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+ **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Writ Petition (Civil) No. 5716 of 2008

% **Reserved on: 29th March, 2012**
Date of Decision: 28th May, 2012

Joshi Technologies International Inc.Petitioner
Through Mr. Mr. S. Ganesh, Mr. Gaurav Pachnanda,
Sr. Advocate with Mr. Bharat Sangal,
Mr. Yawar Masoodi and Ms. Srijna,
Advocates.

Versus

Union of India & Ors. ...Respondents
Through Ms. Sonia Mathur, Mr. Ritesh Kumar and
Ms. Shweta Gupta, Advocates with
Mr. Ajit Jain, Dy. MGR/Fund A-DGH &
Ms. Upma Kwatra, Legal Advisor.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.

Joshi Technologies International Inc., a company incorporated in the United States of America seeks mandamus that they are entitled to benefit under Section 42 of the Income Tax Act, 1961 (Act, for short) in respect of the two Production Sharing Contracts (PSCs, in short) both dated 20th February, 1995 for Oil Fields in Dholka and Wavell, Gujarat.

2. The factual background in brief is that the petitioner along with Larsen & Toubro Ltd., (who subsequently assigned and transferred their rights in favour of the petitioner), were successful bidders in the Notice Inviting Tender, dated 31st December, 1992 ("1992 NIT"). The "petroleum profit" was/is to be shared as per the terms of the PSC

between the Government of India, Ministry of Petroleum and Natural Gas and the petitioner. The two PSCs have duration of 18 years from their effective date and have extension provisions.

3. The petitioner in the returns for the Assessment Years 2001-02, 2003-04 and 2004-05, claimed and was allowed deductions under Section 42 of the Act. However, in respect of the assessment year 2005-06, the Assessing Officer denied benefit under Section 42 vide order dated 31st December, 2007. Several other additions were made. This had resulted in an additional demand of Rs.1,24,45,509/-. The petitioner has filed an appeal against the assessment order before the appellate authority. It appears that the appeal is pending.

4. The Assessing Officer has also issued notices for re-assessment in respect of Assessment years 2001-02, 2002-03, 2003-04 and 2004-05, on the ground that the petitioner was wrongly given benefit of deduction under Section 42 of the Act in the said years.

5. Section 42 of the Act reads as under:-

“42. Special provision for deductions in the case of business for prospecting, etc., for mineral oil.—
[1]For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person for the association or participation of the Central Government or any person authorised by it in such business (which agreement has been laid on the table of each House of Parliament), there shall be

made in lieu of, or in addition to, the allowances admissible under this Act, such allowances as are specified in the agreement in relation—

(a) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee;

(b) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under Section 32:

Provided *that in relation to any agreement entered into after the 31st day of March, 1981, this clause shall have effect subject to the modification that the words and figures “except assets on which allowance for depreciation is admissible under Section 32” had been omitted; and*

(c) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement, and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act being deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

Explanation.—For the purposes of this section, “mineral oil” includes petroleum and natural gas.

[(2) Where the business of the assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred wholly or partly or any interest in such business is transferred in accordance with the agreement referred to in sub-section (1), subject to the

provisions of the said agreement and where the proceeds of the transfer (so far as they consist of capital sums)—

(a) are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of transfer, shall be allowed in respect of the previous year in which such business or interest, as the case may be, is transferred;

(b) exceed the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred in connection with the business or to obtain interest therein and the amount of such expenditure remaining unallowed, shall be chargeable to income tax as profits and gains of the business in the previous year in which the business or interest therein, whether wholly or partly, had been transferred:

Provided *that in a case where the provisions of this clause do not apply, the deduction to be allowed for expenditure incurred remaining unallowed shall be arrived at by subtracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed.*

Explanation.—Where the business or interest in such business is transferred in a previous year in which such business carried on by the assessee is no longer in existence, the provisions of this clause shall apply as if the business is in existence in that previous year;

(c) are not less than the amount of the expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed in respect of the previous year in which the business or interest in such business is transferred or in respect of any subsequent year or years:

Provided that where in a scheme of amalgamation or demerger, the amalgamating or the demerged company sells or otherwise transfers the business to the amalgamated or the resulting company (being an Indian Company), the provisions of this sub-section—

(i) shall not apply in the case of the amalgamating or the demerged company; and

(ii) shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the latter had not transferred the business or interest in the business.”

