



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

% Judgment Reserved on: 02.12.2025  
Judgment delivered on: 20.02.2026  
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+ **W.P.(C) 9678/2025**

PGS GEOPHYSICAL AS .....Petitioner  
versus  
INCOME TAX DEPARTMENT, INTERNATIONAL  
TAX CIRCLE 2(2)(2) NEW DELHI & ANR. ....Respondents

**Advocates who appeared in this case**

For the Petitioner : Mr. Salil Kapoor, Ms. Soumya Singh, Ms.  
Ananya Kapoor, Mr. Sumit Lalchandani and  
Ms. Sakshi Rustagi, Advocates

For the Respondents : Mr. Gaurav Gupta, SSC, Mr. Shivendra  
Singh, Mr. Yojit Pareek, JSCs, Mr. Surya  
Jindal, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**  
**HON'BLE MR. JUSTICE VINOD KUMAR**

**JUDGMENT**

**V. KAMESWAR RAO, J.**

1. The present petition has been filed seeking directions to quash a certificate and order dated 01.05.2025 (impugned order) passed by the respondent No.1/the Revenue under Section 197 of the Income Tax Act, 1961 (the Act) in the case of the petitioner for the Financial Year (FY) 2025-26, relevant to Assessment Year (AY) 2026-27, whereby a withholding tax of 7% of gross receipts has been imposed on the petitioner.



2. At the outset, we may narrate a brief factual background of the present controversy, as borne out from the petition. The petitioner is a non-resident company and is incorporated in Norway. It is engaged in the business of providing geophysical services to oil and gas industry. It conducts seismic surveys and provides offshore seismic data acquisition and other associated services such as processing and interpretation of such data. On 20.11.2024, the petitioner received a Letter of Award (LOA) from the Oil and Natural Gas Commission (ONGC) bearing no.DLI/2024/BB4SEC/1311217/ZV5AC24001 for hiring its services for 2D and 3D broadband seismic data acquisition, pursuant to which, the parties viz., the petitioner and ONGC entered into a contract on 27.12.2024 bearing no.DLI/2024/BB4SEC/1311217/ZV5AC24001/9010039479 whereby the petitioner is to provide services in relation to 2D and 3D Broadband seismic data for acquisition at the eastern offshore of India.

3. Since the petitioner was to receive \$22,905,098 (equivalent to ₹206,14,58,790) pursuant to the aforesaid LOA in relation to 2D & 3D Broadband seismic data acquisition in the FY 2024-25, relevant to AY 2025-26, it applied for a certificate under Section 197 of the Act, requesting the Revenue to grant a lower Tax Deductible at Source (TDS) at the rate of 3.125% by application dated 23.12.2024. In the application, while conceding that as the contract arises in India, the activities of the petitioner are taxable in India, the petitioner contended that since the activities are integral to extraction of oil and gas, the same are liable to be taxable as per the provision of Section 44BB of the Act, by relying upon the judgment of the Supreme Court in the case of *ONGC v. CIT*, [2015] 376 ITR 306, wherein the Court,



after examining a bundle of services, including seismic survey services held that that the profits should be computed in accordance with the provisions of Section 44BB of the Act which is a specific provision for computing income of non-resident from provision of services or facilities in connection with or supplying plant and machinery on hire used, to be used in prospecting or extraction or production of mineral oil in India. Reliance was also placed on the judgment dated 08.04.2016 of this Court in the petitioners' own case in respect of AY 2008-09, titled ***PGS Exploration (Norway) AS v. Additional Director of Income Tax, 2016:DHC:2949-DB*** wherein it was held that the activity of 2D/3D seismic survey carried on by the petitioner in connection with exploration of oil, was not in the nature of 'Fees For Technical Services' (FTS) in terms of Explanation 2 to Section 9(1)(vii) of the Act. Accordingly, the petitioner requested for issuance of a certificate under Section 197 of the Act at the rate of 3.125% as per its calculation, reproduced below:

S.No.	Particulars	Amount (in INR)
1	Gross contractual receipts	184,05,88,200
2	GST at the rate of 12% in respect of contractual receipts	22,08,70,590
3	Total receipts	206,14,58,790 (A)
4	Total tax Liability (excluding surcharge and applicable education cess) as per section 44B of the Act(184,05,88,200*10%*35%)	6,44,20,587 (B)
5	Average tax rate applicable (excluding surcharge and applicable education cess)(B/A*100)	3.125%

4. Pursuant to the filing of the said application, the petitioner filed



another clarification letter dated 03.01.2025 wherein it provided all the other documents requisitioned by the Revenue, including the copy of the contract, tax residency certificate, etc. The Revenue, considering that the services rendered by the petitioner are taxable under section 44BB of the Act, issued the certificate and order for AY 2025-26 dated 22.01.2025 wherein it directed TDS to be deducted at the rate of 3.5% on the payment to be received by the petitioner from ONGC.

5. As the contract was continuing for the FY 2025-26, the petitioner filed an application dated 12.03.2025 for renewal of the certificate for the year under consideration, i.e., A.Y. 2026-27 requesting lower rate of withholding tax on the estimated receipt of \$5,18,91,522 (equivalent to ₹451,45,62,414). In the said application, the petitioner categorically pointed that the application is regarding the same contract and the same fact patterns as for immediately preceding A.Y. 2025-26 for which the Revenue issued the certificate and order dated 22.01.2025 for TDS to be deducted at the rate of 3.5% of the payment to be received by the petitioner. It also provided the clarification/information sought by the Revenue.

6. Thereafter, the Revenue issued a letter dated 26.04.2025 calling upon the petitioner to show cause as to why the provisions of Section 44DA of the Act are not applicable to the receipts which are to be received by the petitioner in place of Section 44BB of the Act. In response to the said letter, the petitioner filed detailed submissions through letter dated 28.04.2025 on the non-applicability of provisions of Section 44DA in the facts of the case and also submitted that the receipts would be taxable under Section 44BB of



the Act, as held by this Court in the case of the petitioner for AY 2008-09.

7. The Revenue then passed the impugned certificate and order dated 01.05.2025 under Section 197 of the Act, whereby it summarily held that the receipts of the petitioner amounts to Royalty/FTS liable to be taxed under Section 44DA of the Act. For computing the rate of TDS, the Revenue assumed profit at rate of 20% and directed that TDS be deducted at the rate of 7%.

8. The petitioner sent a letter dated 19.05.2025 seeking re-evaluation of the certificate and order, but since there was no action taken pursuant to the same, the petitioner withdrew the letter. On account of revision in the estimated receipt for the year under consideration, the petitioner filed an additional application dated 17.06.2025 under Section 197 of the Act, seeking a certificate for AY 2026-27.

