

Income from providing seismic services was taxable under sec. 44BB if it was connected with PE of NR in India

Summary – The Delhi ITAT in a recent case of Siem Offshore AS, (the Assessee) held that revenue earned by a non-resident under a contract for providing seismic services in India is taxable under section 44BB only if it is effectively connected with PE of non-resident in India.

Facts

- The Assessing Officer taxed the receipt received by the assessee as fee for technical services under article 13 of DTAA between India and Norway instead of taxing it under section 44BB.
- On appeal, the Commissioner (Appeals) confirmed the addition made by the Assessing Officer.
- On further appeal, the assessee submitted that the said issue is covered in favour of the assessee in its own case for the assessment years 2006-07 and 2007-08 in I.T. Appeal Nos. 5631 and 5632 of 2010, wherein the Tribunal had decided the issue in favour of the assessee and had also held that the income of the assessee was to be taxed under section 44BB.
- However, the revenue submitted that the issue cannot be said to be covered in favour of the assessee as Delhi High Court has passed an order dated 9-7-2014 in the case of *PGS Geophysical AS v. Addl. DIT* [IT Appeal Nos. 1570 & 1571 (Delhi) of 2014] wherein the High Court has laid down law regarding taxability for FTS for assessment year prior to 2011-12 wherein it has been held that the receipt of the assessee can be taxed under section 44BB only if the assessee has a PE in India during the relevant period and the contract entered into by the assessee in India was effectively connected with that PE in India. The revenue submitted that above findings have not been made in the appeals under consideration, therefore, the case needs to go back to the Assessing Officer who should ascertain the existence of above two conditions and only if these conditions existed the income could be taxed under section 44BB otherwise income needs to be taxed as fee from technical services.

Held

- The cases belong to two different assesseees one belonging to Norway and one belonging to USA. Both assesseees are providing similar services of vessel management services in India. The assesseees' income in the earlier years has been held to be taxable under section 44BB. However, the case law relied upon by the revenue also has similar facts and assessee in that case is engaged in similar activities. The Delhi High Court in that case has held that income of assesseees engaged in such activities can be taxed under section 44BB only if the two conditions are fulfilled. One of the conditions is existence of PE in India and second is regarding effective connection of such contract with the PE in India.

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- Though this issue is covered in favour of the assessee in its own case but High Court has further clarified the similar issue in its order dated 9-7-2014 in the case of *PGS Geophysical AS (supra)*, therefore, in this year the issue cannot be decided by following earlier years.
- The issue decided by High Court is *pari materia* with the issue at hand, therefore, issue is restored to the file of the Assessing Officer with the direction to ascertain the existence of conditions as per High Court order and then determine the tax on the income of the assessee as per law.