IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "I" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 6705/Mum/2025
Assessment Year : 2023-24

Oceaneering International GmbH, 302, Delphi, C Wing, Hiranandani Business Park, Orchard Avenue, Powai, Mumbai-400076. PAN : AAACO6496K	vs.	Deputy Commissioner of Income Tax (International Taxation), Range-3(2)(2), Room No. x, G Block, BKC, Gilban Area, Bandra Kurla Complex, Bandra East, Mumbai-400051.
(Appellant)		(Respondent)

For Assessee :	Shri A.K. Jawadwala
For Revenue :	Shri Krishna Kumar, Sr.DR

Date of Hearing :	09-12-2025
Date of Pronouncement :	12-12-2025

O R D E R

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by assessee against the order of the Assessing Officer (AO) passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act'), dated 19-08-2025, consequent to the directions given by the Dispute Resolution Panel [DRP-2], Mumbai-2, dated 02-07-2025, pertaining to Assessment Year (AY) 2023-24.

2. The limited issue under consideration relates to whether Goods and Service Tax (GST) is to be included while computing the income of the assessee in terms of provisions of section 44BB of the Act.

3. During the course of hearing, both the parties fairly submitted that it is a recurring issue and the matter has been decided in favour of the assessee and covered by earlier decisions of the Tribunal.

4. Our reference was drawn to the decision of the Coordinate Bench for A.Y. 2021-22 *(ITA No. 4670/Mum/2023 dated 21/03/2025)* wherein the relevant findings read as under:

> *"10. We have heard the rival contentions and perused the materials available on record. We find that the Coordinate Bench while considering a similar issue of inclusion of GST for the purposes of presumptive taxation u/s. 44B of the Act in the case of Orient Overseas Container Line Limited (Supra) has exhaustedly examined the matter and the relevant findings therein read as under:*
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> *"8. We have heard both the parties at length, perused the relevant materials referred to before us. The controversy before is whether GST is to be included while computing the deemed profit u/s 44B. Section 44B is a special provision for computing profits and gains of shipping business in the case of non-residents. Prior to insertion of Section 44B, taxable profits of foreign shipping enterprises were determined by suitably apportioning their global profits between their Indian business and foreign business or on the basis of "voyage accounts" which led to difficult and complicated issues in assessments. With a view to simplifying and rationalizing the assessments in such cases, Section 44B was inserted for computing profits and gains of shipping business in the case of non- residents at 7.5% of specified amounts. Insertion of Section 44B substituted computation as per normal provisions in which both debit of expenses and credit of income were considered. At this point, it will be relevant to incorporate the relevant provision of Section 44B of the Act.*
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> *1) Notwithstanding anything to the contrary contained in sections 28 to 43, in the case of an assessee, being a nonresident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession"*

2) The amounts referred to in sub-section (1) shall be the following, namely:- (i) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India, and (ii) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India. Explanation For the purposes of this sub-section, the amount referred to in clause (1) or clause (ii) shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges or handling charges or any other amount of similar nature.

9. At the time of hearing our attention was drawn to Circular No.169 dated 23/06/1975 explaining the rationale of Section 44B and amendment in Section 172 by Finance Act, 1975. For the sake of ready reference same is reproduced hereunder:- "37. Under the existing law, taxable profits of foreign shipping enterprises are determined by suitably apportioning their global profits between their Indian business and foreign business or on the basis of "voyage accounts". Difficult and complicated issues arise in such assessments, particularly in relation to depreciation (including unabsorbed depreciation of earlier years), the balancing charge/allowance and the apportionment of overhead expenses. With a view to simplifying and rationalizing the assessments in such cases, the Finance Act, 1975 has made a special provision in section 44B for computing profits and gains of shipping business in the case of non-residents. Under this provision, profits and gains of a non-resident from the business of operation of ships will not be calculated in accordance with the provisions of sections 28 to 434 but will instead be taken at 7.5 per cent of the aggregate of the following amounts, namely: (a) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of carriage of passengers, livestock, mail or goods shipped at any port in India; and (b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India. 38. …..