9. Mr. Salil Kapoor, learned counsel for the petitioner submitted that the certificate and order passed by the respondent/Revenue under Section 197 of the Act for TDS at the rate of 7% is illegal, bad in law, unreasonable, and inconsistent with the certificate and order issued under Section 197 of the Act at the rate of 3.5% for the preceding year.

10. He stated that the Revenue grossly erred in not appreciating that even if 3.125% withholding tax rate as sought by the petitioner is not granted, in the absence of any change in the facts and circumstances of the case, the Revenue could not have taken a contrary view from that of the immediately preceding year and arbitrarily increased the rate of withholding tax



certificate/order from 3.5% to 7%, more so when the contract for such imposition remains the same. The respondent also failed to appreciate that the application for the year under consideration was not a fresh application requesting a lower withholding certificate for the FY 2025-26, but merely for the renewal of the certificate and order already issued for FY 2024-25.

11. His contention is that the Revenue having accepted the basis of computation of above 3.5% for the immediately earlier FY, that the receipts are taxable under Section 44BB of the Act and therefore, deemed profitability of 10% with profit attribution at the rate of 35%, which would be taxable at 10%, ought not to have resiled from that position without there being any change in facts. The rule of consistency in income tax proceedings cannot be ignored. If a view has been taken in the proceedings for earlier year, then the Revenue is estopped from taking a different view in the subsequent year unless there is some rational and reasonable cause for the same. In this regard, he has referred to the decision of this Court in ***Prem Kumar Chopra v. ACIT W.P.(C) 12104/2022***. Further reliance is placed on the judgments in the cases of ***RadhasoamiSatsang v. CIT, (1992) 193 ITR 321 (SC)***; ***Commissioner of Income Tax v. Excel Industries, 2014 13 SCC 459***; ***Lufthansa Cargo AG v. DCIT, W.P.(C) 91361/2019***; ***Tata Teleservices (Maharashtra) Ltd. v. DCIT, (2018) 402 ITR 384***; ***Commissioner of Income Tax v. ARJ Security Printers, 264 ITR 276***; ***Commissioner of Income Tax v. Neo Poly Pack Pvt. Ltd., 245 ITR 492*** and ***Commissioner of Income Tax v. Dalmia Promoters Developers Pvt. Ltd., 2006 SCC OnLine Del 83***.



12. Mr. Kapoor has submitted that the Revenue has erred on facts and in law in not appreciating that the income of the petitioner, being intrinsically linked to the business of exploration of mineral oils, is taxable only under the provisions of Section 44BB of the Act, as accepted by the Revenue while issuing the certificate and order for AY 2025-26 and held so by this Court in the case of the petitioner itself for the AY 2008-09. The services being rendered pursuant to the contract are precisely the same as those provided by the petitioner during AY 2008-09 before this Court. He has endeavored to demonstrate the similarities between the two cases in a tabulated form in his written submissions. Reliance is also placed on the decision of this Court in the case of *Director of Income-tax-II v. OHM Ltd., [2013] 352 ITR 406 (Delhi)*.

13. It was submitted that the Revenue also failed to appreciate that the applicable GST rate of 12% on the services under consideration, being a statutory liability, does not have any element of profit and hence, the same could not be included in gross receipts for the purpose of taxability under section 44BB of the Act. Reliance in this regard is placed on CBDT Circular No. 23/2017 dated 17.07.2017 issued in the context of tax withholdings under Chapter XVII-B of the Act which provides that wherever as per the terms of the agreement/ contract between the payer and the payee, the GST component comprised in the amount is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such GST component. Though the said circular was issued in respect of payments to resident payees, according to Mr. Kapoor, an analogy can be drawn from the same



that GST element should not be included while withholding the taxes.

14. He stated that it is settled law that service tax is not to be included in gross receipts for the purpose of taxability under Section 44BB of the Act which would apply mutatis mutandis to GST component also. Reference in this regard is made to the judgments in the cases of *Director of Income Tax v. Mitchell Drilling International Pvt. Ltd.*, (2016) 380 ITR 130 (Delhi); *Director of Income-tax (International Taxation) v. Schlumberger Asia Services Ltd.*, [2019] 414 ITR 1 (Uttarakhand) (FB); *CIT (International Taxation) v. B.J. Services Co. Me Ltd.* [2023] 457 ITR 80 (Uttarakhand); *Commissioner of Income-tax (International Taxation) v. Schlumberger Asia Services Ltd.*, [2024] 297 Taxmann 1 (SC); *Commissioner of Income-tax v. Vantage International Management Co.* [2024] 296 Taxman 160 (SC); *Commissioner of Income-tax v. Transocean Offshore International Ventures Ltd.*, [2023] 459 ITR 609 (SC).

15. Mr. Kapoor also submitted that the Revenue has arbitrarily characterised the receipts of the petitioner as Royalty/FTS without providing any reasons. The scope of work of the petitioner under the contract is confined to supplying 2D and 3D broadband seismic data acquisition of the eastern offshore of India, receipts whereof would not amount to Royalty/FTS as per the provisions of the Act. Further, the Revenue has not even stated as to whether the receipts of the petitioner would amount to Royalty or FTS, which are two completely different and mutually exclusive categories, and the receipts of the petitioner certainly cannot be both.

16. In support of his submission that the receipts of the petitioner would



not fall under FTS, he has relied on the following:

- 16.1 Explanation 2 to Section 9(1)(vii) of the Act, which categorically excludes receipts in relation to mining or like projects from its ambit and therefore, provision of 2D and 3D broadband seismic data acquisition, being integral to extraction of Oil and gas, does not amount to FTS.
- 16.2 Central Board of Direct Taxes (CBDT) Instructions No. 1862 dated 22.10.1990, where the CBDT interpreted the question whether prospecting for, or extraction or production of mineral oil are mining operations, and instructed to include even services from imparting of training to drilling activity within 'mining or like project'. The relevant extract from the Instructions reads as under:

*"2. The question whether prospecting for, or extraction or production of, mineral oil can be termed as 'mining' operations, was referred to the Attorney General of India for his opinion. The Attorney General has opined that such operations are mining operations and the expressions 'mining project' or 'like project' occurring in Explanation 2 to section 9(1)(vii) of the Income-tax Act would cover rendering of services like imparting of training and carrying out drilling operations for exploration or exploitation of oil and natural gas. 3. In view of the above opinion, the consideration for such services will not be treated as fees for tax technical services for the purpose of Explanation 2 to section 9(1)(vii) of the Income-tax Act, 1961. Payments for such services to a foreign company, therefore, will be income chargeable to tax under the provisions of section 44BB of the Income-tax Act, 1961 and not under the special provision for the taxation of fees for technical services contained in section 115A, read with section 44D of the Income-tax Act, 1961."*



