appellant. This assessment has been upheld by the First Appellate Authority as also by the Tribunal.

9. We would think that in this analysis of the provisions of the Clauses of the Treaty, there is no error as such committed by the Assessing Officer as confirmed by the First Appellate Authority and the Tribunal and, therefore, the questions of law as framed must necessary be answered against the appellant in all the cases and we do So...."

20. In the instant case, since the tax initially deducted or paid was derived from the core business activities carried out by the assessee through its Permanent Establishment in India, any subsequent interest on a refund of that tax remains characteristically tied to the business. Considering the provisions of paragraph 5 of the India-US DTAA, the interest on refund that has arisen and attributable to the PE in India therefore becomes part of business profit. In such case, instead of paragraph 2(b) of Article 11 of DTAA providing for taxation rate of 15%, the provisions of Article 7 of DTAA i.e., business profits providing for taxation at maximum marginal rate as per Income Tax Act of India, shall apply. We are therefore of the considered view that the income in the nature of interest on income tax refund, which has been earned in the course of its business activities connected to that PE in India, is taxable as business profit under Article 7 of the India US DTAA. Ground 3 of assessee is dismissed.

21. With respect to taxability of off shore supply, we find that the CIT(A) has held as under:

> *5.4.3 I have carefully considered the findings of the AO, facts of the case and submissions of the appellant. Under Section 5(2) and Section 9(1)(i) of the Act, a non-resident is taxable in India on income that:*
> **is received or deemed to be received in India, or*
> **accrues or arises, or is deemed to accrue or arise, in India.*
>
> *Section 9(1)(i) deems business income to accrue or arise in India only if it is attributable to a "business connection" or a Permanent Establishment (PE) in India.*

In the instant case, the supplies of cementing units and batch mixers have been received by ONGC from the appellant. On going through the documents furnished by the appellant, it is noted that the Bill of Lading is drawn with the port consignee being ONGC. Further, the third party inspection of the supplies has been done outside India as is evident from the Test and Inspection Certificate issued by third party. Thus, before the goods were transported to India, they were as per the specification provided in the invoices and were in their final form. As evidenced from the invoices, packing List, combined transport bill of lading, and Bill of Entry it is seen that the goods & materials are imported into India directly by ONGC in its own name. The supplies were insured against all transit risks from warehouse to warehouse by the port consignee and in case of any damage enroute, the port consignee i.e ONGC was to lodge the claim with the underwriters.

5.4.4 In this backdrop, it is held that the appellant has not undertaken any activity in India w.r.t the supply of cement units and batch mixers to ONGC in India and consideration for supply of equipment, was received by the appellant in foreign currency directly in bank account outside India. The AO has taxed the profits from aforesaid supplies in India by applying profit attribution rate to Indian PE as per the deeming provision of section 44BB, but has grossly failed to bring out any operational activity undertaken by the appellant in India in order to establish a business connection or Permanent Establishment of the appellant in India with respect to the aforesaid supplies.

5.4.5 The Hon'ble Supreme court in the case of Ishikawajma-Harima Heavy Industries vs. DIT [2007] 158 Taxman 259, has w.r.t offshore supplies observed that only such part of income, as is attributable to the operations carried out in India can be taxed in India. In the instant case, since all parts of the transaction in question, were carried on outside the Indian soil, the transaction, cannot be taxed in India.

5.4.6 In this backdrop and in view of the established judicial precedents, it is held that, no income arising from the offshore supplies w.r.t the contract undertaken with ONGC can be attributed to India and taxed under section 44BB of the Act. The ground of appeal raised is allowed.

22. We find that the CIT(A) has given a finding of fact that the assessee has not carried out any activity in India in relation to the supply of the cement units and batch mixers to ONGC. We find that the ld AO has not controverted the assessee's submission that the

title and risk in the goods is transferred to ONGC, out of India and the payment for the same is received by assessee, out of India. The ld AO has not rebutted the fact that ONGC is the port/ultimate consignee and the bill of lading is drawn with the ONGC which has directly imported the goods & material. Also ONGC arranges for the insurance of cementing Unit and Batch Mixers and claim for any damage to the goods during transit, is to be made by ONGC. We also note that neither the AO nor the DR has established any business connection or Permanent Establishment of the assessee in India in respect to the said offshore supplies. Following therefore, the decision of Hon'ble Apex Court in case of ***Ishikawajima Harima Heavy Industries*** (supra), we are inclined to uphold the decision of the CIT(A) that since all parts of the transaction in question, were carried on outside the Indian soil, the transaction, cannot be taxed in India. Grounds 7 to 10 of Revenue is accordingly dismissed.

23. In the result, assessee's appeal in ITA No.139/DDN/2025 is partly allowed and Revenue's appeal in ITA No.174/DDN/2025 is dismissed.

Order pronounced in the open court on 21.10.2026

Sd/-	**Sd/-**
SATBEER SINGH GODARA	**NAVEEN CHANDRA**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Delhi
Dated: 21.10.2026
*Priti Yadav, Sr. PS**

SHASHI KANT PANDEY
Digitally signed by SHASHI KANT PANDEY
Date: 2026.10.27 14:51:56 +05'30'

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