39. Section 172 makes a special provision for the levy and recovery of tax in the case of any ship, belonging. to or chartered by a non-resident which carries passengers, livestock, mail or goods shipped at a port in India. Under this provision an ad hoc assessment is made before the ship is allowed to leave the Indian port unless the nonresident shipping concern has an agent in India from whom the tax would be recoverable. For this purpose, one-sixth of the amount paid or payable for the carriage of passengers, livestock, mail or goods shipped at an Indian port is regarded as taxable income which is subjected to tax at the rate applicable in the case of foreign companies. The assessee has, however, the option to file subsequently a return of income and ask for a regular assessment to be made if his actual income is less than the above-mentioned amount of one-sixth of the freight, etc. Where tax already paid on the basis of an ad hoc assessment is found to be more than

the tax determined on regular assessment, the excess is refunded Memorandum to Finance (No. 2) Bill, 1975 "…..

50. With a view to simplifying and rationalising the assessments of non-resident shipping enterprises, the Bill seeks to provide that in the case of a non-resident, the profits and gains from the business of operation of ships will be taken at an amount equal to 7.5 per cent of the amount paid or payable to the taxpayer or to any other person on his behalf. on account of carriage of passengers, live-stock, mail or goods shipped at any Indian port, as also of the amount received, or deemed to be received, in India on account of the carriage of passengers, live-stock, mail or goods shipped at any port outside India. …"

Notes on Clauses

Clause 8 seeks to insert a new section 44 in the Income-tax Act. Under the new section, in the case of a non-resident, the profits and gains from the business of operation of ships will be taken at amount equal to 71/2 per cent of the amount paid or payable to the assessee or to any other person on his behalf, on account of the carriage of passengers. live-stock, mail or goods shipped at any Indian port as also of the amount received, or deemed to be received, in India on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India. This amendment will take effect from 1st April, 1976 and will accordingly apply in relation to assessment year 1976-77 and subsequent years." 10. The entire controversy which now has risen in this year is the interpretation of Section 145A inserted by the Finance Act 2018 with retrospective effect from 01/04/2017 on the issue of applicability of income computation and disclosure standards. The said provision of Section 145A reads as under:- 145A"For the purpose of determining the income chargeable under the head "Profits and gains of business or profession" (i) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in accordance with the income computation and disclosure standards notified under subsection (2) of section 145; (ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation; (iii)... (iv)… …

Explanation 1. – for the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any righty arising as a consequence to such payment.

11. CBDT Circular No.8 dated 26/12/2018 had explained amendment in the following manner:- \"Amendments in relation to notified Income Computation and Disclosure Standards 39.1 Section 145 of the Income-tax Act empowers the Central government to notify Income Computation and Disclosure

Standards (ICDS). In pursuance to the above, the Central Government has notified ten such Standards effective from 1st April, 2017 relating to Assessment Year 2017-18 These are applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the Income-tax Act) for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources" 39.2 In order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS- …. (v) Section 145A of the Income-tax Act has been amended to provide that, for the purpose of determining the income chargeable under the head "Profits and gains of business or profession"- (a) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in the ICDS notified under Sub-Section (2) of section 145; (b) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation,

12. Ergo, amendment to Section 145A was to include taxes of cost of sales / services for valuation of inventory to align with ICDS-2 and nowhere it can be inferred that it tantamount to change the computation mechanism on presumptive basis of taxation. Earlier Section 145A was inserted to bring clarity with the method of accounting for valuation of purchase and sale of goods and inventory, to determine business income. It in effect. provides that for inventory valuation, the amount actually paid or incurred by way of any tax, duty, cess or fees shall be included therein. Earlier there were various litigations whether the valuation of closing stock of the inputs, work-in progress and finished goods must necessarily include the element for which MODVAT credit is available, and in order to ensure that the value of opening and closing stock reflect the correct value, the amendment was brought in Section 145A by the Finance Act, 1998. This was explained then by the CBDT Circular in the following manner:-

“Method of accounting in certain cases

52.1 The issue relating to whether the value of the closing stock of the inputs, work-in-progress and finished goods must necessarily include the element for which MODVAT credit is available, has been the matter of considerable litigation over the years.