- 16.3 The order of this Court in ITA 612/2012, for AY 2008-09, wherein it was held that the activity of 2D/3D seismic survey carried on by the petitioner in connection with exploration of oil, was not in the nature of FTS in terms of Explanation 2 to Section 9(1)(vii) of the Act. The argument is that the services being rendered pursuant to the contract in the present case are precisely the same as those provided in the AY 2008-09.
- 16.4 The decision of the third member of the ITAT in the case of *Wester Geco International Ltd. v. DDIT, Dehradun dated 15.07.2022 in ITA No. 6436/DEL/2016*, wherein it was held that services of seismic data acquisition, planning and carrying out of pre-survey study, software maintenance/upgradation, are not in the nature of FTS and that these services are covered by the exclusion provided in Explanation 2 to Section 9(1)(vii), being consideration for 'mining or like projects' and hence, are not taxable under Section 44DA of the Act, but under Section 44BB by relying on Supreme Court ruling in *Oil and Natural Gas Corporation Limited (supra)*.
17. He has also submitted that the services provided by the petitioner would also not fall within the definition of Royalty as provided in Explanation 2 to Section 9(1)(vi) of the Act, which provides as under:

*“Explanation 2.—For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—*

*(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret*



*formula or process or trade mark or similar property ;*

*(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;*

*(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;*

*(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;*

*(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;*

*(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting; or*

*(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v).”*

18. According to Mr. Kapoor, the CBDT Instruction No.1862 dated 22.10.1990, clarifies that services such as imparting of training, not limited to carrying out drilling operations, are squarely covered within the meaning of a mining or similar project. Pertinently, the term ‘drilling operation’ does not appear in the text of Section 9(1)(vii) Explanation 2, the CBDT circular, or Section 44B of the Act. He has relied upon the judgment of the Supreme Court in *Oil and Natural Gas Corporation Ltd (supra)* to contend that the test of pith and substance, i.e., namely, whether the works contemplated or services to be rendered under the agreement is directly and inextricably



linked with the prospecting, extraction or production of mineral oil, is an acceptable test to determine whether the services fall under the exclusion provided in the definition of FTS in Explanation 2 to Section 9(1)(vii) of the Act. He has illustrated some examples of the scope of works that are regarded as activities connected with prospecting or exploration of mineral oil under the Act, as provided in the judgment, which demonstrate that the essential nature of seismic-related services lies in analysis, assessment, study, design etc., and not in physical interaction with the subsurface. The illustration provided is reproduced as below:

Section 9(1)(vii), Explanation 2 excludes income from **mining and similar projects** from the definition of 'fees for technical services'.



CBDT Circular clarifies that **imparting training and related services are included, even if there is no physical drilling operation.**



Section 44BB covers **services or facilities 'in connection with' prospecting**, of mineral oil— a broad scope.





Seismic survey is the very first step in prospection, collecting vital data to determine locations for drilling.



There is no doubt that seismic surveys are prospection activities and clearly fall outside the ambit of section 9(1)(vii) the Act.



Delhi High Court in Petitioner's own case and same offshore / marine seismic survey services and Supreme Court in *Oil and Natural Gas Corporation Ltd. (supra)* have affirmed that seismic surveys fall within the ambit of Section 44BB and in the exclusion of Explanation 2 to Section 9(1)(vii) of the Act and as such it is not FTS.

19. Mr. Kapoor has submitted that the statutory language of Section 44BB uses the phrase “*engaged in the business of providing services or facilities in connection with prospecting for, or extraction or production of, mineral oils (including petroleum and natural gas)*” which contemplates a wide array of services and facilities related to prospecting, extraction, or production of mineral oil. Hence, there is no requirement that such services must necessarily involve physical operations like drilling; even purely technical or intellectual services, such as imparting training, are covered so long as they are in connection with the relevant activities. Therefore, any attempt to assign a restricted meaning to these provisions, to exclude simple services which do not involve drilling operations, as contended by the



Revenue, is contrary to both the clarification provided by the CBDT and the legislative intent. All services, whether they involve drilling or not, are very much covered under Section 44BB, provided they are in connection with the prospecting, extraction, or production of mineral oil.

20. Mr. Gaurav Gupta, learned Senior Standing Counsel for the Revenue would state that pursuant to the application under Section 197 of the Act for FY 2025-26, some clarifications were sought from the assessee, asking them to produce *inter alia* their global financials for FY 2024-25, documentary evidence with regard to a potential Permanent Establishment (PE) in India, and justifications as to why the provisions of Section 44DA are not applicable to the receipts to be received, in place of Section 44BB of the Act. According to him, the assessee filed its response on 28.04.2025, wherein it admitted that it has a project office in India, and that its activities will be carried on for more than 30 days, thereby conceding that it has a PE in India.

21. He has referred to the decision of this Court in the case of the assessee itself in ITA 612/2021, wherein it was observed as under:

*“19. Thus, after 01.04.2011, income falling within the scope of Section 44DA(1) of the Act would be excluded from the scope of Section 44BB of the Act. ... ..*

*20. Having stated the above, we must clarify that the income falling within Section 115A(1)(b) of the Act which does not fall within the four corners of Section 44DA(1) of the Act would also not be taxable under Section 44BB(1) of the Act, for the reason that by virtue of proviso to Section 44BB(1) of the Act, the same is excluded. Accordingly, the AO would specifically have to determine (a) whether*



*the assessee had a PE in India during the relevant period; and (b) if so, whether the contracts entered into by the appellant with BG and RIL were effectively connected with the appellant's PE in India. It is only, if the AO finds that the said two conditions were satisfied, that the income of the assessee would be computed under Section 44BB(1) of the Act. However, if such conditions are not satisfied then the income tax payable by the appellant would be computed in accordance with Section 115A(1)(b) of the Act.”*

22. A reference is also made to the judgment of this Court in ***Paradigm Geophysical Pty Ltd. v. CIT : W.P.(C)1370/2019***.

23. He also submitted that real nature of income and taxability can be determined only after examination of actual functions carried on by the assessee during the previous year relevant to impugned assessment year. Further, the issuance of certificate under Section 197 of the Act, does not preclude/ bind the Petitioner to adopt a different position and file its return of income on that basis.

24. He stated that that considering the position of law and the fact that the assessee failed to provide the proposed financials relating to its project office, profit was reasonably and tentatively determined at the rate of 20% on the gross receipts of the petitioner in India, on which 35% tax was applied and accordingly, a certificate under Section 197 of the Act was issued.

