2023:BHC-OS:6359-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.315 OF 2018

Deep Drilling 1 Pte. Ltd. ..... Appellant

Vs.

The Deputy Commissioner of
Income-Tax(IT)-2(1)(2), Mumbai ..... Respondent

Mr.Madhur Agarwal a/w Mr.Upendra Lokegaonkar i/b M/s.Mint and Confreres for the Appellant

Ms.Sushma Nagaraj a/w Ms.Kinjal Patel, Ms.Shreya Singhi and Ms.Sakshi Kapadia for the Respondent

CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : 5TH JULY 2023

P.C.

1. Appellant is impugning the order dated 19th April 2017 passed by the Income Tax Appellate Tribunal (ITAT) allowing the Appeal filed by the Revenue against the order passed by CIT (A) on 28th October 2014 pertaining to Assessment Year 2011-12.

2. Appellant is a Company incorporated in Singapore and is tax resident of Singapore. Appellant was engaged in the business of providing Jack up drilling unit and platform well operations services. During the year under consideration, Appellant had entered into an agreement dated 18th June 2020 with Gujarat State

Petroleum Corporation Ltd. (GSPC) for providing Jack up drilling Unit and platform Well operations at the Block KG-OSN-2001/3 offshore India, pursuant to exploration contract awarded by Government of India to the GSPC.

3. During the year under consideration, Appellant earned contractual income of Rs.64,88,90,227/- from GSPC under the contract. The Assessing Officer (AO) observed that the activities carried out by Appellant as per the contract are covered by the provisions of section 44BB of the Act and till Assessment Year 2010-11 Appellant consistently offered its revenue for taxation under section 44BB. No income however, has been offered for tax in India for Assessment Year 2011-12.

4. Mr.Agarwal in fairness stated that the service or facility that Appellant provided was in connection with the exploration, exploitation and extraction of mineral oil and would be covered by section 44BB but the actual service was rendered only from 3rd December 2010 until 31st March 2011. Therefore, the drilling services were continued only for a period of 119 days during Assessment Year 2011-12. Hence, would not be covered under Article 5(5) of the India Singapore DTAA which requires provision of service or facility for a period of more than 183 days in the fiscal year.

Mr.Agarwal submitted that if Appellant provided services in excess of 183 days then certainly, like it had done in the previous years, Appellant would have offerred its income for taxation during the Assessment Year 2011-112 as well.

5. The point in short which is required to be considered was the time of 183 days will begin when the actual services under the contract begins or from the moment the rig enters Indian territory for the purpose in connection with exploration, exploitation or extraction of mineral oil. In other words, when should an enterprise be considered to have rendered services or facilities.

6. It is Appellant's case that though rig had entered the territorial waters some time in April 2010, it was undergoing necessary upgrades / repairs to meet the requirements of GSPC. As per the contract with GSPC and after this upgrades and repairs were completed actual drilling began only on 3rd December 2010 and therefore, the time would start from 3rd December 2010. This would mean only 119 days during Assessment Year 2011-12.

7. Ms.Nagraj, per contra, submitted that Article 5(5) is very widely worded. It says if an enterprise provides services or facilities in the Contracting state for a period of more than 183 days in the fiscal year in connection with the exploration, exploitation or extraction of mineral oils then, the moment the rig enters the

Contracting state the time will begin. Ms. Nagaraj submitted that as per the contract with GSPC, appellant was required to provide Jack Up Drilling Rig services which is clearly connected with exploration, exploitation or extraction of mineral oils. The Drilling Rig was brought into India on 26th April 2010 for undertaking the said drilling services which is evident from the bill of entry submitted. The claim of appellant regarding commencement of operations on 3rd December 2010 cannot be accepted as the rig was brought into India in April 2010 and it was undergoing necessary upgrades/repairs to meet the requirements of GSPC as proposed in the bid. The fact that the rig was getting prepared for undertaking the work of GSPC is also evident from the minutes of the meeting dated 27th April 2010. This indicates that the rig was brought to India in April 2010 to make it suitable for undertaking the drilling activities for GSPC without which the rig could not have performed its obligations under the contract. Therefore, appellant is deemed to have provided services or facilities from April 2010 which will be more than 183 days.

In this case, therefore, the time would have begun in April, 2010 itself even though the contract with GSPC was entered into only on or about 18th June 2010.

8. It is settled law that the use of the expression 'in connection

with' in Section 44BB expands the horizon of the services or facilities, provided by a non-resident assessee provided they have connection with the exploration, extraction or production of mineral oils. Mr.Agarwal, as noted earlier, in all fairness stated that service or facility provided would be covered by section 44BB.

9. The AO in his Assessment Order dated 26th May 2014 has in paragraph 6 extracted the explanation offered by Appellant. Paragraph 6 reads as under:

> *"6. In response to the above the assessee has offered its explanation vide letters dated 06/03/2014 and 27/03/2014. The main contentions of the assessee are as under :*
>
> *i. The company is incorporated and registered in Singapore and is a tax resident of it.*
>
> *ii. It is engaged in the business of providing offshore drilling services for the purpose of prospecting for, exploration, exploitation and extraction of minerals oils and natural gas.*
>
> *iii. For this purpose it deploys its equipments (mainly drilling rig) and the personnel at offshore locations.*
>
> *iv. The assessee entered into an agreement dt.18.6.2010 with GSPC for provision of offshore drilling services and the drilling rig was brought into India in April, 2010.*
>
> *v. The actual services under the contract with GSPC were commenced from 03.12.2010 and continued till the end of the financial year.*
>
> *vi. The drilling services were continued for a period of 119 days during the FY2010-11*
>
> *vii. As per Indo-Singapore DTAA the business profits of the Singapore Enterprise can be taxed in India only if it has a PE in India.*
>
> *viii. An Enterprise of Singapore is deemed to have a*