52.2 Consistent with the other provisions of the Act, with a view to pot on end to this point of litigation and in order to ensure that the value of opening and closing stock reflect the correct value, a new section 1454 is inserted. This section provides that the valuation of purchase, sole and inventory shall be made in accordance with the method of accounting regularly employed by the assessee and such valuation shall be further adjusted to include the amount of any tars, duty, cess or fee (by whatever name called, actually

paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation

52.3 This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999- 2000 and subsequent years." 13. Now by the Finance Act 2018, Section 145 of the amendment was given to ICDS and Section 145(2) empowered the Central Government to notify ICDS by this amendment, "services" were also brought into the scope of Section 145A. Now as per Section 145A(ii), the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation. Thus, Section 145A(ii) suggests inclusive method of accounting for computing 'profits and gains of business or profession' under the normal provisions of the Act and it will apply only when all the 3 elements i.e., purchase, sales and inventory are present together. Thus, while the taxes are included by adjusting the turnover and closing inventory, the same are reduced by adjusting the purchases and opening inventories, if paid, before the due date of filing tax return under Section 139(1) of the Act. 14. In case of presumptive taxation, deduction of expenses is not allowed i.e., purchase and inventory elements are to be ignored for computing deemed income under Section 44B, because the section starts with no-obstante clause overriding computation under sections 28 to 43. The deemed income has to be computed on specified amounts only and nothing more can be added which is not within the scope of Section 44B of the Act because Section 44B provides that non-resident is engaged in the business of operation of ships, then sum equal to 7.5% of the amounts referred to Sub-section (2) has to be computed for the purpose of deemed profits. These amounts are firstly, the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of carriage of passengers, livestock, mail or goods shipped at any port in India; and secondly, the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India. Thus, what is relevant for computing the deemed income u/s.44B is the amount paid or payable or amount received or deemed to be received on account of carriage of passengers, etc.

15. Section 145A of the Act takes into consideration "valuation of sale or purchase of goods/services and of inventory", whereas Section 44B (2) considers specified amounts i.e. "amount paid or payable on account of the carriage of goods shipped at any port in India" and "amount received or deemed to be received on account of the carriage of goods shipped at any port outside India. The terms amount paid or payable' and 'amount received or deemed to be received mentioned under Section 44B cannot be replaced with the term 'valuation' in the absence of any specific enabling provisions under Section 44B or Section 145A of the Act or any other provisions of the Act. For instance, Section 50CA is a deeming provision which enables

replacement of consideration with 'fair market value' where the amount of consideration is less than the fair market value determined in a prescribed manner. 16. Thus, in our view adding GST component to the deemed income which has to be computed directly on specified amounts i.e. amount paid or payable on account of carriage of goods shipped which is revenue element only. For the earlier regime of service tax prior to GST, there were various judicial precedents which upheld exclusion of service tax while computing the provision u/s.44B or other similar provisions. For instance, following judgments have been brought to our notice before us wherein the Hon"ble Courts has approved the exclusion of service tax. i.M/s Deepwater Pacific I Inc SLP (Civil) Dairy No(s). 47374/2023) ii.Vantage International Management Co. [2023] 156 taxmann.com 23 iii.Transocean Offshore International Ventures Lad. [2023] 157 tasumann.com 203 (SC) iv.Schlumberger Asia Services Ltd. [2024] 158 taxfmann.com 267 (SC) Further, Hon"ble Bombay High Court in the case of Pr. CIT(IT) v. Boskalis International Dredging International CV (Income Tax Appeal No. 55 OF 2017 dated 25 March 2019) (followed the decision of Delhi High Court and Mitchell Drilling International Pty Ltd. (ITA No.403/2013 and 384/2015) dated 28/09/2015 and held as under: "3. Learned Counsel for the Assessee drew our attention to a decision of the Delhi High Court in the case of Director of Income-tax-1 Vs. Mitchell Drilling International (P.) Lid 3 in which identical issue had come up for consideration. The High Court referred to the decision of this Court in the case of Sudarshan Chemicals Industries Limited (supra) which was approved by the Supreme Court in case of CIT Vs. Lakshmi Machine Works and also on the decision in the case of Schlumberger Asia Services Ltd. (supra) and held as under: "In Lakshmi Machine Works (supra), the Supreme Court approved the decision of the Bombay High Court in Sudarshan Chemicals Industries Ltd (xupra) which in turn considered the decision of the Supreme Court in George Oakes (P) Ltd. (supra). In the considered view of the Court, the decision of the Supreme Court in Lakshmi Machines Works (supra) is sufficient to answer the question framed in the present appeal in favour of the Assessee. The service tax collected by the Assessee does not have any element of income and therefore cannot form part of the gross receipts for the purposes of computing the Presumptive income of the Assessee under Section 44BB of the Act. The Court concurs with the decision of the High Court of Uttarakhand in DIT v Schlumberger Asia Services Ltd. (supra) which held that the reimbursement received by the Assessee of the customs duty paid on equipment imported by it for rendering services would not form part of the gross receipts for the purposes of Section 44BB of the Act. The Court accordingly holds that for the purposes of computing the Presumptive income of the Assessee for the purposes of Section 44BB of the Act, the service tax collected by the Assessee on the amount paid to it for rendering services is not to be included in the gross receipts in terms of Section 44BB(2) read with 44BB(I). The service tax is not an amount paid or payable, or received or deemed to be received by the Assessee for the services rendered by it. The Assessee is only collecting the service tax for passing it on to the government." 4. We are in respectful