25. That apart, it is stated that the certificate under Section 197 being provisional, tentative and interim, is not conclusive proof or final determination of the tax liability of the assessee, and as such the principle of *res-judicata* shall not apply the determination of TDS rate. In tax matters



pertaining to a subsequent assessment year involving the same issue as a previous year, the court is not bound by the earlier decision and may depart from it if the subsequent case is distinguishable on facts or if the prior ruling was rendered *per incuriam*. In this regard, reliance is placed on the judgments in the cases of *H.A. Shah and Co. v. CIT*, [1956] 30 ITR 618 (Bom.), *Amalgamated Coalfields v. Janapada Sabha*, AIR 1964 SC 1013, *Bharat Sanchar Nigam Ltd. v. Union of India*, [2006] 3 STT 245, and *MeerajEstate Developers v. CIT*, [2019] 418 ITR 681 (Allahabad).

26. Mr. Kapoor, in rejoinder to the submissions of Mr. Gupta would state that for ascertaining the taxability of receipts, and to see whether the same would be taxable under Section 44BB or 44DA of Act, it is the nature of receipts that must be determined and the presence of PE has no relevance.

27. He has controverted the reliance placed by Mr. Gupta on the decision of this Court in ITA 612/2012, by stating that the decision was recalled by this Court *vide* order dated 01.05.2015 in Review Petition 388/2014. The appeal was later heard afresh and disposed of *vide* order dated 08.04.2016 wherein it was held that receipts of the petitioner do not amount to FTS, and the services provided by the petitioner in relation to acquiring and processing of 3D seismic data with respect to the offshore block in India were taxable under Section 44BB of the Act.

28. He has also stated that the judgment in *Paradigm Geophysical Ltd.* (*supra*) only reaffirms the position that unless the receipts amount to FTS or royalty, it cannot be taxed under Section 44DA of the Act. Further, the company in that case was engaged in the business of developing and



providing customised software enabled solutions and annual maintenance services, which is not the case herein.

29. He has also controverted the submission of the learned counsel for the Revenue that the petitioner is yet to undertake the functions and operations and therefore taxability of receipts can only be decided upon examination of such activities yet to be undertaken, by stating that during the year under consideration, the activities of the petitioner pertain to the contract dated 27.12.2024, which was the same contract pursuant to which the Revenue had issued the certificate and order for AY 2025-26. He has also challenged the stand of the Revenue that the petitioner failed to provide its proposed financials, by stating that that *vide* letter dated 23.04.2025, the petitioner had submitted global financials in response to the clarifications sought by the Revenue.

30. In sur-rejoinder, Mr. Gupta has reiterated his contention that the certificate under Section 195 / 197 of the Act, is only provisional and tentative, which may or may not be in strict compliance with actual tax liability of the assessee. In other words, at the stage of issuance of certificate under Sections 195 / 197, the assessing officer has to determine the quantum of TDS, and not the real/actual tax liability of the assessee from the said transaction. Thus, at the time of issuance of certificate under Section 195 / 197 of the Act, the Assessing Officer determines tentative quantum of tax that is required to be deducted based on his individual satisfaction / estimates, and the same doesn't operate as an estoppel against the Revenue to take a completely different position, as to taxability of such income, in the



course of regular assessment. Reference in this regard is made to a decision of the High Court of Madras in the case of *Ansaldo Engersia SPA v. ITO*, [2003] 261 ITR 476 (Mad.) and of this Court in *Areva T&D, SA v. Assistant Director of Income-tax : 349 ITR 127 (Del)*.

31. That apart, he has submitted that the scope of judicial review of the decision to grant lower rate of withholding tax *vis-a-vis* the statutory rate of deduction is extremely narrow, as such decision for issue of certificate are interim in nature and only reflect a tentative/estimated opinion. If ultimately, the assessee is found to be eligible for refund, the same shall be granted to the assessee with applicable statutory interest. Referring to the judgments of this Court in *National Petroleum Construction Co. v. DCIT, International Taxation, Delhi, (2020) 421 ITR 24*, and *Manpower group Services India Pvt. Ltd. v. CIT, (2021) 430 ITR 399*, he contended that the scope of judicial review in present case shall be restricted to the procedure followed by the assessing officer while arrive at the conclusion for issuance of certificate under Section 197 of the Act, which cannot be faulted at all.

32. Mr. Gupta further stated that the definition of FTS as provided under Explanation 2 to Section 9(1)(vii) of the Act excludes consideration for certain activities from its ambit, viz. consideration for construction, assembly, mining or like project. However for such exclusion the “consideration” should be “for construction, assembly, mining or like project” and not “in connection” or “relatable to” such project. In other words, there should be direct nexus and not some remote connection with construction, assembly, and mining or like projects. To buttress this



argument, he has referred to the CBDT Instruction No. 1862 and also the judgment in *ITO v. SMS Schloemann Siemag Aktiengesellschaft Dusseldorf*, (57 ITD 254), wherein it was held that mere 'supervisory services' would not amount to undertaking construction or assembly for exclusion from FTS under Explanation 2 to Section 9(1)(vii) of the Act. In this regard, reference is also made to the decisions in *Director of Income-tax v. Rio Tinto Technical Services*, [2012] 17 taxmann.com 70 (Delhi) and *Clouth Gummiwerke Akrinegesellschaft v. Commissioner of Income-tax*[1999] 103 Taxman 280 (Andhra Pradesh).

33. He has provided the following table to highlight the distinction in the language employed by Section 44BB and Explanation 2 to Section 9(1)(vii) of the Act:

Section 44BB	Explanation 2 to section 9(1)(vii)
Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee, being a non-resident, engaged in the business of <u>providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, a sum equal to ten 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" :</u>	<i>Explanation 2.</i> —For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) <u>but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient</u> or consideration which would be income of the recipient chargeable under the head "Salaries";

34. According to him, from a perusal of the aforesaid, it would become apparent that the provisions of Section 44BB are attracted on all the services



or facilities which are provided in connection with prospecting for, or extraction or production of, mineral oils. Thus, the scope of services covered within the ambit of Section 44BB of the Act, is much wider and not restricted to the activities which are directly in the nature of prospecting for, or extraction or production of, mineral oils. However, on the other hand, the scope of exclusion from the ambit of FTS is very narrow. Therein, the recipient has to *inter-alia* demonstrated that amount receipt is consideration for undertaking construction, assembly, and mining or like project. In other words, there has to be direct-link between consideration and activities of construction, assembly or mining, for the purpose of exclusion from scope of FTS.

35. It is his submission that prior to the amendment brought in by the Finance Act, 2010, such distinction between the scope of Section 44BB and Explanation 2 to Section 9(1)(vii) of the Act, did not impact taxability of receipts which were received in connection with prospecting for extraction or production of mineral oils, since Section 44BB was specific provision for taxability of receipts arising on account of services / facilities in relation to / in connection with extraction and prospective of mineral oil. However, pursuant to amendment brought in by Finance Act, 2010 (under Section 44DA of the Act), the said distinction shall be pertinent to decide the taxability of such consideration. Thus, it would be potent to examine the nature of such receipt, even though they may still qualify within ambit of Section 44BB of the Act, however, their taxability shall be as governed by Section 44DA of the Act (if they are in the nature of FTS / Royalty), unless, it is demonstrated that the same falls outside the ambit of Explanation 2 to



Section 9(1)(vii) and 9(1)(vi) of the Act.