6. The contention of the petitioner is that by mistake, due to inadvertent oversight and error on the part of the Ministry of Petroleum and Natural Gas, the petitioner has been denied benefit under Section 42 of the Act. On account of their mistake, Section 42 was not incorporated and mentioned in the two PSCs and the contracts were not tabled/laid before the Parliament. It is submitted that the petitioner is not responsible for the said lapse and, therefore, should not be punished and penalized by being denied benefit under the said Section. The aforesaid contention of the petitioner is pressed on the following averments/allegations:-

(a) Terms and conditions of the Model Production Share Contract (MPSC, for short), were a part of 1992 NIT. The terms and conditions of MPSC served as a basis for bid evaluation process. Article 16 of MPSC dealt with taxes, royalties, rental etc and Article 16.2 provided for the benefits under Section 42 of the Act. Thus, the MPSC was a part of

notice of 1992 NIT and was a part of the contracts in questions i.e. the two PSCs.

(b) On 22nd June, 1992, Ministry of Petroleum and Natural Gas, had sought opinion of the Ministry of Law, Justice and Company Affairs, whether benefit under Section 42 could be availed of and granted under contracts involving public-private participation. Ministry of Law, Justice and Company Affairs, vide their written opinion dated 21st July, 1992, affirmed and stated that the language of Section 42 was pari materia with the language of Section 293A and that vide the PSCs, which involved participation of the Government in the form of share in production, concessions as to tax could be granted under Sections 293A and 42 of the Act.

(c) Ministry of Petroleum and Natural Gas had written the letter dated 23rd February, 1998, for submission of Hindi translations of the contracts in view of the requirement that English and Hindi versions of the PSCs must be placed before the Parliament. In this letter, it was specifically stated that in order to give effect to provisions in the contract as per Section 42 of the Act, 50 copies each, of both Hindi and English versions, of the PSCs were required. The case of the petitioner assessee is that the necessary translation was made and the documents as required were furnished.

(d) Reconciliation of financial statements between petitioner and the Ministry of Petroleum and Natural Gas shows that Government of India's "petroleum profit" has been calculated with the benefit under Section 42 of the Act. The Comptroller of Audits & Accounts has also verified and accepted the said computation.

(e) Benefit under Section 42 of the Act has been granted to 216 PSCs of various oil fields before initiation of New Exploration Licence Policy (NELP) w.e.f. 1st January, 1999. Reference to benefit under the said Section was inadvertently missed out in 13 PSCs, which relate to six different parties including the petitioner and M/s NIKO Resources Limited, who have also been denied benefit under Section 42 of the Act.

(f) Ministry of Petroleum and Natural Gas, in office memorandum dated 17th June, 2005, had stated and accepted the position that it was inequitable and unfair not to grant benefit under Section 42 to the 13 PSCs in question. The Ministry of Petroleum & Natural Gas, in their letter dated 11th April, 2007, had again justified the grant of benefit under Section 42 of the Act to the petitioner and the fact that the Assessing Officer/authorities had questioned the claim/deduction raising the doubt. Petroleum operations were a high risk business and it would not be fair if benefits under Section 42 were not given to the 13 PSCs. It was further stated that due to an oversight, the said PSCs did not contain a specific provision for allowance and deduction under Section 42

though this condition or benefit was mentioned in two other contracts, details of which were mentioned. The Ministry of Finance was requested to issue necessary clarification.

(g) Ministry of Petroleum & Natural Gas in their letter dated 28th April, 2008, had again reiterated that non-failure to refer to Section 42 in the 13 PSCs was an oversight in isolated cases, as in all other PSCs signed till then under pre-NELP, included stipulation for benefit under Section 42 of the Act. It was further stated that in the case of 7 PSCs, 2 operated by the petitioner and 5 operated by NIKO Resources Ltd. located in the State of Gujarat, the Assessing Officer/tax authorities had disallowed the claim/benefit under Section 42 of the Act and levied tax. Ministry of Finance was requested to concur with the suggestion/recommendation of the Ministry of Petroleum and Natural Gas with regard to applicability of the benefit under Section 42 to these 13 PSCs.

