



## Global Business Tax Alert Sharp Insights

- Activities relating to acquisition of 3D seismic data covered under section 44BB
- Income from mobilisation and demobilisation of vessel outside India taxable as fees for technical services
- Interest u/s 234B and 234C not chargeable to the non-resident

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# Synopsis

Recently, the Income Tax Appellate Tribunal – Delhi, in the case of Fugro Geoteam AS (“assessee”), has held that:

- Activities relating to acquisition of 3D seismic data is covered under provisions of section 44BB relating to presumptive taxation.
- Income arising from mobilisation and demobilisation of vessel outside India was taxable as fees from technical services under section 9(1)(vii)
- Assessee being a non-resident and as such tax was to be deducted at source by Indian party, interest under sections 234B and 234C was not chargeable

## Facts

### **Section 44BB of the Income-tax Act, 1961 ('Act')**

- Assessee, a tax resident of Norway, was engaged in activities relating to acquisition of 3D seismic data under contracts with Reliance Industries Limited and Oil and Natural Gas Corporation Limited.
- In return filed for the Assessment year 2008-09, assessee declared income from contract receipts under the presumptive taxation provisions of section 44BB for computing profits and gains in connection with the business of exploration, etc., of mineral oils.
- The Assessing Officer ('AO') rejected the assessee's claim for levy of tax under section 44BB at a presumptive profit rate of 10 per cent and held the income to be taxable as fees for technical services at a presumptive profit rate of 25 per cent.
- On appeal, the Dispute Resolution Panel ('DRP') upheld the draft order of the AO.

### **Section 9 of the Act**

- Assessee claimed that income from mobilisation and demobilisation of vessel outside India was not chargeable to tax in India.

- AO held that said income was taxable as fees from technical services under section 9(1)(vii).
- On appeal, the DRP upheld the draft order of the AO.

### **Section 234B and Section 234C, of the Act**

- The AO levied the consequential interest for default and deferment in payment of advance tax under sections 234B and 234C.
- The assessee claimed that Interest under sections 234B and 234C was not chargeable, since the assessee is a non-resident and as such tax is to be deducted at source by the Indian party.

## Issues before the Tribunal

- Whether assessee was entitled to declare its income under the presumptive taxation provisions of section 44BB.
- Whether income arising from mobilisation and demobilisation of vessel outside India was taxable.
- Whether interest under sections 234B and 234C is applicable in case of the assessee being a non-resident.

## Ruling of the Delhi Tribunal

The Delhi Tribunal held as under:-

- Relying on the judgment of the Hon'ble Delhi High Court in the case of PGS Geophysical AS<sup>1</sup>, the Tribunal held that the assessee is entitled to declare its income under the provision of section 44BB of the Act.

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<sup>1</sup> PGS Geophysical AS v. Addl. DIT [2014]369 ITR 27/[2015] (Delhi)

- Relying on the various judgments of the Hon'ble Uttarakhand High Court<sup>2</sup>, the Tribunal held that the revenue arising from mobilization / demobilization of vessel outside India is taxable as fees for technical services.
- Relying on the judgement of Hon'ble High Court in the case of NGC Network Asia LLC<sup>3</sup> and in the case of Clifford Chance LLP<sup>4</sup>, the Tribunal held that interest under sections 234B and 234C is not chargeable. Also, the Tribunal observed that the special leave petition filed from the judgment of the Hon'ble Uttarakhand High Court in the case of Clifford Chance LLP was dismissed by the Hon'ble Supreme Court.

## Comments

The Delhi Tribunal relied on the various High Court Judgements of Delhi, Uttarakhand and Bombay to arrive at its decision.

It is pertinent to observe that the tax authorities at field level is taking a position that foreign companies are liable to pay interest under section 234B and 234C. Further, the tax authorities have been seen filing an appeal before the Tribunal taking a ground that in view of the Delhi High Court decision in the case of Alcatel Lucent <sup>5</sup>, the non-residents are liable to pay interest.

In the present case, the Delhi Tribunal has taken into consideration the Bombay High Court ruling in the case of NGC Network Asia LLC and in the case of Clifford Chance LLP to hold that interest under sections 234B and 234C is not chargeable in case of a non-resident. Further, the Tribunal observed that the special leave petition filed from the judgment of the Hon'ble Uttarakhand High Court in the case of Clifford Chance LLP was dismissed by the Hon'ble Supreme Court.

<sup>2</sup> CIT v. Atwood Oceanics Pacific Ltd. [2011] 338 ITR 156 (Uttarakhand);  
 CIT v. Halliburton Offshore Services Inc. [2008] 300 ITR 265 (Uttarakhand);  
 CIT v. R & B Falcon Drilling Co. [2011]338 ITR 152 (Uttarakhand);  
 CIT v. Sundowner Offshore International (Burmuda) Ltd. [2011] 338 ITR 147 (Uttarakhand);  
 CIT v. Trans Ocean Offshore Inc. [2008] 299 ITR 248 (Uttarakhand) and  
 Sedco Forex International Inc. v. CIT [2008] 299 ITR 238 (Uttarakhand)

<sup>3</sup> DIT (International Taxation) v. NGC Network Asia LLC [2009] 313 ITR 187 (Bom.)  
<sup>4</sup> DIT v. Clifford Chance LLP [IT Appeal No. 2883 of 2008]

<sup>5</sup> DIT (IT) vs. Alcatel Lucent USA, Inc [2014] 45 taxmann.com 422 (Delhi)

It is also pertinent to note that the present Delhi Tribunal does not discuss the Delhi High Court ruling in the case of Alcatel Lucent even though it is the jurisdictional High Court.

The decision relates to the AY 2008-09 and so has not discussed the changes in calculation of advance tax vide proviso to section 209(1) of the Act w.e.f. 1 April 2012.

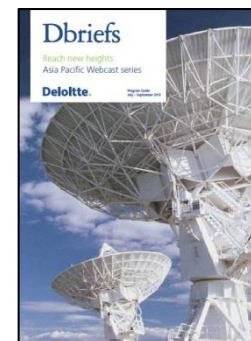
**Source:** ITAT Delhi in the case of Fugro Geoteam AS Vs. Additional Director of Income-tax (International Taxation) (ITA No. 5823/DEL/2011)

## Upcoming Dbriefs - Register

### India's Finance Act and Recent Developments: The Road Ahead

**Tuesday, 28 July, 2:30 PM – 3:30 PM IST**

The proposals of the Indian Finance Act 2015 are now in force and there are significant developments for foreign investors. In addition to the amendments in law by the Finance Act, there have been several other developments on the tax front. What are the amendments in law and recent developments you need to be aware of? Stay up to date with the latest international tax developments in India.



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