agreement with this view expressed by the Delhi High Court in which identical question had arisen. 5. In the result, Income Tax Appeal is dismissed. 17. Full Bench of Hon"ble High Court of Uttarakhand in case of DIT v. Schlumberger Asia Services Ltd. [2019] 414 ITR 1 (Uttarakhand) (FB) held that service tax paid earlier by the assessee to Government of India is not on account of provision of services in connection with exploration and production of mineral oil,

hence would not form part of aggregate taxable amount referred to in clauses (a) and (b) of sub-section(2) of section 44BB Relevant extract of the ruling is as under:-

"27. The word 'on account of has been defined in the Random House Dictionary of the English Language to mean "by reason of; because of, for the sake of. In the Reader's Digest Great Encyclopaedic Dictionary, "On account of is defined to mean on consideration of, because of. In Collins English Dictionary "On account of" is defined to mean as 'because of, by reason of. D. Ramanatha Aiyer: The Law Lexicon defines "on account of to mean "because of, by reason of, towards payment of (1) concerning (2) because of". It is only if the service tax reimbursed to them by the ONGC, which was paid by the assessee to the Government earlier, is held to be a payment in consideration of the services and facilities provided by the assessee, in connection with the prospecting. extraction and production of mineral oils in India, would it then fall within the ambit of sub-section (2) of Section 44BB.

28. As the expression 'amount paid or payable' in Section 44BB(2)(a), and the expression amount received or deemed to be received in Section 44BB(2)(b), is qualified by the words 'on account of the provision of services and facilities in connection with, or supply of plant and machinery, it is only such amounts, paid or payable for the services provided by the assessee, which can form part of the gross receipts for the purposes of computation of gross income under Section 44BB(1) read with Section 44BB(2). DIT v. Mitchell Drilling International (P.) Ltd. [2015] 62 taxmann.com 24/234 Taxman 818/[2016] 380 ITR 130 (Delhi). On its literal construction, Section 44BB(2) would only be the amount paid by the ONGC to the assessee on account of (i) provision of services in connection with or (ii) supply of plant and machinery on hire used in, the prospecting, extraction and production of mineral oils. As the amount reimbursed by the ONGC, towards the service tax paid by assessee earlier to the Government, is not an amount paid to the assessee towards the services provided by the latter in connection with the prospecting, extraction or production of mineral oils, it is not required to be included in the amounts specified in clauses (a) and (b) of Section 44BB(2)."

18. Apart from that in the case of the assessee itself the Tribunal have consistently has been holding that service tax being in the nature of statutory payment does not involve any element of profit therefore, cannot be included in the gross receipts.