(h) The requirement under Section 42 of the Act is that the contract should be laid before the Parliament, as a condition subsequent and is not a prior condition and, therefore, even now the PSCs can be placed before the Parliament. Reliance was placed on ***Atlas Cycle Industries Limited vs. State of Haryana***, (1979) 2 SCC 196, wherein it has been held as under:-

22. Now at p. 317 of the aforesaid Edition of Craies on Statute Law, the questions whether the direction to lay the rules before Parliament is mandatory or merely directory and whether laying is a condition precedent to their operation or may be neglected without prejudice to the effect of the rules are answered by saying that “each case must depend on its own circumstances or the wording of the statute under which the rules are made”. In the instant case, it would be noticed that sub- section (6) of Section 3 of the Act merely provides that every order made under Section 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made under Section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (6) of Section 3 of the Act falls within the first category i.e. “simple laying” and is directory not mandatory. We are fortified in this view by a catena of decisions, both English and Indian. In *Bailey v. Williamson* [1873LRVIII QB 118] where by Section 9 of the Parks Regulations Act, 1872 passed on June 27, 1872 “to protect the royal parks from injury, and to protect the public in the enjoyment of those royal parks and other royal possessions for the purpose of innocent recreation and exercise” it was provided that any rules made in

pursuance of the first schedule to the Act shall be forthwith laid before both Houses of Parliament, if Parliament be sitting, or if not, then within three weeks after the beginning of the then next ensuing session of Parliament; and if any such rules shall be disapproved by either House of Parliament within one month of the laying, such rules, or such parts thereof as shall be disapproved shall not be enforced and rules for Hyde Park were made and published on September 30, 1872 when Parliament was not sitting and in November 18, 1872, the appellant was convicted under Section 4 of the Act for that he did unlawfully act in contravention of Regulation 8 contained in the first Schedule annexed thereto by delivering a public address not in accordance with the rules of the said Park but contrary to the Statute, and it was inter alia contended on his behalf that in the absence of distinct words in the statute stating that the rules would be operative in the interval from the time they were made to the time when Parliament should meet next or if Parliament was sitting then during the month during which Parliament had an opportunity of expressing its opinion upon them, no rule made as supplementing the schedule could be operative so as to render a person liable to be convicted for infraction thereof unless the same had been laid before the Parliament, it was held overruling the contention that the rules became effective from the time they were made and it could not be the intention of the Legislature that the laying of the rules before Parliament should be made a condition precedent to their acquiring validity and that they should not take effect until they are laid before and approved by Parliament. If the Legislature had intended the same thing as in Section 4, that the rules should not take effect until they had the sanction of the Parliament, it would have expressly said so by employing negative language.

7. Separate counter affidavits/affidavits have been filed by the Ministry of Finance and by the Ministry of Petroleum and Natural Gas. In the counter affidavit/ affidavit filed by the Ministry of Finance, they

have raised preliminary objections regarding territorial jurisdiction, as well as alternative remedy as the assessment order is appealable. The territorial jurisdiction has been challenged on the ground that the assessment order, in case of the petitioner, was passed in Ahmedabad in the State of Gujarat and this writ petition has been filed in the Delhi High Court. We may at the outset note that the Additional Solicitor General did not press the said objections and rightly, in our opinion. The petitioner is not challenging/questioning the assessment order, which is already a subject matter of the appellate proceedings. The issue in present writ petition is whether the failure to incorporate a clause for grant of benefit u/s 42 of the Act was a result of an error or oversight or the grant of the said benefit was never intended and agreed. This question cannot be decided by the Assessing Officer or by the authorities under the Act or in the appellate proceedings pursuant to the assessment order. The two PSCs in question were executed and signed in Delhi by the respondent No. 1 i.e. Ministry of Petroleum and Natural Gas and, therefore, this court has jurisdiction to examine the contention as the cause of action or subject/issue raised in the writ petition has arisen or arises in Delhi. Even if a part of the cause of action arises within the jurisdiction of this Court, the writ petition is maintainable and can be entertained by this Court. The question of forum convenience, in the present case, does not arise, as the issue raised, is limited and

substantially arises in Delhi, as the PSCs were executed in Delhi. Further the two Ministries, the Ministry of Finance and Ministry of Petroleum & Natural Gas, have been made parties and their files/relevant records are in Delhi.