36. As per the contract dated 27.12.2024, the scope of work of the petitioner is '*2D and 3D broadband seismic data acquisition in Eastern Offshore India*'. It is submitted that offshore seismic surveys are like ultrasounds of the earth that help scientists “see” below the ocean floor. Seismic survey is conducted by a vessel towing a compressed air gun which fires in regular intervals and a large array of sound sensors that record how long it takes for the sound to bounce back from the layers of rock under the sea floor from the recorded data detailed three-dimensional maps are produced these provide engineers the information they need to develop a production plan in order to tap the highest yield reserves. During the process of Offshore Seismic Survey, no construction, mining, assembly or any similar activities take place. Thus, such offshore seismic surveys and data acquisition does not fall under exceptions carved out from Explanation 2 to Section 9(1)(vii) of the Act. He also stated that if the offshore seismic surveys and data acquisition is coupled with mining or drilling operation, then it may fall outside the scope of FTS.

37. Mr. Gupta has also drawn our attention to Clause 3 and Appendix-C of the contract dated 27.12.2024, to submit that apart from providing for Offshore Seismic Surveys and Data Acquisition, the contract also identifies the vessels [*MV Ramform Sovereign*] and various equipments to be deployed by the petitioner for the said purpose. The contract further stipulates that “*if the CONTRACTOR intends to deploy additional seismic vessel(s) not from the shortlisted vessels, but conforming to contract specifications, permission*



*shall be required from CORPORATION before deployment.”* In view of the aforesaid covenants, it is apparent that the said contract was for carrying out Offshore Seismic surveys and Data acquisition but only through specific and identified vessels /equipment. Thus, the consideration payable under the contract also bears character of royalty for use of industrial, commercial or scientific equipment. Thus, the same may also qualify as ‘Royalty’ under Explanation 2 to Section 9(1)(vi) of the Act.

38. Yet another submission of Mr. Gupta is that prior to the amendment introduced by the Finance Act, 2010, taxability of FTS / Royalty arising on account of services / activities in connection with business of exploration, etc., of mineral oils, was governed by provisions of Section 44BB of the Act, viz., special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils. This is particularly so because, although proviso to Section 44BB(1) provides that the said subsection shall not apply in a case where the provisions of Sections 42, 44D, 115A or 293A apply for the purposes of computing profits or gains or any other income referred to in those sections, however, there was no corresponding provision under Section 44D of the Act, to override the specific provisions of Section 44BB of the Act.

39. While adjudicating *ONGC (supra)*, the Supreme Court attempted to harmonise the scope of specific provision *vis-a-vis* the general provisions for taxability of Royalty/FTS. The question before the Court was, whether the amounts paid by ONGC to the non-resident assesseees/ foreign companies for providing various services in connection with prospecting, extraction or



production of mineral oil is chargeable to tax as FTS under Section 44D read with Explanation 2 to Section 9(1)(vii) of the Act or under Section 44BB of the Act. While examining this, the Court primarily held that income from any activity which has proximity with or is in relation to mining for or exploration of mineral oil, shall be taxable under the provisions of Section 44BB of the Act. Mr. Gupta stated that however, the Court had neither examined nor given any finding as to nature of receipt arising from solitary function of '2D/3D Offshore Seismic Survey' and whether the same would qualify as FTS, or Royalty, particularly when the specific vessels as well as equipment are identified in the said contract for carrying out such work.

40. He has submitted that however, after the amendment introduced by Finance Act, 2010, FTS/Royalty even though arising on account of services/activities in connection with business of exploration, etc., of mineral oils, shall be taxable as per provisions of Section 44DA of the Act, since, the amendment expressly and clearly overrides '*Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils*', by introduction of Second Proviso to Section 44DA(1) of the Act, which reads, "*Provided further that the provisions of section 44BB shall not apply in respect of the income referred to in this section.*" To decipher such correlation between Sections 44BB and 44DA of the Act, he has placed reliance on the decision of this Court in the case of ***Paradigm Geophysical Pty Ltd. (supra)*** wherein, scheme of the Act has been elaborated, for classification of receipts (relating to exploration of mineral oil) under different provisions for the purposes of its taxability. He stated that the judgment provides a harmonious construction of Section 44BB vis-



à-vis Section 44DA and 115A, and to showcase the same, has tabulated the summary of the judgment as under:

Particulars	Section 44BB (Special provision for business of mineral oil exploration)	Section 115A Tax on dividends, royalty and technical service fees in the case of foreign companies (without PE)	Section 44DA (Special provision for royalty and FTS for non-residents with PE in India)
Applicability	Applies to a nonresident engaged in providing services/facilities or supplying plant & machinery on hire for prospecting, extraction or production of mineral oils.	Applies to nonresident / foreign company earning royalty or fees for technical services (FTS) from Govt. or Indian concern and not covered under 44DA of the Act, i.e., No PE.	Applies to non-resident / foreign company earning royalty or fees for technical services (FTS) from Govt. or Indian concern and having a PE or fixed place of profession in India.
Nature of Income Covered	Income from services, facilities, or plant & machinery used in relation to mining of mineral oil etc.	Royalty or FTS received from Indian Concern of GoI - non-PE	Royalty or FTS effectively connected with the PE in India.
Computation Mechanism	10% of specified amounts received/ receivable.	Gross receipt is Income however Tax Rate @20% on such Gross Receipt.	Income computed under normal provisions of "Profits and gains business or profession." subject to exclusion specified under said section.
Permissible Deductions	No separate deductions— 10% deemed in come replaces them.	No Deduction. Gross amount is deemed as Income	Deductions allowed only for expenditure wholly & exclusively incurred for PE; No deduction for payments to head office/other offices except reimbursement.
Exclusion Clause after 2010	44BB does not apply if 44DA applies (explicit exclusion).		Second proviso states that 44BB shall not apply to income referred in 44DA.
Example of computation	Gross Receipt – 100Cr. Income @10% - 10Cr. Tax Rate @ 35%	Gross Receipt – 100Cr. Tax Rate @ 20%	Gross Receipt – 100 Cr. Expenses – xxx Income – (100 Cr – xxx) Tax Rate – 35%
	Tax amount :: 3.5 Cr. [i.e., 3.5% of Gross Receipt]	Tax amount :: 20 Cr. [i.e., 20% of Gross Receipt]	(in present case: Income estimated @ 20% of Receipt Tax amount :: 100 Cr. x 20% x



			35% = 7 Cr. [i.e., 7% of Receipt in this case
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## ANALYSIS AND CONCLUSION

41. Having heard the learned counsel for the parties, and perused the record, the issue which arises for consideration is whether the AO is justified in issuing the certificate and order dated 01.05.2025 under Section 197 of the Act in the case of the petitioner for the FY 2025-26 relevant to AY 2026-27 whereby withholding tax at the rate of 7% on gross receipts has been imposed upon the petitioner.

