Inclusion of statutory liability for the purpose of computing gross receipts under section 44BB - Reference for constitution of Larger Bench

The Uttarakhand High Court in the case of Halliburton Offshore Services Inc. *v.* ACIT, while dealing with the question of inclusion of statutory liability in computing the gross receipts for the purposes of section 44BB of the Income-tax Act, 1961 (the Act), has referred the said matter to the Chief Justice for constitution of a Larger Bench.

Background

Under section 44BB of the Act, 10% of the amount received by a non-resident taxpayer on account of:
a) provision of services and facilities in connection with; or
b) supplying plant and machinery on hire used, or to be used, in

the prospecting for, or extraction or production of, mineral oils, is deemed to be its business income.

In this context, there has been a controversy as to whether statutory receipts like service tax, customs duty etc payable to the non-resident taxpayers, is includible in the gross receipts for the purposes of section 44BB of the Act.

Earlier, Uttarakhand High Court in the case of DIT *v.* Schlumberger Asia Service Ltd. [2009] 317 ITR 156 (Uttarakhand) held that reimbursement of customs duty on the import of equipment, being statutory in nature, is not required to be included while computing gross receipts under section 44BB of the Act. (Please refer to our news alert dated 7 August, 2009 link enclosed herewith for ready reference)

http://www.pwc.in/en_in/in/assets/pdfs/news-alert-tax/news-alert-7-august-2009-schlumberger-asia-service-ltd.pdf

Uttarakhand High Court - Reference to Chief Justice for constitution of Larger Bench

The Uttarakhand High Court in the case of Halliburton Offshore Services Inc., while examining the taxability of statutory receipt under section 44BB of the Act, observed that this section deals with the amount paid or payable and does not contemplate reduction of the same on account of any liability to be incurred by the payee, whether statutory or otherwise. After noting its earlier decision in the case of Schlumberger mentioned above and in disagreement with the same, has referred the matter to the Chief

Justice for constitution of a Larger Bench to examine the issue.

Please click on the link below to view the High Court Order.
http://lobis.nic.in/uhc/BG/judgement/30-12-2013/BG26122013ITA412009.pdf

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