19. The case of the department before us is that the judgments rendered in the context of service tax could not be applicable under the new GST. We find that though GST has replaced by erstwhile service tax law to provide a single tax of supply of goods and services right from manufacture to consumer. For the sake of ready reference Section 68 of erstwhile Service Tax law and Section 49 of CGST Act, the comparison is given herein below.

Service Tax		*GST*	
Section 68 of Finance Act, 1994	*Section 68 relates to payment of service tax. Sub-section (1) thereof stipulates that every person, providing taxable service to any person, shall pay service tax at the rate specified in section 66B of Finance Act 2012 in such manner, and within such period, as may be prescribed. Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified by the Central Government in Official Gazette, service tax the the thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the*	*CGST Act, 2017*	*(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or NEFT or RTGS or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.* *(2)The input tax credit as selfassessed in the return of registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.* *(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.* *(4) The available amount in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to*

			conditions restrictions such and within such time as may be prescribed.
Rule 3(1) of the Cenvat Credit Rules	*provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. A manufacturer or producer of final products or a provider of output service ITA no. 4670/MUM/2023 Oceaneering International GMBH 19 shall be allowed to take credit of Service tax paid on any input service received*		

b. Service tax collected in excess (unjust enrichment)

Both under the Service Tax Law and GST Law, there are adequate provisions which requires timely deposit of taxes collected including excess taxes collected. Where the taxes collected and not deposited, there are provisions which enables recovery of taxes by the Government. Relevant extract of the provisions is reproduced hereunder:

Reference under the law, rules, etc		*Reference under the law, rules, etc*	
Section 73A (1) and (2) Finance Act, 1994	*Section stipulates 73A(1) that any person who is liable to pay service tax, and has collected any amount in excess of the service assessed tax or determined and paid on any taxable service, from recipient the of taxable service as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government. Section 73A(2)stipulates that where any person, who has collected any amount, which is not required to be collected, from any other person, in any manner representing as service tax, such person shall forthwith pay the amount so collected to the credit of the*	*Section 76 of CGST Act, 2017*	*(1) Notwithstanding anything to contrary in any direction the contained order or of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any any other person amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not. (2) Where any*

	Central Government.		*amount is required to be paid to the Government under subsection (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a ITA no. 4670/MUM/2023 Oceaneering International GMBH 20 penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act*
Section 73A(3) Finance Act, 1994	*Where amount any is required to be paid to the credit of the Central Government under section (1) sub-or sub-section (2), and the same has not been so paid, the Central Excise Officer shall serve on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government*		

c. Levy is an indirect tax which can be collected from the buyer / service recipient Service Tax and GST both are an indirect tax and can be passed on by service provider to the service recipient. Relevant extract of the provisions is reproduced hereunder:

Reference under the law, rules, etc.	*Provisions*	*Reference under the law, rules, etc.*	*Provisions*
Section 83-Finance Act, 1994	*Section 83 makes certain provisions of the Excise Central Act applicable, and thereunder the provisions of, among others, sections 12A and*	*Section 49(9) of CGST Act, 2017*	*Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full*

	12B of the Central Excise Act shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.		*incidence of such tax to the recipient of such goods or services or both.*
Rule 4A of Service Tax Rules	*Service provide shall issue an invoice which shall mention the amount of Service tax thereon. Payable*	*Section 15 of CGST Act, 2017* *Rule 46 of CGST Rules, 2017*	*Every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount the Government, shall forthwith pay the said amount to the Government, irrespective whether supplies of the in respect of which such amount was collected are ST taxable or not*
Section 12B of Central Excise Act, 1994	*Section provides 12- B that every person who has paid the duty of excise on any goods under the Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods*		
Article 268A of constitution of India	*Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated*	*Article 269A of constitution of India*	*The value of a supply of goods or services or both of shall be the of transaction value, which is the price*

	by the government of India and the States in the manner provided in clause(2)		*actually paid or payable for the said supply of goods or services or both the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act (i.e. GST) Taxable value and GST to be mentioned separately invoice on Taxes on services shall be levied by the Government of India and such tax shall collected be and appropriated by the Government of India*

20. On perusal of the comparison of the relevant provision of service tax law and GST law it can be seen that both are indirect taxes and is recovered by the service provider on behalf of assessee and as an agent of the Government as such rates are specified and thus, the provision under the service tax law are similar to provision of GST law and therefore, in our opinion the judicial precedents delivered in respect of erstwhile tax law would apply mutatis mutandis to the GST laws also.