42. The order which has been issued by the AO is reproduced below:-

*“Sub: ORDER UNDER SECTION 197 OF THE INCOME TAX ACT, 1961*

*An application u/s 197 from M/s PGS Geophysical AS (hereafter referred to as the ‘applicant’) vide request no.708797 regarding issuance of certificate u/s 197 of the Income-tax Act for withholding tax at 3.12% for FY 2025-26 in respect of receipts of Rs.477,40,19,980/- receivable from M/s Oil and Natural Gas Corporation Limited under the terms of contract between PGS Geophysical AS and Oil and Natural Gas Corporation Limited (‘ONGC’) bearing contract*

*no.*

*DLI/2024/BB4SEC/1311217/ZV5AC24001/9010039479 dated 27 Dec 2024 for providing geophysical services to oil and gas industry.*

*2. The applicant M/s PGS Geophysical AS is a company incorporated in Norway and conducts seismic surveys & provides off shore seismic data acquisition and other associated services such as processing and interpretation of such data. The applicant has furnished copy of certificate of incorporation of the company. On 20 November 2024, PGS has been received letter of award by ONGC. Further, as per*



contact dated 27.12.2024 the total amount of contract is USD 7,47,96,619.52/-. During the FY 2025-26, PGS is expected to receive USD 5,18,91,522 (equivalent to INR 477,40,19,979/-) for the said contract in relation to 2D & 3D broad band seismic data acquisition of Eastern offshore, India.

3. In the instant case, the hiring services for 2D & 3D Broadband seismic data acquisition are taxable in India. The applicant has claimed that the activities undertaken by PGS are integral to extraction of Oil and Gas, the same shall be taxable as per the provision of section 44BB of the Act. The applicant has a project office in India. The services provided by the applicant are in the nature of Royalty/ FTS and hence, the income from these activities is covered under section 44DA of the Act.

“44DA. Special provision for computing income by way of royalties, etc., in case of nonresidents.—

(1) The income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by a non-resident (not being a company) or a foreign company with Government or the Indian concern after the 31st day of March, 2003, where such non-resident (not being a company) or a foreign company carries on business in India through a permanent establishment situated therein, or performs professional services from a fixed place of profession situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be, shall be computed under the head “Profits and gains of business or profession” in accordance with the provisions of this Act .....

4. The applicant has not provided financials for the project office.



*Moreover, the applicant has assumed USD exchange rate of 1 USD = 92 INR which is not correct. The average dollar rate during the year 2025 is 1USD= 86.40 INR. Therefore, the exchange rate of 1 USD = 87 INR may be allowed to the assessee. The calculations the revenue to be received is as follows:*

*The applicant is expected to receive USD 5,18,91,522/-. Considering the exchange rate of Rs. 87 the amount expected to be received is USD 5,18,91,522/- \* 87 = Rs. 4,51,45,62,414/-.*

*5. Therefore, the profit rate of 20 percent is being assumed. 197 is a very premature stage for determining income for AY 2026-27 and assessment is not possible at this very point of time, hence, in order to protect the interest of revenue, taking into account the rate of tax on business income @35%, we may issue certificate u/s 197 directing the buyer to deduct tax at source @ 7% (excluding surcharge and cess) on the payment of Rs.4,51,45,62,414/- for reporting purpose only. Such certificate would be provisional in nature and subject to final assessment.*

*6. The certificate is provisional and shall remain in force for the aforesaid payments only unless it is modified or cancelled for F.Y. 2025-26. The facts of cancellation or modification, if required will be intimated. This certificate is issued for limited purpose of lower deduction u/s 197. This shall not cater any further benefit/claim under the provision of Income Tax Act, 1961 to the applicant.”*

43. A perusal of the aforesaid order would reveal that the petitioner had made a request for issuance of a certificate under Section 197 of the Act for withholding tax at the rate of 3.5% for the FY 2025-26 in respect of the receipts by the petitioner from ONGC pursuant to the contract executed on 27.12.2024. For the FY 2024-25, in respect of the same contract dated 27.12.2024, the AO had issued the certificate dated 13.12.2024 for



withholding tax at the rate of 3.5%. However, for the FY 2025-26, there is a clear departure in as much as the tax which has been directed to be withheld is 7%. The case of the petitioner is primarily that the receipts shall be taxable as per provisions of Section 44BB of the Act; whereas the AO came to the conclusion that the services/receipts provided by the petitioner are in the nature of the FTS/Royalty and hence income from these activities is covered under Section 44DA of the Act.

44. The interplay between the provisions of Sections 44BB and 44DA and their applicability to non-residents carrying on the business of exploration etc. of mineral oils had come up for consideration before a co-ordinate bench of this Court in *Paradigm Geophysical Pty Ltd. (supra)*, wherein it was observed as under:

**“ANALYSIS & CONCLUSION:**

**LEGAL POSITION VIZ. SECTION 44BB AND SECTION 44DA AFTER AMENDMENT INTRODUCED UNDER FINANCE ACT, 2010.**

*11. The pivotal controversy in the present case surrounds the interpretation of Section 44BB and 44DA of the Act. These provisions have undergone amendments over the years, the last one being introduced by the Finance Act, 2010. Since assessee has argued at length that this legal position remains unaltered, we feel that this aspect in law needs to be clarified as it would also be germane for the decision in the present case. It is, thus, imperative to first examine the effect and consequence of the said amendments, particularly to determine if the legal position has undergone any change with respect to the applicability of the provisions, after the effective date i.e. April 01, 2011 since the return of income filed by the Petitioner pertains to the assessment year 2012-13.....*



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*The interplay between Section 44DA(1) and 44BB(1) of the Act has been a subject matter of several judgments. We need not engage ourselves with an elaborate analysis of the said provisions, as they existed prior to amendments, and it would suffice to note that the conflict between the two provisions has been noticed in several decisions. Revenue has always maintained its stand that both set of provisions are special in nature which operate in their own clearly defined spheres; once a particular receipt of income takes on the character of Royalty/FTS as defined in section 9(1) (vi)/ 9(1) (vii), it cannot be considered for treatment under Section 44BB and has to be taxed under Section 115A/44DA of the Act. That being said, there are several judgments of this court, wherein it has been held that Section 44BB is a specific provision and incase the income falls within the ambit of Section 44DA(1) of the Act, it would be liable to be taxed under Section 44BB(1) of the Act, provided it was in connection with extraction or production of mineral oils. This conflict or inconsistency now stands resolved by virtue of the amendments introduced under the Finance Act, 2010. Though the insertions are stated to be clarificatory, however the rationale behind the introduction of the amendments has to be examined to appreciate the legislative intent envisioned under the Finance Act, 2010.*