PE in India and to carry on business through that PE only if the Singapore Enterprise provides services or facilities in India for a period of more than 183 days in any fiscal year in connection with the Exploration, Exploitation or Extraction of mineral oils in India.

ix. As the drilling operations in India were only under taken for 119 days which is less than the threshhold period of 183 days, accordingly, the assessee cannot be said to have a PE in India.

x. In view of the above, provisions of section 44BB cannot be applied.

xi. The revenues for A.Y.2009-10 were offered for taxation u/s.44BB as the assessee had operations in India for more than 183 days.

xii. As regards A.Y.2010-11 though the operations were undertaken only for 4 days the revenue was offered to tax due to lack of appropriate tax advice and a mistake of law without considering the provisions of Indo-Singapore DTAA.

xiii. Further, the income offered for A.Y. 2009-10 & 2010-11 was in connection with a single contract whereas the contract for current A.Y. is a different one."

10. In paragraph 7(iv) of the Assessment Order, the AO has also extracted the minutes of the meeting held on 27th April 2010 between GSPC and Appellant and the same reads as under :

"iv. The fact that the during the in between period of actual start of operations and arrival of rig in India, the rig was getting prepared for undertaking the work of GSPC is evident from the minutes of meeting held on 27/04/2010 between GSPC and Deep Drilling 1 Pte. Ltd. (Aban Offshore) the main points of which are as under :

a) Aban informed that the Rig DD1 is currently in anchorage in Kakinada and is undergoing necessary upgrades/ repairs to meet GSPC requirements and as proposed in their bid
b) Aban was informed that they will have to arrange for suitable AHTS (two or three) to correctly position the Rig as per the requirement of GSPC and for this GSPC will provide a rig positioning diagram to assist in determining the final positioning of the rig with the future platform,

GSPC may not be able to provide AHTs during the Rig positioning.
c) GSPC will provide the latest platform elevations and plan reviews to Aban.
d) Since GSPC is going to hire Casing Running services separately as done earlier and the rig is not equipped with a pile hammer, it will be GSPC's responsibility to provide with Pile Hammer as Aban has stated in its bid that it can be provided at cost of US$1800 per day if required by GSPC.
e) Aban current has 18 3/4th 15K BOP and it will be used in the beginning. Aban will explore providing either a 20 ¾ 3K or a 21 ¼ 2K BOP in addition for short term.
f) GSPC asked about the BOP hoisting system since it is rated just above the weight of the BOP stack. Aban responded that they would add extra compression to the system.
g) GSPC inquired if Aban is equipped to carry out batch drilling of three wells. Since the CTU is not needed, a texas Deck would have to be fabricated / modified to support tree conductors. GSPC will furnish the information that GSPC has on the previous design by Premium Drilling.
h) GSPC will furnish the 4 slot template drawings along with the drawings of the existing 6 slot template to Aban."

11. If we have to accept Mr.Agarwal's stand that the date on which the count of 183 days will begin is only when the rig actually begins to perform under the contract, i.e. 3rd December 2010, then (a) there was no need to bring rig into the country in April 2010, (b) there was no need to hold meetings with GSPC in April 2010, (c) the fittings could have been made outside the country and the rig could have been brought into India later, and (d) it will not stop an assessee from saying that in the middle of the contract of drilling the rig broke down, she was off – hire and, therefore, those days should not be added in counting 183 days. Theoretically, it is possible that on 30th March the rig may have a sudden break down and on 2nd April the rig may start working again to escape the requirement of

183 days.

12. Therefore, it is quite clear that even though the actual contract was entered into with GSPC only on 18th June 2010, and accepting what Appellant states that the drilling work actually commenced on 03rd December 2010, still the fact that as on 27th April 2010 the rig was undergoing necessary upgrades / repairs to meet the GSPC requirements, in our view the rig was already in the contracting state for providing the services or facilities in connection with the exploitation, exploration or extraction of mineral oil as early as on 27th April 2010.

13. The ITAT has also come to the same conclusion in paragraph 8 and 9 of the impugned order which read as under :

> *"8. A reading of the above makes it clear that immediately after arrival of the drilling rig on 26.04.2010 operations had started on the Rig to make it suitable to perform the activities contracted. It involved active participation of GSPC as evident above. For providing the service and facility in this case it was required to properly position the rig, fabricate and modify of the same as per the needs of the GSPC. By no stretch of imagination it can be said that the Rig was ready for use. It was only after the aforesaid fabrication, upgradation and enabling operations were carried out that further drilling operations were commenced from 3.11.2010 and continued till the end of the financial year. Thus, the assessee was having in PE in India to carry on business from the day when it commenced in India operation to fabricate, to upgrade to prepare, to position and to enable the Rig to perform the drilling activity.*
>
> *9. Hence, when the rig had entered Indian waters and it was undergoing fabrication, upgradation and positioning for the drilling activity for GSPC it can be said that the PE was there in connection with the exploration, exploitation or extraction of mineral oils. The operation on the Rig to upgrade it, to prepare, and to enable it to perform the*

> *drilling activity and the actual drilling activity cannot be considered in isolation for considering whether the assessee is having a PE which could be said to be in connection with the exploration, exploitation or extraction of mineral oil in India. Thus the day from which such fabrication, positioning and upgradation, activity started (which in the present case can be safely considered to have commenced from 26.04.2010 as evident from the minutes of the meeting between GSPC and the assessee), the assessee was having an establishment in connection with its services and activity for GSPC. (emphasis supplied)*

14. In the circumstances, we find no substantial question of law arises. Appeal dismissed.

(FIRDOSH P.POONIWALLA, J.) **(K.R. SHRIRAM, J.)**