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

+ **ITA 775/2023 & CM APPL. 65363/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3 Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

VETCO GRAY PTE LTD. Respondent

Through: Mr Sachit Jolly with Ms Disha Jham,
Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

18.12.2023

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

1. This appeal concerns Assessment Year (AY) 2018-19.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 15.03.2023, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The sole issue which arises for consideration concerns the taxability of amounts received by the respondent/assessee against offshore supplies of plant and machinery.
4. We are informed by Mr Sachit Jolly, learned counsel, who appears on behalf of the respondent/assessee, that in the earlier AYs i.e., AY 2010-11 to AY 2017-18, 1% of the gross receipts were attributed to the respondent/assessee.

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5. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, however, informs us that insofar as AY 2017-18 is concerned, although an order was passed under Section 143(3) of the Income Tax Act, 1961 [in short, “the Act”], the Commissioner of Income Tax [CIT] took recourse to powers under Section 263 of the Act and thereafter, as per law, set aside the assessment order.

5.1 Mr Bhatia also states that in the appeal, the Tribunal reversed the decision of the CIT and that the appellant/revenue’s appeal i.e., ITA 448/2023 for the said year is pending adjudication with this court. The said appeal is listed before the court on 04.04.2024.

6. We may note that the stand of the appellant/revenue is that the provision of Section 44BB of the Act would be applicable in this case, and therefore, a sum equal to 10% of the aggregate amount, as set forth in subsection (2) of the said Section, would have to be deemed as profits and gains of business and accordingly brought to tax.

7. On the other hand, Mr Jolly says that the provision of Section 44BB of the Act would not apply as the said provision speaks of plant and machinery supplied on “hire”, whereas, the respondent/assessee for years has been accepting the route charted out by the Central Board of Direct Taxes (CBDT) *via* Instruction No.1767 dated July 01, 1987.

7.1 In this regard, a hard copy of the instruction has been placed before us. Based on the said instruction, in particular paragraph 5 of the said instruction, it is contended that only 1% of the gross receipts, if at all, can be brought to tax of the offshore supplies.



7.2 For convenience, the relevant part of the said instruction is extracted hereafter:

“5. On this basis, where the sale takes place outside India, only 10 percent of the gross receipts in respect of the activities of installation, hook-up, commissioning etc., performed in India will be taxable here. Where, however, the sale takes place within the country, apart from the 10 percent in respect of gross receipts for activities by way of; installation etc. performed in India, the income arising from the activity of sale itself will have to be brought to tax. This will be done by estimating the income from such sale at one percent (10% of 10%) of the gross receipts in respect of all activities performed outside India. The activities performed in India are excluded for this purpose because, the entire income from such activities would already have been included as indicated in the preceding sentence.”

8. *Prima facie*, the provisions of the said instruction seem to apply to the respondent/assessee.

9. Mr Bhatia states that he would require a short accommodation to ascertain as to whether or not the said instruction has been modified or superseded.

10. At the request of Mr Bhatia, list the matter on 22.12.2023.

11. For the purpose of good order and record, the Registry will scan and upload the copy of the aforementioned instruction so that the same remains embedded in the case file.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 18, 2023 / tr

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[Click here to check corrigendum, if any](#)

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