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## Oil and Gas Tax Alert

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### Reimbursement of catering charges includible while computing deemed profit under section 44BB of the Income-tax Act, 1961

#### Facts

EnSCO Maritime Ltd ('assessee'), a non-resident company, received certain sums from Oil and Natural Gas Corporation Limited and Paramount Offshore and included the same for the purposes of computing the amount on which deemed profit under section 44BB(2) of the Income Tax Act, 1961 (ITA) is to be computed. It did not include the sum received on account of reimbursement of catering charges while computing these profits.

The issue before the Uttarakhand High Court was whether reimbursement of catering charges is liable to be included in computing the amount mentioned in section 44BB(2) of the ITA.

The contention of the Revenue authorities was that the amount received by the assessee as catering charges is part of the amount on which 10 per cent deemed profit is to be calculated under section 44BB of the ITA.

#### Ruling of the High Court

- After analysing the provisions of section 44BB of the ITA, the High Court observed that section 44BB makes a special provision for computing the profits and gains of non-resident assessee engaged in the business of providing services or facilities in connection with the exploration, etc. of mineral oils. The section overrides the provisions of section 28 to 41 and Section 43 to 43A of the ITA,
- The assessee is deemed to have earned a profit of 10 per cent of the amount paid to it on account of provision of services and facilities in connection with

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the extraction or production of mineral oils, whether paid in or outside India,

- The words used in the section include the amount received by the assessee on account of catering charges as these charges do form part of 'services and facilities' in connection with the extraction or production of mineral oil,
- The observations of its earlier ruling in the case of Halliburton Offshore Services Inc reported in 300 ITR 265 were noted wherein the Court held that section 44BB is a complete code in itself and provides by a legal fiction that 10 per cent of the aggregate amounts shall be deemed to be the profits and gains of the non-resident assessee.

Accordingly, the High Court held that reimbursement of catering charges is liable to be included in the amount for computing the deemed profit under section 44BB of the ITA.

**Conclusion**

In this ruling, the High Court has emphasized the word 'amount' appearing in section 44BB(2) of the ITA as opposed to 'income', which could have far reaching consequences.

*Source: CIT and DCIT, Dehradun Vs. Ensko Maritime Ltd (Uttarakhand)*

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