



# SATURDAY INTERNATIONAL TAX GYAN !!!

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### SITG No. 204

## Bengal Tiger Line Pte. Ltd.

v.

## DCIT 1(1), Chennai

Global income of tax resident of Singapore company from shipping operation is taxable only in Singapore and India has revoked it's right of taxing such income

04.05.2024



## Facts of the Case

- ❖ Assessee is a company resident of Singapore and engaged in the business of operation of ships internationally.
- ❖ During the FY 2014-15, assessee company received an amount from shipping operations in India and did not offer such income to tax as per Article 8 of India-Singapore DTAA.
- ❖ Further, assessing officer denied the exemption claimed under Article 8 and taxed such income in India under section 44B.
- ❖ Assessee company filed its return of income for the AY 2015-16 on 28.09.2015 declaring exempt income of Rs. 19,48,19,987.

# Assessee's Contention

- ❖ Assessee company earned shipping income from India and claimed exemption under article 8 of India-Singapore DTAA.
- ❖ Assessee contented that Article 24 of DTAA cannot be invoked on fact that shipping income earned from India is neither exempt in India nor taxed at reduced rate.
- ❖ Assessee contented that tax treaty specifies that only residence country have a right of taxation on shipping income as per **Article 8 which is not an exemption provisions but enabling provision which provides right of taxation of income to the residence country.**
- ❖ Further, Article 24 of DTAA would only apply for incomes which are exempt from tax as per treaty.

# Revenue's Contention

- ❖ The revenue referring the provision of section 44B and taxed the income received from shipping operation in India and denied the benefit claimed under Article 8 of DTAA.
- ❖ The revenue contented that global shipping income as per Article 8 of DTAA is taxable in the resident country but as per Article 24 exemption would apply only to the extent of amount repatriated to Singapore.
- ❖ **Further, shipping income earned is exempt from tax under section 13F of Singapore Income Tax.**
- ❖ Revenue contented that shipping income earned in India does not qualify for tax exemption in India as per the provisions of Article 24 of India-Singapore DTAA and hence relief claimed by assessee under DTAA is not valid.

# Legal provisions

## Section 44B of Income Tax Act:

- 1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half 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".

## Section 13F of Singapore Income Tax Act:

- 1) Subject to sub-sections (1A) and (2), there shall be exempt from tax the income of an approved international shipping enterprise derived  
(a,) on or after 1st April 1991 from
  - i. the carriage of passengers, mail, livestock or goods from outside the limits of the port of Singapore by any foreign ship;
  - ii. the charter of any foreign ship to any person where such ship is used by the person for the carriage of passengers, mail, livestock or goods outside the limits of the port of Singapore; and
  - iii. the carriage of passengers, mail, livestock or goods by any foreign ship to Singapore solely for the purpose of transshipment;

# Legal provisions

## Article 8 of India Singapore DTAA which read as under:

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic **shall be taxable only in that State.**

## Article 24 of India Singapore DTAA which read as under:

1. 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 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.

# Ruling

- ❖ Hon'ble Gujarat High court in the case of M.T. Maersk Mikage where Hon'ble Tribunal held that income earned by Singapore based shipping company through shipping business carried out at Indian Ports, was not taxable in Singapore on basis of remittance but on basis of accrual, clause (1) of Article 24 of Indo-Singapore DTAA would not apply to deny benefit of Article 8 of Indo Singapore DTAA to said company.
- ❖ The tax treaty clearly specifies that only the residence country have the right of taxation of freight income earned from operation of ships in international traffic. As per Article 8(1) of DTAA is not an 'exemption provision', but an enabling provision which provides an exclusive right of taxation of income to the residence country.
- ❖ **As per Article 24 of the India Singapore DTAA would apply only for incomes which are "exempt" from tax as per the tax treaty.**
- ❖ Therefore, shipping income dealt with under Article 8, states that profits derived by an enterprise of a contracting state from the operation of ships in international traffic shall be taxable only in that state i.e. resident state.

# Our Comments

- ❖ Article 24 is a special article in India Singapore DTAA which limits the benefit available to subscriber of Article, wherein only such income is taxable in the source state which is either exempt or taxable at reduced rate in India by virtue of article of DTAA and such income taxable in other country by virtue of receipt. Thus, the reduced rate of exemption will only be available to income which is exempt.
- ❖ Now, in the current case law, article 8 does not makes the income exempt rather it fully takes away the right of India on taxability of such income and makes it non-taxable in India. Thus, there is a difference between an income being non-taxable and an income being exempt.

<b>Exempt Income</b>	<b>Non-taxable income</b>
Exempt income refers to those types of income which are otherwise taxable but specifically exempted from tax under the provisions of the Act or agreement.	Non-taxable income refers to income that is not considered as part of the taxable income calculation, and hence not subjected to tax
Under Income tax act these exemptions are usually provided under Section 10.	This category typically includes income that does not meet the criteria of taxable income and does not fall under any head of income
Example: Agriculture income [S. 10(1)], profit from partnership [S. 10(2A)]	Example: Gift received from relative, Claim of insurance received for personal car or accident etc.



<b>Section/Article</b>	Section 44B of IT Act and Article 8 and 24
<b>DTAA/Country</b>	India Singapore
<b>Court</b>	Chennai Tribunal
<b>Date of decision</b>	06.11.2020

**Note:** Case law name in **Red**- in favor of the revenue, **Green**-In favor of the Assessee, **Orange** = Partial



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