*13. Section 44 BB is a special provision for computing profits and gains of a non-resident from business of providing services or facilities in connection with, or supplying plant and machinery on hire, used or to be used in the prospecting for or extraction or production of mineral oils, including petroleum and natural gas. Section 44DA is broader and more general in nature and provides for assessment of the income of the nonresident by way of royalty or fees for technical services, where such nonresident carries on business in India through a permanent establishment situated therein, or performs services from a fixed place of profession situated in India and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with the permanent establishment or fixed*



*place of profession situated in India. One more distinction between sections 44 DA and 44 BB is that, in section 44 BB one does not find any reference to a permanent establishment in India and the services contemplated therein are more specific than what is contemplated in section 44 DA. Thus, Section 44BB is a special provision in so far as it relates to the applicability of the provision in the context of the specified services. Section 44DA applies where such non-resident carries on business in India through a permanent establishment stipulated therein or performs services from a fixed place of profession, such income shall be computed under the head "profit and gains of business or profession" in accordance with the provisions of the Act, subject to the condition that no deduction shall be allowed in respect of any expenditure or allowance which is not wholly or exclusively incurred for the business of such permanent establishment or fixed place of profession in India or in respect of amounts, if any, paid by the permanent establishment to its head office or to any of its other offices. Section 115A of the Act provides the rate of taxation in respect of income of a non-resident, in the nature of royalty or fees for technical services, other than the income referred in Section 44DA i.e. income in the nature of royalty and fees for technical services which is not connected with the permanent establishment of the non-resident.*

*14. There is another Section that needs to be referred, for the sake of comprehensive understanding i.e. Section 44D of the Act, inserted in the first place vide Finance Act, 1976 for taxability of income in the nature of royalty and fee for technical services. Later, a special provision was introduced by way of Section 44BB vide Finance Act, 1987. However, even when 44D was appearing in the statute book, Section 44BB contained a proviso which excluded applicability of Section 44BB to cases that were covered by Section 44D. However, it is pertinent to note that there was no similar proviso appearing under Section 44D.*

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*16. Keeping in mind the legislative history of amendments in the two provisions, the aforesaid amendments are significant and*



*changed the position with respect to the applicability of the said provisions. A taxing statute is to be construed strictly. The position that existed prior to the amendments was different. There was no proviso which restricted the applicability of Section 44BB in respect of the income falling within the scope of Section 44DA (1) of the Act. However, now that the proviso has been inserted, it has fundamentally restricted the applicability of section 44BB. This proviso has to be given due consideration and a meaning, recognizing the legislative intent. A plain reading of section 44BB (1) shows that it applies to an assessee who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire use, or to be used, in the prospecting for, or extraction or production of mineral oils. However, the proviso thereto carves out an exception that the subsection shall not apply in a case where the provisions of section 44DA apply for the purpose of computing profits or gains or any other income referred to in those sections. Further, a reading of section 44DA makes it clear that it applies to the character of income which is in the nature of royalty or fees for technical services. The legislative intent behind the amendment is also evident from the memorandum to the Finance Bill 2010 which reads as under:*

*“Under the existing provisions contained in section 44BB(1) of the Income-tax Act, income of a non-resident taxpayer who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils is computed at ten per cent of the aggregate of the amounts paid.*

*Section 44DA provides the procedure for computing income of a non-resident, including a foreign company, by way of royalty or fee for technical services, in case the right, property or contract giving rise to such income are effectively connected with the permanent establishment of the said non-resident. This income is computed as per the books of account maintained by the assessee. Section 115A*



*provides the rate of taxation in respect of income of a non-resident, including a foreign company, in the nature of royalty or fee for technical services, other than the income referred to in section 44DA i.e., income in the nature of royalty and fee for technical services which is not connected with the permanent establishment of the non-resident.*

*Combined effect of the provisions of sections 44BB, 44DA and 115A is that if the income of a non-resident is in the nature of fee for technical services, it shall be taxable under the provisions of either section 44DA or section 115A irrespective of the business to which it relates. Section 44BB applies only in a case where consideration is for services and other facilities relating to exploration activity which are not in the nature of technical services. However, owing to judicial pronouncements, doubts have been raised regarding the scope of section 44BB vis-a-vis section 44DA as to whether fee for technical services relating to the exploration sector would also be covered under the presumptive taxation provisions of section 44BB.*

*In order to remove doubts and clarify the distinct scheme of taxation of income by way of fee for technical services, it is proposed to amend the proviso to section 44BB so as to exclude the applicability of section 44BB to the income which is covered under section 44DA. Similarly, section 44DA is also proposed to be amended to provide that provisions of section 44BB shall not apply to the income covered under section 44DA. These amendments are proposed to take effect from 1st April 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.”*

*This proviso reinforces the legislative intent to carve out an exception to the character of the income referred to in this section i.e. royalty and fees for technical services. The principles relating to interpretation of statute, emphatically lay down that statute should be interpreted to preserve the legislative intent. **A reading of the overall scheme of section 44BB and 44DA leaves no***



**manner of doubt that section 44BB applies if the assessee is engaged in the business of providing services or facilities in the prospecting for, or extraction or production of minerals oils. However, if income earned by such assessee takes the color of royalty or FTS, then the computation for the purposes of determining "profits and gains of business or profession" is to be done as per the provisions of section 44DA of the Act. Therefore, now in the current scenario if the income of the assessee is Royalty or FTS, then the same would be taxed under Section 9(1)(vi)/(vii) read with Section 115A or 44DA, as the case may be."**

(emphasis supplied)

45. It is clear from the above that after the amendment introduced by the Finance Act, 2010, FTS/ Royalty arising out of activities in connection with the exploration etc. of mineral oils shall be taxable as per Section 44DA of the Act by virtue of the second proviso to Section 44DA(1). However, for the said provision to apply, the income/receipts at the hand of the assessee necessarily need to be in the nature of FTS/Royalty. As such, to decide the controversy in the present case, it is necessary to examine whether the consideration received by the petitioner amount to FTS/Royalty.

