

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI**

**ITA No.266/Del/2007
Assessment Year : 2004-05**

**DY COMMISSIONER OF INCOME TAX
(OSD), RANGE-1, DEHRADUN**

Vs

**M/s DOLPHIN DRILLING PTE LTD,
C/o S.R.Batliboi & Co.,
2nd Floor, The Capital Court,
LSC, Phase-III, O/of Palme Marg,
Munirka, New Delhi – 110 067.
PAN No.AACCD0288Q.**

Shri D R Singh, JM And Shri R C Sharma, AM

Dated : October 26, 2009

Appellant Rep. by : Shri Ashwani Kumar Mahajan, CIT-DR.

Respondent Rep. by : Shri Ajay Vohra and Shri Dhruv Sanghavi, Advocates.

ORDER

PER R.C.SHARMA, AM :

This is an appeal filed by the Revenue against the order of CIT(A) dated 15.11.2006 for the AY 2004-05.

2. Rival contentions have been heard and record perused. Brief facts of the case are that assessee, a non resident company, incorporated in Singapore filed its return of income on 29.10.2004 declaring loss of Rs.94,43,72,830/-. The assessee company has given on hire its drillship 'Belford Dolphin' to its sister concern, M/s Dolphin Drilling Ltd. in connection with execution of the contract with ONGC. The assessee declared contract revenues at Rs.58,42,15,200/- and after claiming depreciation of Rs.147,60,49,666/- declared loss of Rs.94,43,72,830/-. The AO however rejected the books of account on the ground that no correct income can be deducted therefrom particularly in view of the method of translating business transactions into currency of accounting, incorrect report in form 3CD etc. and estimated the income of the assessee u/s 44BB(1) @ 10%.

3. In an appeal filed by the assessee, the CIT(A) allowed assessee's claim of proper accounting of income received in convertible foreign exchange and also on account of claim of depreciation. With regard to addition made u/s 40A(i), the CIT(A) restored the matter back to the file of the AO for deciding afresh after verification of the expenses. Aggrieved by this order of CIT(A), the Revenue is in further appeal before us.

4. We have considered the rival contentions and found from the record that the AO has declined assessee's claim of proper accounting of foreign transaction by observing that the assessee has claimed to have maintained its books of account in US\$ and has also received revenues in US\$, the assessee therefore, should have converted the business transactions in other

currencies into US\$ on the date of such transactions while the assessee has converted all transactions on 31.3.2004 in INR which is not in order in view of accounting principles. As per AO, correct profit or loss cannot be ascertained if the expenditures and receipts are converted on the last day of the year after all such transactions are over. Therefore, subclause (c) of clause (2) of explanation to Rule 115(1) has no application to the business transactions as claimed by the assessee. We have considered the rival contentions and gone through the orders of the authorities below and do not find any infirmity in the order of CIT(A) for accepting assessee's method of conversion of foreign transaction into Indian currency on the last date of accounting year. Sub-clause (c) of clause (2) of Explanation to Rule 115(1) refers to the conversion of income from business and profession and not to the day to day transactions of business. The provision reads as under: -

"115. Rate of exchange for conversion into rupees of income expressed in foreign currency.

(1) The rate of exchange for the calculation of the value in rupees of any income accruing or arising or deemed to accrue or arise to the assessee in foreign currency or received or deemed to be received by him or on his behalf in foreign currency shall be the telegraphic transfer buying rate of such currency as on the specified date." And the specified date as has been defined in sub-clause (c) of clause (2) of explanation reads as under:

"(c) in respect of income chargeable under the heads "income from house property", "profits and gains of business or profession" not being income referred to in clause (d) and "income from other sources" (not being income by way of dividends and interest on securities", the last day of the previous year of the assessee;"

5. It is crystal clear that Rule 115 provides for conversion of income in 'foreign currency' using the exchange rate on the specified date. The Rule does not require the assessee to first convert the income into USD or any other currency and subsequently convert the same into INR. Income from profits and gains of business is the culmination of the day to day business transactions. In other words, the requirement under Rule 115 to convert 'income from profits and gains of business' at the year end rate effectively implies that the day to day transactions are required to be converted at the year end rate. Clause 2(c) of the Explanation to Rule 115(1) provides that the exchange rate as on the last day of the relevant financial year is to be adopted for the purpose of conversion of income from profits and gains of business or profession into Indian Rupees. Income is defined in Section 2(24) to include profits and gains of business or profession and is construed as revenues less deductions of expenses allowed under the Act. Accordingly, there is no infirmity in the order of CIT(A).

6. With regard to ground taken for denial of claim of depreciation, we found that the assessee company has claimed depreciation of Rs.1,68,51,28,493/- on the drillship 'Belford Dolphin'. The assessee was required to substantiate the ownership of Drillship and justifications of depreciation thereon. In reply vide letter dated 22.3.2006, the assessee has given the break-up of cost of acquisition of drillship as under: -

Drill cost	USD 26,03,65,218.00
Inventory	USD 69,97,903.00
CWIP	USD 26,36,879.00
Total	USD 27,00,00,000.00

7. In support of total cost, copy of a memorandum of agreement has been filed. For the purpose of carrying on its business activities during AY 2004-05, the assessee had acquired the drillship – Belford Dolphin. The assessee had

submitted the following documents in support of the same during the course of assessment proceedings vide letter dated 22.3.2006 :-

(i) The agreement under which Belford Dolphin was purchased for USD 270,000,000 which, inter alia, also categorically mentioned the manner in which the consideration would be settled i.e. the mode of payment – copy on pages 99-104 of paper book.

