

## **Sec. 44BB covers hiring of barge for offshore accommodation being indirect usage of barge to extract mineral oil**

**Summary – The Mumbai ITAT in a recent case of Valentine Maritime (Gulf) LLC., (the Assessee) held that Section 44BB does not envisage only direct use of plant and machinery in prospecting for or extraction or production of mineral oils and, therefore, amount received by assessee from hiring of barge used for offshore accommodation of employees was also liable to be taxed under section 44BB**

### **Facts**

- The assessee was a foreign company incorporated in UAE. It was operating in field of oil and gas construction industry. During relevant year, assessee earned income from hiring two tug boats to 'A' Ltd. and one barge from 'L' Ltd. The claim of assessee was that 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 section 44BB.
- The Assessing Officer took a view that from the details furnished by assessee it could not be satisfactorily proved that the vessels were indeed used by 'A' Ltd. and 'L' Ltd. for the purpose of prospecting of or extraction or production of mineral oils, which was a requirement of section 44BB. He thus rejected assessee's claim.
- The Commissioner (Appeals) allowed assessee's claim in respect of hiring charges received from 'A' Ltd. As regards 'L' Ltd., the Commissioner (Appeals) opined that the barge was used for offshore accommodation of the employees of 'L' Ltd. and was not directly involved in connection with prospecting of mineral oil. He thus affirmed the stand of Assessing Officer to deny the taxation of such receipts in terms of section 44BB.
- On cross appeals:

### **Held**

- Section 44BB deals with provision for computing profits and gains in connection with the business of exploration, *etc.* of mineral oils. Section 44BB 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.
- The case set-up by the assessee is that it has hired out two tug boats and a barge to 'A' Ltd. and 'L' Ltd. respectively to be used in the prospecting for or extraction or production of mineral oils. The assessee has placed certificates issued by 'A' 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 hired out to 'L', assessee has furnished a Naval Security Clearance Certificate which prescribes that barge 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 section 44BB of the Act. On the basis of aforesaid, Commissioner (Appeals) has concluded that only so far as the earnings from 'A' Ltd. are concerned, the same are eligible for taxation in terms of section 44BB of the Act and not the earnings from 'L' Ltd. With regard to the earnings from 'L' Ltd., the Commissioner (Appeals) found that the hired barge was used for offshore accommodation/construction activities which was an activity "not directly involved" in connection with prospecting for or extraction or production of mineral oils.
- Insofar as the earnings from 'A' Ltd. is concerned, 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 Commissioner (Appeals) in this regard is supported by not only the certificate issued by 'A' Ltd., but also by the terms of arrangement of hiring with the said concern. In the absence of any cogent material brought out by the revenue, the said finding of Commissioner (Appeals) is confirmed. Accordingly, revenue fails on this aspect.
- Coming to plea of assessee with respect to the earnings from 'L' Ltd. for hiring of barge, as per the terms of arrangement, the said vessel has been used for offshore accommodation/construction activities. As per the revenue, use of the vessel for "offshore accommodation/construction activities" does not fall within the scope of section 44BB of the Act. 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 section 44BB and that the phraseology of section 44BB 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, one may refer to the decision of the Authority for Advance Ruling (AAR) in the case of *Lloyd Helicopters International Pty Ltd. v. CIT* [\[2001\] 249 ITR 162/115 Taxman 334 \(AAR - N. Delhi\)](#) 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 section 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 is done in the course of such business by the assessee.
- Therefore, as per the phraseology of section 44BB, even the earnings from hiring of barge to 'L' Ltd. are eligible for assessment under section 44BB. In coming to such a conclusion, the Bench is also conscious of the stand of Assessing Officer as manifested in the assessment order for assessment

year 2008-09, wherein hiring receipts from 'L' Ltd. on account of hire of barge in terms of same contract have been accepted to be assessable under section 44BB. Therefore, considering the facts and circumstances of the case, the additional ground raised by assessee that the amount received from 'L' Ltd. is also liable to be taxed in terms of section 44BB is allowed. Thus, assessee succeeds on its additional ground of appeal.

- In the result appeal of assessee is allowed and that of the revenue is dismissed.