8. Similarly, preliminary objection that the writ petition should not be entertained, as it relates to a contractual dispute, has to be rejected. The dispute or the cause of action raised pertains to what was allegedly agreed and accepted between the petitioner and the Ministry of Petroleum and Natural Gas. The dispute does not pertain to the interpretation of the two PSCs. The writ courts have jurisdiction to entertain contractual issues when justified and necessary, as per the ratio expounded and explained by the Supreme Court in ***Kumari Shrilekha Vidyarthi and Ors. Vs. State of U.P. and Ors.***, (1991) 1 SCC 212 and ***ABL International Limited & Anr. Vs. Export Credit Guarantee Corporation of India & Ors.***, (2004) 3 SCC 553. We note that the writ petition has remained pending before this Court since August, 2008 and it may not be proper and appropriate to dismiss the same and ask the petitioner to file a Civil Suit at this stage. The dispute, though factual, can be decided on the facts and material on record and on the basis of official records.

9. This brings us to the core or the main issue: Whether benefit under Section 42 of the Act was envisaged in the 1992 NIT and in the PSCs,

but due oversight or mistake, the same was not included and mentioned in the written contract, and if so, the effect thereof? If the question is decided in favour of the petitioner, the second aspect is whether a direction can be issued for grant of benefit under Section 42 of the Act to the petitioner, with a further direction that the contract should be laid before the Parliament after incorporating the said clause?

10. The petitioner, in the writ petition, has stated that the 1992 NIT included and referred to the MPSC. This is not correct. The 1992 NIT did not refer to the MPSC and did not stipulate that MPSC shall form part of the tender documents. In 1992 NIT, there was no reference to MPSC or that the terms and conditions of the MPSC shall be included in, or be a part of, the PSCs. We do not also find any document or clause in the bid given by the petitioner under the 1992 NIT to the effect that the MPSC or clause 16.2 of the same would be applicable and should a part of the PSCs. The tender given by the petitioner did not specifically stipulate or include any clause with regard to benefit under Section 42 of the Act.

11. Written PSCs were signed and executed between the petitioner and the Ministry of Petroleum and Natural Gas in the name of the President on 20.2.1995. Article 15 of the said two PSCs had specific stipulations and clauses under the head “Taxes, Royalties, Rentals, Customs duties, etc.” In clause 15.1, it was stated as under:-

“15.1 All the Companies and operations under this Contract shall be subject to all fiscal legislation in India except where, pursuant to any authority granted under any applicable law, they are exempted wholly or partly from the application of the provisions of a particular law or as otherwise provided herein.”

Clauses 15.3 and 15.4 read as under:-

“15.3 If any change in or to any Indian Law, rule or regulation by any authority dealing with income tax or other corporate tax, export/import tax, custom duty or tax imposed on Petroleum or dependent upon the value of Petroleum results in a material change to the economic benefits accruing to the parties after the Effective Date of the Contract, the parties to this contract shall consult promptly to make necessary revisions and adjustment to the contract in order to maintain such expected economic benefits to the Parties.”

15.4 (a) No custom duties or other import duties are applicable on equipment and materials imported solely for use in Petroleum Operations in the Contract Area.

(b) The Contractor shall not be liable for payment of sales tax on sale of Crude oil to the Government/ its nominee, which shall be payable by the buyer.”

There is no reference to Section 42 of the Act.

