



# Analysis of Section 44BB of the Income Tax Act 1961

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## Background

Section 44BB of the Income Tax Act, 1961 was first introduced in 1987 with a retrospective effect from 1st April 1983. It was a new provision which was introduced as a measure of simplification for the computation of taxable income from activities connected with the exploration of mineral oils. Further, the finance act of 2010 clarifies 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 even if it's an income which is related to the section 44BB of the Act.

Some Important Judicial pronouncements relating to the various items in section 44BB of the Income Tax Act 1961 are as follows.

## Loss

Irrespective of loss or profit assessee has to pay 10% of the gross receipt  
**Commissioner of Income-tax v. O.N.G.C<sup>1</sup>**



## Reimbursement

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Reimbursement paid with regard to the activities related to section 44BB and also the part of gross receipt calculated for the purpose of tax **Ensco Maritime Ltd. v. Additional Director of Income-tax**<sup>2</sup>.

## Permanent Establishment

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Section 44BB applies only to such an assessee, who is a non-resident and not to an assessee, who has a permanent establishment in India or has a fixed place of profession situated in India **Director of Income-tax (International Taxation) v. Western Geco International Ltd**<sup>3</sup>.

## Statutory Taxes

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Statutory taxes paid by the assessee does not form part of the gross receipts **Director of Income-tax-I v. Mitchell Drilling International (P.) Ltd** <sup>4</sup>

## For Providing Services

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Payment for providing various services in connection with prospecting, extraction or production of mineral oil, would be assessed under section 44BB, and not under section 44D **Oil & Natural Gas Corporation Ltd. v. Commissioner of Income-tax**<sup>5</sup>

## One Time Tax

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Once the 10% tax has been charged under section 44BB 90% of the remaining amount of foreign resident are not chargeable to tax. **Commissioner of Income-tax v. Schlumberger Sea Co. Inc**<sup>6</sup>

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<sup>1</sup>[2004] 134 Taxman 156 (UTTARANCHAL)/ [2003] 264 ITR 340 (UTTARANCHAL)/[2004] 186 CTR 468 (UTTARANCHAL)[30-09-2003]

<sup>2</sup>[2017] 77 taxmann.com 12 (Uttarakhand)/ [2017] 244 Taxman 261 (Uttarakhand)[30-05-2016]

<sup>3</sup>[2013] 35 taxmann.com 345 (Uttarakhand)/ [2013] 216 Taxman 216 (Uttarakhand) [20-05-2013]

<sup>4</sup>[2015] 62 taxmann.com 24 (Delhi)/ [2015] 234 Taxman 818 (Delhi)/[2016] 380 ITR 130 (Delhi)[28-09-2015]

<sup>5</sup> [2015] 59 taxmann.com 1 (SC)/ [2015] 233 Taxman 495 (SC)/[2015] 376 ITR 306 (SC) [01-07-2015]

<sup>6</sup> [2002] 124 Taxman 358 (Calcutta) / [2003] 264 ITR 331 (Calcutta)/[1999] 157 CTR 538 (Calcutta)[17-09-1997]



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