



2025:UHC:681-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE MR. G. NARENDAR, C.J.
HON'BLE MR. ASHISH NAITHANI, J

INCOME TAX APPEAL No.30 of 2015

Commissioner of Income Tax, (International Taxation) ...Appellant

Versus

Baker Hughes Asia Pacific Limited ...Respondent

Counsel for the appellant : Mr. Hari Mohan Bhatia, learned counsel.

Counsel for respondent : Mr. Pulak Raj Mullick, learned counsel, through VC.

JUDGMENT : (per HON'BLE MR. G. NARENDAR, C.J.)

Learned counsel for the appellant would fairly submit that the substantial questions of law raised in the instant appeal have already been answered by the Coordinate Bench of this Court, headed by the then Hon'ble Chief Justice, and was pleased to dispose of the appeal by the following order: -

"6. In such circumstances, the appeals are disposed of as follows:

(i) We answer the questions of law relating to the assessability of the amounts under Section 44BB against the Revenue.

(ii) In relation to the substantial questions of law relating to Section 234B, we remit the matter back to the Assessing Officer to consider whether there is any liability under Section 234B on the



basis that the amounts in question would fall to be assessed under Section 44BB of the Act."

2. That apart, the issue regarding inclusion of service tax has also been considered and disposed of by the Full Bench of this Court in favour of the assessee, and the Full Bench has observed in paragraphs Nos.62, 63, 64 and 65 as under: -

*"62. Except to state that the said judgment needs re-consideration, no justifiable cause has been shown as to why this Court should take a view different from that of the Delhi High Court, in **Mitchell Drilling International Pvt. Ltd. (2016) 380 ITR 130 (Delhi)**, more so when the Division Bench of the Delhi High Court has taken a view similar to that of a Division Bench of this Court in **M/s Schlumberger Asia Services Ltd. (2009) 317 ITR 156**. As the revenue has not been able to show just cause for this Court to take a different view, we see no reason to differ with the Division Bench judgment of the Delhi High Court that reimbursement of service tax is not an amount paid to the assessee on account of providing services and facilities in connection with the prospecting for, or extraction or production of, mineral oils in India.*

63. As we have, for reasons aforementioned, held in favour of the assessee and against the Revenue, it is unnecessary for us to examine the submission of Sri Poras Kaka, learned Senior Counsel appearing on behalf of the assessee, that the Income Tax Act, being a Central/Federal law, warrants consistency in interpretation and approach to be adopted; and the



view adopted by one High Court in India should be followed by all other High Court also.

64. We answer the reference in favour of the assessee, and against the Revenue, holding that the amount reimbursed to the assessee (service provider) by the ONGC (service recipient), representing the service tax paid earlier by the assessee to the Government of India, would not form part of the aggregate amount referred to in clauses (a) and (b) of sub-section (2) of Section 44BB of the Act.

65. We direct all these appeals to be listed before the Division Bench, hearing appeals under Section 260-A of the Act, for its disposal in terms of this order."

3. In view of the judgment disposing of ITA No.34 of 2015 and connected appeals, we answer the questions of law relating to the assessability of the amounts under Section 44BB against the Revenue. In relation to the substantial questions of law relating to Section 234B, we remit the matter back to the Assessing Officer to consider whether there is any liability under Section 234B on the basis that the amounts in question would fall to be assessed under Section 44BB of the Act.

4. We leave it open for the respondent/ assessee to canvass their case before the Assessing Officer.



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5. In view of the above, the present appeal is disposed of.

6. Pending application, if any, also stands disposed of.

G. NARENDAR, C.J.

ASHISH NAITHANI, J.

Dt: 10th February, 2025
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