46. The issue regarding FTS in respect of this very petitioner has been settled by this Court in *PGS Exploration (Norway) AS (supra)* wherein the Court considering the activities of 2D/3D seismic survey carried out by the petitioner in connection with exploration of oil held that the income received pursuant to the contract with ONGC would not amount to FTS. Mr Kapoor, in particular has relied upon the paragraphs 21 to 23 of this decision, which are being reproduced as under:-



*“21. In this view, the primary issue to be addressed is whether the consideration received by the Assessee for providing Geophysical services would fall within the exclusion provided in Explanation 2 to Section 9(1)(vii) of the Act. In our view, the aforesaid question is no longer res integra and is squarely covered by the decision of the Supreme Court in Oil and Natural Gas Corporation Limited (supra). The said decision was rendered in a batch of matters concerning several non-resident assesseees who claimed that their service fell within the expression "mining or like projects" and thus, the consideration received by them for such services stood excluded from the scope of 'fees for technical services'. The said assesseees classified the contracts entered into by them under eight heads which are reproduced below:-*

- "1. Carrying out seismic surveys and drilling for oil and gas.*
- 2. Services starting/re-starting/enhancing production of oil and gas from wells*
- 3. Services for prospecting for exploration of oil and or gas.*
- 4. Planning and supervision of repaid of wells.*
- 5. Repair, Inspection or Equipment used in the exploration, extraction or production of oil and gas.*
- 6. Imparting Training.*
- 7. Consultancy in regard to exploration of oil and gas.*
- 8. Supply, Installation, etc. of software used for oil and gas exploration."*

*22. In its judgment, the Supreme Court referred to a Circular No.1862 dated 22.10.1990 which in turn referred to the Attorney General's opinion that prospecting for or extraction or production of mineral oil could be termed as 'mining operations' and consequently provided that expression "mining projects" or like projects" as occurring in Explanation 2 to Section 9(1)(vii) of the Act would also cover "rendering of services like imparting of training and carrying out*



*drilling operations for exploration or exploitation of oil and natural gas". And, after examining various contracts involved in the appeals before it, the Supreme Court held that the contracts were inextricably connected with prospecting, extraction or production of mineral oil and, accordingly, proceeded on the basis that consideration for such services was not fees for technical services. The Supreme Court held that even though there may be certain ancillary works contemplated under the contracts in question but since the dominant purpose of each of such contract is for prospecting, extraction or production of mineral oils, the income from such services were to be computed under Section 44BB of the Act.*

23. In view of the above, the first question - Whether on the facts and circumstances of the case, the Tribunal erred in law in holding that the activity of 2D/3D seismic survey carried on by the appellant in connection with exploration of oil, was in the nature of "fees for technical services" in terms of Explanation 2 to section 9(1)(vii) of the Act – must be answered the affirmative, that is, in favour of the Assessee and against the Revenue."

(Emphasis supplied)

47. The above judgment was rendered pursuant to a review filed by the petitioner, praying that the issue whether the income of the petitioner would amount to FTS was not considered by the Court in its initial judgment. The Court then examined the issue in detail and concluded that prospecting for or extraction or production of mineral oil could be termed as mining operations, and consequently, provided that the expression 'mining projects or like projects' as occurring in Explanation 2 of Section 9(1)(vii) of the Act would also cover rendering of services like imparting or training and carrying out drilling operation for exploration or exploration of oil and natural gas. As such, it was held that the consideration for the activity of



2D/3D seismic survey in connection with exploration of oil, carried out by the petitioner herein cannot be construed as FTS. Nothing has been brought before us to show that the said judgment has been taken in appeal or set aside.

48. We find that though the AO had not considered the above judgment for the FY 2024-25, he issued the certificate withholding tax @ 3.5% under the same contract. However, in the impugned order / certificate, there is a clear departure from the earlier FY as the AO has stated that the income from the activities of the petitioner is FTS/Royalty, covered under Section 44DA of the Act.

49. The submission of Mr Gupta is that offshore seismic surveys are like ultrasounds of the earth that help scientists see below the ocean floor. Seismic survey is conducted by a vessel towing a compressed air gun which fires in regular intervals and a large array of sound sensors that record how long it takes for the sound to bounce back from the layers of rock under the sea floor. From the recorded data detailed three-dimensional maps are produced which provide engineers the information they need to develop a production plan in order to tap the highest yield reserves. In other words, offshore seismic survey has no construction, mining, assembly or any similar activity; thus, offshore seismic surveys and data acquisition does not fall under exceptions carved out from Explanation 2 to Section 9(1)(vii) of the Act. He stated that if the offshore seismic surveys and data acquisition is coupled with mining or drilling operation, then it may fall outside the scope of FTS.

50. In the impugned order, the AO has merely stated that the services are



in the nature of FTS/Royalty; hence the activities are covered under Section 44DA of the Act. There is no reason provided as to why there is a deviation from the earlier FY, wherein the receipts of the petitioner were held to be covered under Section 44BB of the Act. Further, the order does not specify as to whether the receipts (or parts thereof), are in the nature of FTS or in the nature of Royalty, to be covered under Section 44DA of the Act.

51. Be that as it may, the finding of the AO with respect to FTS cannot be sustained in view of the decision in *PGS Exploration (Norway) AS (supra)* wherein this Court had held to the contrary in the case of the petitioner itself, albeit before the amendment was introduced. As such, the stand of the Revenue that the income of the petitioner would amount to FTS and would be taxable as per Section 44DA *prima facie* cannot be accepted.

52. Insofar as the element of Royalty is concerned, we note that though no stand was taken by the Revenue in its reply and surrejoinder that the receipts of the petitioner would amount to Royalty, Mr. Gupta in his Written Submissions has stated that since the contract identifies the vessel and the equipments used by the petitioner, the receipts thereof would also entail income in the nature of Royalty. This position is contested by Mr. Kapoor by stating that the services provided by the petitioner do not in any manner fall under the definition of Royalty provided in Explanation 2 to Section 9(1)(vi) of the Act. In any case, the order of the AO provides no reasoning as to how the receipts would fall within the nature of Royalty to be covered by Section 44DA of the Act.

53. In the facts of this case, as the impugned order does not show that the



AO had considered the judgment of this Court rendered in the case of petitioner itself being *PGS Exploration (Norway) AS (supra)* and has also not given any reasoning insofar as the conclusion arrived at that the receipts are in the nature of Royalty, appropriate shall be that the impugned order and certificate under Section 197 of the Act be set aside and the matter be remanded back to the AO for him to consider the law laid down by the Supreme Court in the case of *ONGC (supra)* as also this Court in *PGS Exploration (Norway) AS (supra)* as well as the issue with regard to the element of Royalty and then pass a fresh order under Section 197 of the Act. This exercise shall be carried out by the AO within a period of three weeks from the date of receipt of copy of this order. It is ordered accordingly.

54. The writ petition is allowed on the above terms.

**V. KAMESWAR RAO, J**

**VINOD KUMAR, J**

**FEBRUARY 20, 2026**