

Disclosure of long-term deposit with a bank in respect of 'Site Restoration Fund' under section 33ABA of the Income-tax Act, 1961

The following is the brief version of an opinion given by the Expert Advisory Committee of the Institute in response to queries sent by a member. This is being published for the information of readers.

A. Facts of the Case

1 A corporation is an exploration and production (E&P) company established under the Companies Act, 1956. The core activities of the company are exploration, development and production of hydrocarbons wells on land as well as in offshore areas.

2 Extraction of hydrocarbons requires installation of facilities in the form of platforms, pipelines and other structures (which are of huge size and magnitude in case of offshore operations). Once the production from a particular well or cluster of wells comes to an end, the facilities for such offshore wells have no value at its location. Further, as per the requirement of law, such facilities cannot be left at their locations due to safety and environmental reasons.

3 Removal of these facilities from their locations and bringing the same to shore in accordance with the provisions of environmental laws is termed as 'Abandonment' in exploration industry. Removal,

particularly in the offshore wells, requires incurrance of huge costs. Such costs are called 'Abandonment Costs' or 'Site Restoration Costs'. It means the site has to be restored in the same condition as it was when the company took it for exploration and production. Given the choice (subject to law) any producer will like to leave such facilities at their locations to save on abandonment costs. But the environmental laws and safety standards require the producer to remove these facilities and place the same at a safe location.

4 There is a provision in the Income-tax Act, 1961, under section 33ABA, that an assessee carrying on the business consisting of the prospecting for, or extraction or production of, petroleum or natural gas or both, in India, can deposit the amount with the State Bank of India (SBI) towards 'Site Restoration Account' (Abandonment). Income-tax deduction is available on deposit in this account and the amount can be utilised for this purpose only. In case the

amount is withdrawn for any other purpose, the same becomes taxable in the hands of the assessee.



5 As per Schedule VI to the Companies Act, 1956, the deposits with banks have to be shown under the head 'bank balances' which forms part of current assets though the deposits made by the company under 'Site Restoration Fund' are in the nature of 'Escrow deposits' on term basis. As per the requirement of Schedule VI to the Companies Act, 1956, the company has no option but to show it under 'bank balances' as deposits. Such deposits as on 31.3.2004, being of high magnitude at Rs. 3168.19 crore, after detailed deliberations with the statutory auditors, were shown as 'Deposits with bank under Site Restoration Funds Scheme' under the heading 'Cash and Bank Balances'. Further, it was clarified by way of a footnote as follows: "Deposited under section 33ABA of the Income-tax Act, 1961 and

1. The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.

2. The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in 23 volumes which are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.

could be withdrawn only for the purposes specified in the scheme”.

6 In the cash flow statement, this amount was shown as ‘cash and cash equivalents’ as this forms a part of ‘cash and bank balances’ in the balance sheet, although the company has clarified, as an abundant precaution, that the head ‘cash and cash equivalents’ includes deposits with bank under the ‘Site Restoration Fund Scheme’.

7 The government auditors had observed that this amount of Rs. 3168.19 crore, being long term in nature, should not have been shown as ‘cash and bank balances’ under ‘Current Assets, Loans and Advances’ in the balance sheet. When the position under the Companies Act was explained by the company, the observation was removed with the understanding that disclosure should be made in 2004-05 accounts as per the clarification from the Institute of Chartered Accountants of India in this regard.

8 The querist has expressed the view that although deposit with the SBI under section 33ABA being ‘escrow’ of long term maturity, the disclosure in the balance sheet should not be as ‘cash and bank balances’ and also should not appear as ‘cash and cash equivalents’ in the cash flow statement, but in view of the requirements of Schedule VI to the Companies Act, 1956, the company has no option but to show it as a current asset. Since this amount appears as bank balance in the balance sheet, this had to be taken as cash and cash equivalents in the cash flow statement.

9 A copy of the annual report of

the company for the year 2003-04 and the text of section 33ABA of the Income-tax Act, 1961, have been separately submitted by the querist for the perusal of the Expert Advisory Committee.

B. Query

10 In view of the position explained above, the querist has sought the opinion of the Expert Advisory Committee with regard to the appropriate manner of disclosure of the deposit with the State Bank of India in respect of Site Restoration Fund under section 33ABA of the Income-tax Act, 1961, in the balance sheet as well as in the cash flow statement.

C. Points considered by the Committee

11 The Committee notes that the company has made a deposit with the State Bank of India with regard to Site Restoration Cost for availing deduction under section 33ABA of the Income-tax Act, 1961. The Committee also notes that, as per the provisions of the Act, in case the company utilises the deposit for purposes other than for meeting site restoration costs, it will have to pay tax on the same. The Committee is, therefore, of the view that the amount of deposit can be utilised by the company at any time even for a purpose other than site restoration cost although at the expense of paying tax on the same. Thus, in the view of the Committee, the company has a choice rather than compulsion to continue to maintain the deposit with the bank.

12 On the basis of the above, the

Committee is of the view that the deposit in question should be shown under the sub-head (7B) ‘Bank Balances’ under the head ‘Current Assets, Loans and Advances’ as per Schedule VI to the Companies Act, 1956, with the required disclosures.

13 The Committee notes that Accounting Standard (AS) 3, ‘Cash Flow Statements’, issued by the Institute of Chartered Accountants of India, defines the term ‘cash’ as follows:

“Cash comprises cash on hand and demand deposits with banks.”

14 The Committee is of the view that the deposit with the State Bank of India should be considered as a demand deposit with the bank since the company has the choice to use it even for a purpose other than for meeting site restoration costs, although at the cost of paying tax on the same. The Committee is, therefore, of the view that the company is correct in considering the deposit as ‘cash and cash equivalents’ for the purpose of preparing cash flow statement.

D. Opinion

15 On the basis of the above, the Committee is of the opinion that in the balance sheet, the presentation of the deposit with the State Bank of India in respect of Site Restoration Fund under section 33ABA of the Income-tax Act, 1961, along with the disclosure made by the company, is proper. The Committee is further of the opinion that treating the said deposit in the cash flow statement as ‘cash and cash equivalents’ along with the disclosures made by the company, is proper. ■