21. Otherwise also it would be quirk of a fate that tax collected on behalf of the customer is again to be held as part of taxable income of the assessee who is collecting GST. The assessee is taxable person under the GST laws and shows GST separately in the invoice raised on the customers. We have perused the copy of the sample invoice produced before us at our direction wherein, it is seen that service charge is indicated separately and CGST is levied on such service charge is also indicated separately. If the GST services have been indicated in the invoice separately then it cannot be included for purpose of taxation while computing the income. For instance there are various TDS provisions and CBDT has clarified through various circulars that if GST services are indicated separately in the invoice then no tax would be deducted at GST components. By way of illustration following circulars have been referred to before us under various sections:-

Sr. No	*Circular No.*	*Relevant Section*
1	*Circular No. 5 of 2023*	*Section 194BA*
2	*Circular No. 20 of 2023*	*Section 194O*
3	*Circular No. 12 of 2022*	*Section 194R*
4	*Circular No. 13 of 2022*	*Section 194S*
5	*Circular No. 13 of 2021*	*Section 194Q*

22. If we accept the contention of the revenue, then it would lead to a situation where calculation of tax of reimbursement of taxes would tantamount to collection of tax on taxes. Section 44B(2) of the Act provides for deemed taxation on amount paid or payable / received on account of 'carriage' of goods, passengers, etc. Further, the Explanation thereto clarifies that the amounts in connection with the carriage would include 'demurrage charges', 'handling charges and other amounts of a 'similar nature". Thus, what is sought to be included u/s 44B are the charges' recovered from the consignor of the cargo/ customer as a consideration for transportation from a port in India to outside India and vice versa.

23. GST being a mandatory 'statutory levy' cannot be said to be in the nature of 'charges' by the shipping Company towards the carriage. The incidence of GST is on account of taxability of services under the relevant parliamentary statute i.e., GST laws and not on account of the business activities as envisaged in Sections 44B(2)(i) and 44B(2)(ii) of the Act. Otherwise, including GST in gross receipts for purpose of section 44B would be akin to charging income tax on GST i.e., tax on tax, which would promote cascading effect which cannot be the intent of legislation.

24. Further, a service provider acts in a fiduciary capacity out of statutory obligation casted upon it, while collecting service tax/GST on the behalf of exchequer and the same is ultimately deposited with the exchequer, hence there cannot be any iota of doubt that the impugned GST is not in the nature of specified income under Section 44B.

25. Thus, reliance placed by the Hon'ble DRP members in the case of Sedco Forex International Inc. (supra) to treat 'GST similar as 'reimbursement of mobilization charges is misplaced and incorrect. In the case of Sedco Forex International Inc. fixed mobilization charges were agreed between the parties, which could be more or less than the actual expenditure. Thus, reimbursement of mobilization charges' cannot be equated with pure reimbursement which has no element of income.

26. The core argument of the department before us and by the ld. DRP is that amendment in the provisions of Section 145A of the Act brought by Finance Act 2018, since it includes "services" within its code therefore, income has to be computed in accordance with Section 145A and any taxes levied under services is included and for that heavy reliance has been placed on the judgment of Hon'ble High Court of Bombay in the case of Knight Frank (India)

Pvt. Ltd (Bombay High Court) [2016] 72 taxmann.com 300 (Bombay). However the Hon'ble Court held that Section 145A restricts its ambit only to valuation of purchase and sale of goods in inventory and would not apply to service tax billed on rendering of service as service tax billed has no relation to any goods nor does it have anything to do with bringing goods to a particular location. Section 145A which is for the method of accounting which starts with 'for the purpose of determining the income chargeable under the head 'Profits and gains of business or profession', being a general provision, would not apply to the special provisions of section 44B of the Act. Further, the words "For the purpose of determining the income chargeable under the head "Profits and gains of business or profession..." in section 145A signifies that the essence of section is to compute income under the head profits and gains of business or profession which is computed as per provisions of Section 29 of the Act. On the contrary, provisions of Section 44B (1) starts with a non obstante clause "Notwithstanding anything to the contrary contained in sections 28 to 43A...". Since Section 44B overrides the provisions of Section 29 of the Act, therefore in our opinion Section 145A is not applicable for computing deemed income under Section 44B.

