IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 18 of 2009

1. Director of Income Tax, International Taxation, Delhi-II, New Delhi.
2. ACIT, Range-I, Dehradun.

…….. Appellants.

Versus

M/s Enron Global Exploration & Production Ltd. C/o Nangia & Co. 7/7 Rajpur Road, Dehradun (PIN-248001)

…….. Respondent

Mr. Hari Mohan Bhatia, Advocate, present for the appellants.
Mr. S.K. Posti, Advocate, present for the respondent.

Hon'ble Prafulla C. Pant, J.
Hon'ble V.K. Bist, J.

Oral : Prafulla C. Pant, J.

This appeal, preferred under Section 260A of the Income Tax Act, 1961, is directed against order dated 24.10.2008, passed by the Income Tax Appellate Tribunal, Delhi Bench "G" New Delhi in ITA No. 861/Del/2005 (Assessment Year 2000-2001), whereby said court has dismissed the appeal of the Revenue.

2) Heard learned counsel for the parties, and perused the impugned order challenged before this Court.

3) Brief facts of the case are that the assessee Company iss incorporated in United States of America. During the Assessment Year 2000-2001, the assessee earned revenue under its contract with M/s Enron Oil & Gas India Ltd. (for short EOGIL) in connection with oil and gas exploration and drilling activities. In the statement of income, the assessee company has mentioned “NIL”, as income from the business, after claiming expenditure, on the ground that it has rendered services on cost to cost basis to EOGIL and received payments towards the reimbursement of expenses. It is also mentioned in the return that the transaction was covered under the provisions of Production Sharing Contract (for short PSC), which EOGIL has entered with the Indian concern.

4) The Assessing Officer, in his Assessment Order took the view that since the income accrued to the assessee is covered under 9 (1) (i) of Income Tax Act, 1961, as such, the same was taxable under Section 44BB of the Act. He assessed 10% as deemed profits of the aggregate amount received by the assessee.

5) Aggrieved by the order of Assessing Officer, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) which deleted the addition made by the Assessing Officer. On this the Revenue preferred appeal before the Income Tax Appellate Tribunal (for short ITAT). The ITAT took a view that since there was Double Taxation Avoidance Agreement (DTAA) between India and United

States of America, as such, no tax was payable by the assessee, as it had no permanent establishment in India.

6) It is not disputed that there is DTAA between India and United States of America. It is also not disputed that the PSC entered between the EOGIL and India Company was approved by the Parliament, as required under Section 42 of the Income Tax Act, 1961. Also, there is little evidence on record, to show that the assessee company worked for more than ninety days during the relevant year in India. That being so, it cannot be said that the assessee company had its permanent establishment (for short P.E.) in India.

7) In the above circumstances, this Court is of the view that the ITAT has committed no error of law, in finding that since the PSC between EOGIL and Indian concern was approved under Section 42 of Income Tax Act, 1961, the amount received by the assessee for service rendered by it to EOGIL are not taxable under Section 44BB of the Act, as the same was not applicable due to DTAA between the India and United States of America. There is little evidence on record, to suggest that assessee had PE in India, as such, there was no tax payable under D.T.A.A. by the assessee in India.

8) The issue raised in this appeal is already answered by this Court in its judgment and order dated 26.11.2012, passed in Income Tax Appeal No. 40 of 2007. CIT Vs. M/s Enron Oil & Gas Expat Service Inc., Dehradun, in favour of the assessee. Learned counsel for the appellant stated that

there is no information that said decision of this Court is challenged before the Apex Court.

9) In the above circumstances, we answer the issue raised by the appellants in this appeal against them holding that since the assessee had no permanent establishment in India, during the relevant year as such, it was not liable to pay the tax under DTAA, in India.

10) Accordingly, the appeal stands dismissed.

(V.K. Bist, J.) **(Prafulla C. Pant, J.)**

19.06.2013
JM