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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 694/2014**

Date of decision: 24th November, 2014

COMMISSIONER OF INCOME TAX Appellant

Through Mr. Balbir Singh, Sr. Standing
Counsel & Mr. Abhishek Singh Baghel,
Advocate.

versus

JUBILANT OFFSHORE DRILLING PVT LTD Respondent
Through Mr. Vaibhav Kulkarni, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue relates to Assessment Year 2008-09 and impugns the order dated 14th February, 2014 passed by the Income Tax Appellate Tribunal (Tribunal, for short) in the case of M/s. Jubilant Offshore Drilling Private Limited.

2. We have examined the assessment order, but it is difficult to appreciate and accept the logic and reasoning of the Assessing Officer to hold that the business of the assessee had not been set up and, therefore, expenditure of Rs.1,69,72,374/- should be treated as pre-operative expenses. The said expenditure was accordingly disallowed and income as returned was enhanced by Rs.1,69,72,374/-. The Assessing Officer further directed initiation of penalty for concealment under Section 271(1)(c) of the Income Tax Act, 1961 (Act, for short) for the said disallowance.

3. In our opinion, the Commissioner of Income Tax (Appeals) rightly deleted the said disallowance after observing that the business of the assessee had been set up and the expenditure incurred was business expenditure. The Tribunal has affirmed the said finding.

4. The respondent-assessee was incorporated in March, 2004 and since then engaged in the business of oil and gas exploration, etc. In the proceedings for the earlier Assessment Years, i.e. 2005-06 to 2007-08, it has been accepted that the business of the respondent assessee had commenced. The assessee had acquired and was granted licences by the Government of India under the New Exploration Licensing Policy. The respondent had acquired participating interest with effect from 16th October, 2004 in the block KG-OSN 2001/3 under the scheme of amalgamation and the agreement with M/s. Jubilant Enpro Private Limited approved by the Delhi High Court vide orders dated 20th April, 2005 and 23rd May, 2005.

5. The assessee had explained and asserted that the business of the assessee had in fact commenced because they had started oil exploration operations. Therefore, it is not a case where the business had merely been set up, but a case where the actual operations had commenced. The reasoning given by the Assessing Officer that till the oil production starts, the business would not set up, is clearly fallacious and has to be rejected. The reason is simple that oil exploration itself was one of the business activities undertaken by the respondent-assessee. Oil production would be the second stage of business activity, but this would not undo the commercial and business activities relating to oil exploration. The assessment order itself refers to the judgment of the Andhra Pradesh High Court in ***CIT versus Sponge Iron India Ltd.*** (1993) 201 ITR 770 (AP) that for commencement of business all activities which go on to make business need not be started simultaneously. As soon as an activity which

is an essential activity in the course of carrying on the business is started, the business must be said to have commenced, yet the Assessing Officer failed to apply the said ratio. The Gujarat High Court in ***CIT versus Saurashtra Cement and Chemicals Industries Ltd*** [1973] 91 ITR 170 (Guj.) held,

“... business is nothing more than a continuous course of activities and all the activities which go on to make up the business need not be started simultaneously in order that the business may commence. The business would commence when the activity which is first in point of time and which must necessarily precede the other activities is started.”

A similar view was taken in ***Sarabhai Management Corporation Ltd versus CIT*** [1976] 102 ITR 25 (Guj.), which was upheld by the Supreme Court vide its order reported in [1991] 192 ITR 151 (SC).

6. The respondent-assessee being conscious of the fact that revenue would be generated once the oil production commenced had capitalised the expenditure on oil exploration cost and the same was reflected as “capital work in progress” in the balance sheet. This was in accord with the principle of matching of revenue or earnings with the expenditure. This is not the reasoning and ground given by the assessing officer to disallow expenditure of Rs.1,69,72,374/-. This is not the ground or reason raised before the Tribunal or before us.

7. The expenditure of Rs.1,69,72,374/- which has been claimed as a revenue deduction in the said year, was under the following heads:-

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S. No.	Expense claimed	Amount (in Rs.)	Amount (in Rs)
	Operating and other expenses		
1	Legal and Professional	10,75,298	

	expenses		
2	Audit fee	1,96,630	
3	Filing fee	20,85,649	
4	Forex loss	1,25,000	
5	Miscellaneous expenses	10,649	
Total (A)			34,93,226
Finance charges			
6	Bank charges and Guarantee	1,08,13,329	
	Commission		
Total (B)			1,08,13,329
Depreciation claimed			
7	Depreciation claimed	26,65,819	
Total (C)			26,65,819
Operating expenses disallowed (A)+(B)+(C)=(D)			1,69,72,374

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8. Noticeably, the respondent assessee had themselves added back the Registrar of Companies' filing fee of Rs.20,80,000/- and had applied/claimed the said expense under Section 35D of the Act. The depreciation of Rs.26,65,819/- had also been added back by the respondent assessee. This factual position was ignored in the assessment order, without any explanation. Other expenditure was not directly relatable and having nexus with the oil exploration costs. This is not the finding of the assessing officer or an issue raised before us. They are clearly business expense.

9. The Assessing Officer had also disallowed Rs.2,90,854/- under

Section 35D of the Act being expenses relating to increase in the authorised capital. Once we hold that the business had been set up or rather the business had commenced, the said addition made by the Assessing Officer disallowing the claim under Section 35D of the Act has to be rejected.

10. The appeal is dismissed *in limine*. The appellant, i.e. the Commissioner of Income Tax, Delhi-II will pay cost of Rs.10,000/- to the Prime Minister's Relief Fund as we find that the appeal in the present case is wholly misconceived and should not have been filed. The said cost will be paid within three months of the date when copy of this order is received by the office of the Commissioner of Income Tax, Delhi-II.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

NOVEMBER 24, 2014
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