27. Thus, the decision of the Hon'ble Bombay High Court will not be applicable in this case same was not rendered in the context of Section 44B and in any case in so far as the observation of the Hon'ble High Court that any tax or levy cannot be part of turnover receipts unless it is not paid, is not applicable in the case of the assessee. It has been brought to record that assessee discharged its GST liability of Rs.96,51,49,085 through payment of tax to the Government Treasury and input tax credit and this has been demonstrated from the copies of form GSTR 9 and annual GST re-conciliation statement.

28. Further, ld. DRP members also relied on CBDT Circular No. 10/2017 dated March 23, 2017 which discusses on the applicability of ICDS on determination of turnover by noncorporate taxpayers covered under presumptive taxation like Sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. and stated that the service receipts and sales in the instant case are to be valued inclusive of taxes, as per ICDS guidelines. Relevant extract of Circular is hereunder:- "Question 3: Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxationlikesections44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act? Answer: ICDS is applicable to specified persons having income chargeable under the head Profits and gains of business or profession' or 'Income from other sources. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining he receipts or turnover, as the case may be."

29. Thus, reliance placed by the DRP on the aforesaid Circular is not valid since Delhi High Court in the case of Chamber of Tax Consultants v. Union of India [2017] 87 taxmann.com 92 (Delhi) held that the aforesaid Circular was ultra vires the provisions of the Act and liable to be struck down. Also, the amendment was introduced vide Finance Act 2018 to bring certainty on the issue of applicability of ICDS and not to validate the circular. Even otherwise, in the aforesaid Circular, CBDT has also clarified that where there is a conflict between ICDS which is a general provision and specific provisions, specific provision shall prevail.

30. Before us, the plea was taken that if GST is to be added to the amounts paid on account of taxes, then deduction of such GST is also required to be given u/s.43B. Though the provision of Section 44B overrides Section 28-43A of the Act, but other sections including Section 43B are not specifically over ridden by Section 44B. This issue has been decided by the Hon"ble Uttarakhand High Court in the case of DIT v. Schlumberger Asia Services Ltd. [2019] 414 ITR 1 (Uttarakhand) (FB) wherein it has held that the benefit of deduction of tax can be claimed by the assessee in view of section 43B(a), while computing its income under section 28, and the provisions of section 43B would prevail notwithstanding anything contained in, among others. Thus, it has been stated that invoking the provisions of Section 43B under Section 44B shall force the assessee to prepare a memorandum account wherein the specified amounts are credited and adjusted by GST due to Section 145A and correspondingly, GST discharged before the due date of filing of tax return specified under Section 139 of the Act is debited to such account. However, preparation of such memorandum account is neither required under the Act nor can replace the express provisions of Section 44B of the Act. We therefore, find merits in such contention of the ld. Counsel that if it is held that Section 145A are applicable for computing deemed income u/s.44B and GST is added to the specified amounts and provisions of Section 29 are invoked, then deduction of GST paid should be allowed while computing income under the head „profits and gains" of business or profession as per Section 43B. Even otherwise also Section 44B over rights Section 28-43A and 43B and therefore, in case if department seeks to add GST on the turnover for the purpose of calculating the profit u/s.44B, then, deduction u/s.43B has to be allowed if it is paid on or before the due date and similarly it can be disallowed once GST has not been paid within the due date. However, this is purely academic, contention which has been raised because we have already held that for the purpose of Section 44B only specified amount mentioned in the sub-Section 2 of Section 44B alone is the subject matter of computation of profit @7.5% and Section 145A has no applicability. Thus we hold that while computing income u/s.44B, GST cannot be included and all the judgments relied upon by the assessee by the Hon"ble High Court and Hon"ble Supreme Court and the Tribunal will apply in this year also. Thus, in our opinion, the minority view of the single member of the DRP is to be upheld that GST cannot be included while computing deemed income u/s.44B, accordingly, this issue is decided in favour of the assessee."

