SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 162

Commissioner of Income International Taxation Vs Citicorp Investment Bank (Singapore) Ltd.

Capital Gain covered under Article 13(4) of DTAA, earned in India by Singapore Resident can not be taxed in India if assessee offers it's income to tax in Singapore irrespective of whether income is repatriated or not

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[2023] 151 taxmann.com 501 (Bombay) [21-06-2023]

Facts of the Case

- Citicorp Investment Bank (Singapore) Ltd. (i.e., the assessee) is a tax resident of Singapore. It is registered as a Foreign Institutional Investor (FII) in the debt segment with SBI. For the F.Y. 2009-10 (A.Y. 2010-11), the assessee has **earned capital gain on the sale of debt securities in India** on which it had claimed the benefit of Article 13(4) of the India-Singapore DTAA.

- In its return, the assessee also declared a **capital gain of Rs. 86,62,63,158 on debt instruments** and hence **claimed exemption under Article 13(4)** of India-Singapore DTAA.

- A certificate has also been submitted by the assessee received from the Singapore authorities stating that such capital gains shall be considered as accruing under Singapore Tax Law and it would be brought to tax in Singapore without reference to the amount remitted or received in Singapore.

- During the assessment, the **assessee was asked to explain how the provisions of Article 24 of DTAA** stood complied with in order to claim capital gain as an exemption in India.

Assessee's Contention

- The assessee in its submission contended that being an FII, it is **liable to tax in Singapore on its worldwide income**.

- The assessee stated that since Article 13(4) of India-Singapore DTAA provides for the taxation of Capital Gain in Singapore and the assessee is already offering its worldwide income for tax in Singapore, therefore the **question of whether the remittance of such income is being made to Singapore or not, it has no relevance** for the purpose of claiming benefit under the DTAA.

- The Ld. counsel argued that the **limitations of relief under Article 24 of DTAA would only arise when the entire capital gain is not taxed in Singapore and only the remitted amount is taxed in Singapore**.

- The **assessee is offering the certificate taken from the revenue authorities of Singapore** to the effect that income derived from buying or selling Indian Debt Securities and from Foreign exchange transactions in India would be considered under Singapore tax law as accruing in or derived from Singapore, and such income, therefore, be brought to tax in Singapore, without reference to the amounts remitted or received in Singapore.

Revenue's Contention

- A.O. contended that if the assessee wants **to claim any benefit under the DTAA**, the assessee **has to fall within the provisions of the DTAA**. However, the A.O. believes that though the provisions of Article 13(4) allow exemption of Capital Gains in the source country, i.e., India, provisions of **Article 24 of DTAA provide for restriction of exemption of such capital gains to the extent of repatriation** of such income to other income i.e., Singapore.

- A.O. further submits that even the **Singapore law u/s 10(1)** regarding the charge of income tax, suggests that the income will be taxed on a receipt basis in Singapore earned from sources outside Singapore.

- Further the **assessee did not show that repatriation of the capital gains** was made to Singapore and in view of Article 24 of DTAA, the assessee is not entitled to the exemption claimed.

- The **revenue raised following question of law before Hon'ble High Court** in their appeal which is as follows:
  i. Whether Hon'ble ITAT is correct in its view in holding that the assessee is entitled to claim the benefit of Article 13(4) of the DTAA without appreciating the merits of provisions of Article 24 of the treaty.
  ii. Whether Hon'ble ITAT is correct in holding that Article 24 of the treaty has no application to the assessee's case.

Legal Provisions

Article 13 (Capital Gains) of India- Singapore DTAA:

❖ As per **Article 13(4)** of India- Singapore DTAA, gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in Paragraphs 1,2, and 3 of this article shall be taxable only in that state.

Article 24 (Limitation of Relief) of India- Singapore DTAA:

❖ Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of the tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State.

❖ However, this limitation does not apply to income derived by the Government of a Contracting State or any person approved by the competent authority of that State for the purpose of this paragraph. The term "Government" includes its agencies and statutory bodies.

Ruling

The Hon’ble High Court of Bombay upheld the notings and decision of Hon’ble ITAT in its entirety as the **appeal was based on the question of fact and not the question of law**.

Hon’ble ITAT held earlier as under:

- In view of the legal position held by the coordinated bench of this tribunal, the Hon’ble Court finds that the **limitation prescribed under Article 24 of the treaty is not applicable** in the present case, hence the income earned by the assessee on the sale of a debt instrument is not taxable in India as per Article 13(4) of the treaty.

- The Hon’ble Tribunal observes that the **A.O.’s observation** that the assessee has not produced any evidence to show that the income was repatriated to Singapore to satisfy the conditions of Article 24 was **incorrect**. It **upheld the contention of the assessee** that the **certificate from Singapore Tax Authorities certifying that the income** derived by the assessee from buying and selling of Indian Debt Securities would be considered under Singapore Tax Laws as accruing in or derived from Singapore and such income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore is **sufficient enough to claim the benefit of Article 13(4).**

- Hence, the **appeal of the revenue was dismissed** on the ground that **no substantial question of law** arises.

Our Comments

- While determining the taxability by referring to the provisions of DTAA, along with the articles of Specific Income one should always read and give due emphasis to the Residual articles which speak about MFN Clause, LOB, MAP, MLI, etc.

- Analyzing the language of Article 24, it limits the exemption or reduction of tax under DTAA only when the income is subjected to tax in Singapore. When as per the law of Singapore the income is subjected to tax, the full amount, then in that case limiting provisions of Article 24(1) would not apply, whether or not remitted to or received in Singapore.

- the intention of the treaty is to provide relief to the assessee, and hence while reading the DTAA, we would try and understand the intention of the law rather than going for the literal interpretation of the law.

- It is important to note that any such document which is issued by the Foreign Revenue Authorities/ government (in the present case, Certificate), should be accepted on its merits and the intention of such authority over issuing such certificate should be considered as True and Fair. Such documents should be accepted in their entirety by our concerned authorities. It has been re-iterated by various Hon'ble courts in the case of TRC as well.

- **The pertinent question that arises here is whether Article 24 would not be applicable even when such income is not offered to tax in the C.Y. but shall be offered to tax in the future.**

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Filed ITR declaring Total Income of Rs. 33,99,75,350, and Capital Gain of Rs. 86,62,63,158 as exempt

Citicorp Investment Bank (Assessee)

Received Certificate from Singapore Revenue Authorities to the effect that Capital Gain income derived by the assessee would be **brought to tax in Singapore** without reference to the amount remitted or received in Singapore

Singapore Revenue Authorities

During the assessment, the A.O. asked the assessee to explain how the provisions of Article 24 of DTAA stood complied to claim exemption on Capital Gain earned and denied the certificate issued by Singapore Revenue Authorities.

A.O. of Indian Tax Authorities

Revenue filed appeal to the Hon'ble High Court of Bombay aggreived by the order of ITAT

Hon'ble Bombay High Court after relying on ITAT

In conclusion, the Hon'ble High Court upheld the decision of ITAT which states that the A.O. was not justified in denying the benefit of Article 13(4) by invoking the clause of Article 24 of India- Singapore DTAA as per the discussion explained in the case earlier and hence the Hon'ble court sees no reason to admit this appeal on the ground proposed by the A.O.

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Section/Article	Article 13 and 24 of DTAA
DTAA/Country	India – Singapore DTAA
Court	High Court of Bombay
Date of decision	21.06.2023

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