13. There is no letter or correspondence written by the petitioner from 1995 onwards stipulating that, by mistake or due to oversight, Section 42 benefit was not mentioned in the written PSCs. Letter dated 23rd February, 1998, written by the Desk Officer, Ministry of Petroleum and Natural Gas refers to the Section 42 and the requirement to table the contract in both Houses of Parliament and therefore, 50 copies of Hindi

and English version were required. However, this letter can be explained as having been written in routine as in several PSCs benefit under Section 42 was granted and thus contracts were required to be placed before the Parliament. This letter by itself or even with other letters, etc. does not justify the claim of the petitioner. Learned counsel for the petitioner is justified in relying upon the three letters written by Ministry of Petroleum and Natural Gas to the Ministry of Finance being letters dated 17th June, 2005, 11th April, 2007 and 28th April, 2008. However, these letters are internal inter- ministerial correspondence and were written, as it is apparent, on the request of the petitioner or NIKO Resources Limited. These are not contemporaneous letters written at the time when the PSCs were signed. These letters use the word ‘oversight’, but the question is whether or not there was an oversight at the time of execution and signing of the PSCs in 1992-1995. The question is whether or not, at that stage, the parties had envisaged and were ad idem that the petitioner would be entitled to benefit under Section 42 under the PSCs. The categorical and emphatic stand taken by the respondent, Ministry of Petroleum and Natural Gas, in the counter affidavit, is that no such benefit was envisaged, considered or granted at the time when the PSCs were negotiated and awarded. Their stand is as under:-

“4. That the contents of Para 4 are matter of record. However, it is submitted that Notice Inviting Offer (referred as NIT in the Petition) issued by the Ministry of Petroleum & Natural Gas, in 1992, did not contain any Model Production Sharing Contract (MPSC). The NIT was issued for inviting bids for offering of small size discovered fields. The MPSC places at Annexure P-1 in the petition is for the exploratory blocks offered during the same period and not for the discovered fields as that of the petitioner. It is also submitted that if the position taken by the petitioner is accepted as correct that the MPSC used for purposes of bid evaluation and execution of contract included Article 16 and Section 42, the Petitioner, at the time of negotiating the PSC, should have prevailed upon the Government for including the relevant Section in the executed contract, which was not done by the petitioner. It is therefore submitted that the petitioner cannot put the onus on the respondent for not including the relevant section of Income Tax Act in the PSC. It is pertinent to state that the signed PSC did not specifically provide for applicability of Section 42 of the Income Tax Act.

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9. That it is submitted that as against the 1992 NIT, only 13 PSCs for small sized fields were signed, out of which the two PSCs signed with Petitioner are part of these PSCs. The other PSCs mentioned by the petitioner were signed under different NITs.

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11. That the referred position was observed from the scrutiny of records by Ministry of Petroleum & Natural Gas, after another contractor of similarly placed Hazira PSC i.e. M/s NIKO Resources brought to the notice of this ministry in May 2005 that the revenue authorities

had started disallowing the benefit of Section 42 of the Income Tax Act, 1961 to the said PSC. It may be stated here that no contractor out of these 13 small size fields as referred in Para 9 above, including the Petitioner, made any representation to the respondent ministry earlier about incorporating the clause pertaining to Section 42 of Income Tax Act in respective PSC. It is also submitted that as already stated in Para 4, if the position taken by Petitioner is taken to be correct that the MPSC used for purposes of bid evaluation & execution of contract included Article 16 and Section 42, the Petitioner, at the time of negotiating the PSC, should have prevailed upon the respondent for incorporating the relevant Section in the executed contract, which was not done by the Petitioner. In this view of the matter it is stated that the Petitioner cannot put the onus on the respondents for not including the relevant section of Income Tax Act in the PSC.”

14. In order to verify and examine the correct factual position, we had asked the respondent Ministry of Petroleum and Natural Gas to produce the original files relating to preparation and finalization of tender documents. They were produced before us on 21st February, 2012. We examined the original records and found that under the terms and conditions, as well as in the notes, no benefit under Section 42 of the Act was envisaged or was required to be granted. We also recorded the statement of the learned Additional Solicitor General that the three letters mentioned above were factually incorrect and, therefore, no legal right on the basis of the letters accrues/arises. Thus, no statement or

promise, that advantage under Section 42 would be available to the successful bidder, was promised or made.