11. Following the said decision, the Coordinate Bench in Seadrill International Ltd. (supra) has held that the GST which is collected as a separate line item in the invoices as a statutory levy cannot be included as part of gross receipts for the purposes of section 44BB of the Act and the relevant findings therein reads as under:

"9. The ld DR did not controvert the contention that Section 44B and section 44BB are similarly worded and that the ratio laid down by the coordinate bench in the above case will apply to assessee's case also since the issue contended is identical. We notice that the Co-ordinate Bench in the above decision has held that GST should not part of gross receipts for computing presumptive income under section 44B of the Act the reasons as listed below – (i) GST is a statutory levy collected separately as part of invoice and therefore cannot be included for purpose of taxation while computing the presumptive income. In assessee's case from the perusal of records, we notice that the GST is a separate line item in the invoice. (ii) If GST is included in the income for applying the presumptive tax of 10% then the same would amount to tax on tax i.e. Income tax on an indirect tax levy (iii) The intention is to tax the receipt / charges / consideration arising out of the services rendered on presumptive basis and that GST being a mandatory 'statutory levy" cannot be said to be in the nature of charges / receipt / consideration (iv) Section 44B overrides the provisions of Section 29 of the Act, and therefore Section 145A is not applicable for computing deemed income under Section 44B. This should be applicable to section 44BB also.

10. We further notice that the coordinate bench in the above case has distinguished the case laws relied on by the lower authorities in assessee's case. It is also noticed that the assessee in the present case has relied on judgments as have been considered by the coordinate bench in the above case.

11. In view of these discussions and the facts in assessee's case being identical to Orient Overseas Container Line Ltd. (supra), in our considered view the ratio laid down by the Co-ordinate Bench, the above case is applicable in assessee's case in the context of section 44BB of the Act also. Accordingly, we hold that the AO is not correct in treating the GST element which is collected as a separate item in the invoice as a statutory levy which is collected and deposited into the Government A/c, as income for the purpose of section 44BB of the Act. Therefore, the AO is directed to delete the addition made in this regard. The grounds raised by the assessee in this regard are allowed."

12. Following the aforesaid decisions so rendered by the Coordinate Benches, we are of the considered view that GST would not form part of gross receipts for the purposes of computing income under Section 44BB of the Act and the AO is hereby directed to exclude the amount of Rs 13,10,09,191/- towards GST while computing gross receipts in hands of the assessee. In the result, ground no. 2 of the assessee's appeal is allowed."

5. Further, our reference was drawn to the decision of the Coordinate Bench for A.Y. 2022-23 *(ITA No. 802/Mum/2025 dated 03/04/2025)* wherein following the aforesaid decision, the matter was decided in favour of the assessee.

6. Following the aforesaid decisions so rendered by the Co-ordinate Benches, we are of the considered view that GST would not form part of gross receipts for the purposes of computing income under Section 44BB of the Act and the AO is hereby directed to exclude the amount of Rs. 22,76,54,279/- towards GST while computing gross receipts in hands of the assessee. In the result, ground No. 1 of the assessee's appeal is allowed

7. In Ground No. 4, the assessee has challenged the action of the AO in granting short period of advance tax paid. It was submitted that the assessee has paid advance tax of Rs. 1,70,50,000/-. However, the credit has been allowed only to the extent of Rs. 1,32,50,000/-. It was accordingly submitted that necessary directions may be issued to the AO to allow the balance credit of Rs. 38 lakhs. The Ld.DR has been heard. The AO is directed to verify the deposit of advance tax of Rs. 38 lakhs and where the same is found to be in order, allow the necessary credit to the assessee. In the result, ground of appeal is allowed for statistical purposes.

8. No other ground has been pressed during the course of hearing, hence, the same are dismissed as infructuous.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12-12-2025

Sd/-	Sd/-
[SANDEEP SINGH KARHAIL]	[VIKRAM SINGH YADAV]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 12 -12-2025
TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai