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

+ **ITA 56/2023**

**THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3** Appellant

Through: Mr Keshav Garg, proxy for Mr
Ruchir Bhatia, Sr. Standing Counsel.

versus

TECHNIP FRANCE SAS Respondent

Through: Mr Aniket D. Agrawal with Mr
Samarth Chaudhari, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

30.01.2023

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[Physical Hearing/Hybrid Hearing (as per request)]

1. A request for accommodation is made on behalf of Mr Ruchir Bhatia by Mr Keshav Garg, Advocate. Mr Garg says that Mr Bhatia is not well.
2. This appeal is directed against the order dated 26.07.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] concerning Assessment Year (AY) 2011-12.
3. The issue which arises for consideration is: whether the amounts received by the respondent/assessee from M/s Reliance India Ltd. (RIL) should be considered as Fees for Technical Services (FTS) and hence exigible to tax under Section 44DA and Section 115A of the Income Tax Act, 1961 [in short, "the Act"]?

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4. According to the Assessing Officer (AO), since the payment received is qua FTS, it will fall under Section 9(1)(vii) of the Act and is also covered by the provisions of Article 13 of the India-France Double Taxation Avoidance Agreement (DTAA).

5. To be noted, the record shows that the respondent/assessee does not have a Permanent Establishment (PE) in India.

5.1. Furthermore, it is the respondent/assessee's case that the activity in issue is connected with prospecting and extraction of mineral oil, and therefore, would fall under Section 44BB of the Act.

5.2. The respondent/assessee, accordingly, it appears, has offered the amount received against the activity for levy of tax under Section 44BB of the Act and appears to have relied upon the following judgments:

(i) **ONGC Ltd. v. Commissioner of Income Tax** 376 ITR 306;

(ii) **DIT v. OHM Limited** (2013) 352 ITR 406 (Delhi)

6. According to the appellant/revenue, the respondent/assessee is the second line contractor. The Tribunal, in this behalf, while ruling in favour of the respondent/assessee, has relied upon its decision rendered in the matter concerning the respondent/assessee.

7. The appellant/revenue will inform the court as to what was the final outcome of that decision taken by the Tribunal.

8. To be noted, Mr Aniket D. Agrawal enters appearance on behalf of the respondent/assessee. Mr Garg will ensure that a copy of the case papers is served on Mr Agrawal *via* e-mail, in the course of the day.



9. Accordingly, at request, list the above-captioned appeal on 22.02.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 30, 2023 / tr

Click here to check corrigendum, if any

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