(ii) In order to substantiate the value of actual cost adopted by the appellant for Belford Dolphin, the auditors certificate certifying the actual cost of Belford Dolphin in the books of account maintained by the appellant in Singapore copy on pages 106-107 of paper book.

(iii) Certificate of registration issued by the Registrar of Singapore Ships stating that the appellant is the owner of Belford Dolphin; copy on pages 98 of paper book.

(iv) The manner in which the aggregate consideration of USD 270,000,000 was accounted for in the Indian books of account which is as follows:-

Particulars	Amount (USD)
Cost of Belford Dolphin	260,365,218
Inventory	6,997,903
Capital Work in progress	2,636,879
Total	270,000,000

The manner in which the written down value of USD 261,494,428, on which depreciation has been claimed, had been arrived at i.e. the aggregate of the cost of acquisition of USD 260,365,218 and capitalized work-in-progress of USD 1,129,210 and the exchange rate used for the purpose of conversion into Indian Rupees, which is as follows:

Particulars	Amount (USD)	Exchange rate	Amount (Rs.)
Cost of Belford Dolphin	260,365,218	45.15 (date of purchase – October 10, 2003)	11,755,489,586
Capitalized work in progress	1,129,210	45.42 (date of capitalization – January 1, 2004)	51,288,718
Total			11,806,778,304

The following documentation in relation to customs clearance of Belford Dolphin copies on pages 109-120 of paper book.

- Bill of entry;
- Bill of lading;
- Essentiality certificate dated November 10, 2003 issued by the Directorate General of Hydrocarbons; and
- Fair market valuation certificate as on November 10, 2003 from Noble Denton, a distinguished independent expert valuer.

8. We found that during the course of assessment proceedings, the assessee had filed adequate documents in support of the value of the drillship. The

total purchase consideration of USD 270,000,000 payable to Fred Olsen Energy AS, is clearly reflected in the purchase agreement and the same is adequate and conclusive proof of the same. When the actual consideration is duly explained and agreed as per the agreement by which the drillship changed hands, there is no question of the same being certified by any competent authority. The CIT(A) has recorded a categorical finding to the effect that there is no doubt whatsoever that the asset 'Belford Dolphin' is owned by the assessee and that it has been used by the assessee. If the assessee is in the business of giving drillship on hire, such income has to be assessed under the head 'profits and gains of business or profession' and if not, such income has to be assessed under the head 'income from other sources'. However, in both cases, assessee is entitled to depreciation on the drillship. The ship has been purchased from its sister concern and consideration has been paid by way of allotment of 270 million shares of one dollar each to its sister concern namely Fred Olsen Energy AS. In support of the market value of the drillship, assessee has submitted two valuation reports, one by R.S.Platou who estimated the cost between 260-270 million dollars and second by Noble Denton who estimated the cost at 270 million dollars. The chronology of events regarding the drillship Belford Dolphin is that in November, 2001 Navis Explorer AS sold this ship to Fred Olsen Drilling AS for 344 million dollars. In October, 2003 Fred Olsen Drilling AS transferred it to Fred Olsen Energy AS for 270 million dollars and in the same month it was sold by Fred Olsen Energy AS to DDPL also for 270 million dollars. The assessee has also submitted details of the WDV of the drillship in the hands of the previous owner namely, Fred Olsen Energy AS. The WDV of Belford Dolphin as on October 2003 was US\$ 331428774 while it has been sold by Fred Olsen Drilling US\$ 27000000. Thus the actual cost of the drillship to the assessee is what has been claimed by it before the AO. The assessee has duly furnished from 3CEB which is a report u/s 92E of the IT Act alongwith its return of income before the AO. Accordingly, we do not find any infirmity in the order of CIT(A) for allowing claim of depreciation.

9. In ground No.3, the Revenue is aggrieved for restoration of matter regarding disallowance of expenses u/s 40(a)(i).

10. Rival contentions have been considered. We found that AO has declined assessee's claim of the expenses incurred by the assessee by invoking the provisions of Section 40(a)(i) on the ground that tax has not been deducted therefrom even though these expenses were not taxable in India and there was no requirement to deduct tax thereon. While restoring the matter, the CIT(A) has duly directed to examine the books of account maintained by the assessee with reference to vouchers and also to examine whether these expenses are incurred wholly and exclusively for the purpose of business. The assessee was also directed to produce the aforesaid details and satisfy the AO about the deductibility of all such expenses claimed in the profit & loss account. The learned AR invited our attention to the order passed by the AO u/s 251, to give effect to the order of CIT(A) with regard to the restoration of the matter, wherein vide order dated 8.3.2007 the AO has re-decided the issue. Even though CIT(A) was not empowered during the relevant time for restoration of the matter, however the Tribunal is empowered to consider the facts and circumstances of the case and keeping in view the nature of expenses involved, we found that it requires examination on the part of the AO. Accordingly, the ground taken by Revenue regarding restoration of the matter to the file of the AO is dismissed.

11. In the result, the appeal of the Revenue is dismissed. Decision pronounced in the open Court on 26th October, 2009.