15. On the question of discrimination between 13 PSCs who are not being given benefit under Section 42 of the Act and other PSCs where benefit has been given, the respondents have stated that the 13 PSCs were in respect of small oil fields which had already been discovered and, therefore, the risk factor was less. The other PSCs were in respect of undiscovered oil fields, and therefore, the respondents had agreed and accepted that the benefit under Section 42 should be granted. In view of the explanation given by the respondents, it cannot be said that the respondent Ministry of Petroleum or Natural Gas, in the present case, had deliberately withdrawn the benefit, which was initially envisaged but due to an oversight was not recorded or mentioned in the written contract. The respondents have stated that the benefit under Section 42 was granted in respect of undiscovered oil fields and not in respect of discovered small oil fields.

16. The petitioner in their affidavit dated 3rd August, 2009, have tried to controvert the said statement/ averments and stated that in 1994-95, PSCs were signed for Rawa Oil Field and Panna Mukta oil fields. The respondents have contested and pointed out that these fields were not small scale discovered fields. The petitioner has stated that in 2000, Assam Company Limited was granted benefit of Section 42 in respect of

Amguri oil field, which was a discovered field. However, in the present case we are concerned with the year 1993-94 and not with the year 2000 and in 1999 NELP was adopted. We may note here that the petitioner along with the said affidavit has filed on record an extract from their tender/bid. In the tender/bid, the petitioner had stated as under: -

“In the absence of formal terms & conditions, the following clarifications/qualifications are necessary based on a reading of the “Model Contract” :-

- 1) The model covers all aspects of petroleum operations, including exploration, discovery and development of oilfields, and it will have to be radically pruned to suit the present purpose, viz. development of a discovered oilfield.*
- 2) The various provisions of the model are so interlinked that it will be difficult to delink exploration/discovery from development. In the event Government/ONGC require us to adopt a contract as per the model, deletions and additions have to be made by mutual agreement to cover/address only the development activities.*

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- 1) Article 16 requires contractor to be liable for payment to Government Central & State and local bodies of taxes, royalties, cess etc. We assume that in the event of any change in laws and regulations, either through amendment or interpretation, resulting in additional cost implications which the Contractor could not have foreseen or allowed for, then all such additional costs shall be reimbursed to Contractor, either by*

direct payment from Government or through suitable amendment of contract terms.”

16. The petitioner was, therefore, aware of clause 16.2 of MPSC, which specifically makes reference to benefit under Section 42 of the Act, but did not advert to and refer to the same in their tender bid. They did not ask for the said benefit.

17. In these circumstances, it is not possible to accept the contention of the petitioner that benefit under Section 42 of the Act was inadvertently missed out, or due to an oversight, not included in the written contract. In these circumstances, we need not examine the second question/issue referred to above.

18. We must, however, express our displeasure and anguish over the averments made in the additional affidavit dated 23rd March, 2012, filed by the respondent No. 1. It was stated in the additional affidavit that “Petroleum profit” is shared between the Government of India and the petitioner at the rates agreed under Article 14.2.1 and it does not include income tax as a contract cost. This is not fully factually correct as the petitioner has filed before us copy of the reconciliation and financial statement for the year 2006-07, with and without benefit under Section 42 and it is pointed out that “petroleum profit” has been calculated with reference to benefit under Section 42. Our attention is rightly drawn by the petitioner to the letter dated 11th November, 2009, written by the

Ministry of Finance, Department of Revenue. In paragraph (I), of the said communication, it is stated that the government's share of "petroleum profit" may be impacted due to changes in the investment multiple/post tax rate of return but the extent of impact can not be predicted reliably. Ministry of Petroleum and Natural Gas should have been careful while filing and making the said averment. Even if the factual position was uncomfortable, they should have admitted and accepted the true facts and should not have been ambivalent. We do not, however, proceed on this aspect, as the learned senior counsel for the petitioner on instructions had stated that they do not want the Government of India to return or repay the "excess" "petroleum profit" paid to them.

19. In view of the aforesaid reasoning, we do not find any merit in the present writ petition and the same is dismissed. In the facts of the case, there will be no orders as to costs.

(SANJIV KHANNA)
JUDGE

(R.V. EASWAR)
JUDGE

May 28th , 2012
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