

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL (IT) NO. 429 OF 2018
WITH
INCOME TAX APPEAL (IT) NO. 744 OF 2018

The Commissioner of Income Tax,
International Taxation-1,
1st Floor, Room No.107, Scindia House,
Ballard Pier, N.M.Road, Mumbai-400038 ... Appellant

Versus

APL Co. Pte. Ltd.
C/o. APL India Pvt. Ltd.
247, Park Hincon House,
B-Wing, 8th Floor, LBS Marg,
Vikhroli (W), Mumbai-400004 ... Respondent

Mr. P.C.Chhotaray for Appellant.
Ms Arati Vissanji i/by Mr. Atul K Jasani for Respondent.

CORAM **K. R. SHRIRAM &**
 DR. N. K. GOKHALE, JJ.
DATED: **30th August 2023**

(ORAL JUDGMENT PER K.R. SHRIRAM J.):

INCOME TAX APPEAL (IT) NO. 429 OF 2018

1. Assessee-Respondent was a tax resident of Singapore. It was engaged in the business of owning and operation of ships in international waters and in particular container ships. Admittedly,

the business operation as well as management team were based in Singapore. For the Assessment Year 2008-09, Assessee filed on 28th September 2008 return of income declaring total income as Nil.

2. Assessee used to accept cargo for carriage internationally to and from India. In India, Assessee's agent is its wholly owned subsidiary, 'APL India Private Limited'. Being a tax resident of Singapore in terms of Article 4(1) of India Singapore Double Taxation Avoidance Agreement ("**DTAA**"), Assessee sought the benefit of Article 8 of the DTAA for its gross freight earnings collected from India. Accordingly, the return of income was filed at Nil income on the ground that the gross earnings was not taxable in India in view of the provisions of the DTAA.

3. The Assessing Officer noted that Assessee had shown income in respect of 136 ships and claimed the entire freight income from these ships as exempt. The Assessing Officer observed that Assessee produced ship registration certificates of only 128 ships and not for the remaining 8 ships and, therefore, held that the

freight earned from those 8 ships would not be entitled for benefit under Article 8 of the DTAA.

4. Accordingly, applying the provisions of Section 44B of the Income-tax Act, 1961 (“**Act**”), the Assessing Officer taxed the receipt with regard to those 8 ships @ 7.5% assessing the total income at Rs.22.98 Lakhs.

5. Aggrieved, Assessee filed an appeal before the Commissioner of Income-tax (Appeals) [**CIT(A)**]. The CIT (A) enhanced the income by denying benefit to 97 ships in addition to 8 ships denied by the Assessing Officer on various grounds. The main ground was that the applicability of Article 24 of the DTAA was only with respect to specific exempt income under the DTAA and not to income under Article 8. This order of the CIT (A) passed on 28th March 2013 was challenged by Assessee before the Income Tax Appellate Tribunal ("**ITAT**"). The ITAT by its order dated 16th February 2017 allowed the appeal. The ITAT, on the issue of applicability of Article 24, held that the limitation of benefit provided under Article 24 would not be applicable in the case at hand and primarily relied upon a certificate/confirmation dated

21st February 2013 given by the Inland Revenue Authority of Singapore ("IRAS").

6. The ITAT, also relying on a judgment of the Bombay High Court in the case of *Balaji Shipping UK Ltd v DIT*,¹ held that even those 8 ships which were not included by the Assessing Officer would fall within the ambit of operation of ships in terms of Article 8 of the DTAA. Aggrieved by this order of the ITAT, this appeal is preferred and the following 5 substantial questions of law are proposed. If we consider the first 4 questions of law, all relate to the limitation imposed by Article 24 of the DTAA.

QUESTIONS OF LAW

"A. Whether, in the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in not restricting the benefit of Article 8 of the Double Taxation Avoidance Agreement (DTAA) between India and Singapore to the assessee, in accordance with the limitation imposed by Article 24 of the said DTAA?

B. Whether, in the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in placing reliance on a letter of an officer of the Singapore Revenue Authority, giving a non-binding opinion without any statutory authority, interpreting the applicability of Article 24 of the

1 [2012] 253 CTR 460 (Bom)

DTAA to hold that income accrued in Singapore dehors the express provisions of Income Tax Act and DTAA ?

C. Whether, in the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in not holding the impugned freight income from shipping business activity as income accrued in India ?

D. Whether, in the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in holding that the income arising to the assessee from operation of ships within the purview of Article 8 of the India-Singapore DTAA is not an income exempt from tax in India with respect to the source country as per Article 24 of the same DTAA without taking into account the meaning of exempt from tax under this Article being exempt from tax in the Source State (India) and reserved for taxation in the State of Residence (Singapore) which is exemplified by the use of the phrase 'shall be taxable only' in Article 8(1) of the said DTAA ?

E. Whether, in the facts and circumstances of the case and in law and without prejudice to the substantial question of law raised above, the Hon'ble ITAT has erred in allowing the benefit in respect of freight receipts from 97 ships under Article 8 of the India - Singapore DTAA even though Article 8 (4) of the said DTAA requires the assessee to be the owner, lessee or a charterer of the ships ?"

7. Article 24 has been considered in various judgments by the Tribunal and the High Courts. It came up for consideration before the Hon'ble Gujarat High Court in the case of ***M.T. Maersk Mikaje & Ors v Director of Income-tax (International Taxation)***² and by this Court in the case of ***Commissioner of Income-tax (IT)-2 v.***

² [2017] 390 ITR 427 (Guj)

Citicorp Investment Bank (Singapore) Ltd.³ The Courts while analysing Article 24 held that under '*Article 24 where the income from sources in India shall be exempted from tax or taxed at a reduced rate in India and under the laws in force in Singapore, the said income is subject to tax by reference to the amount thereof which is remitted to or received in Singapore and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under the DTAA in India shall apply to so much of the income as is remitted to or received in Singapore. Therefore, the exemption or reduction of tax to be allowed under the DTAA in India shall only apply to so much of the income as is remitted to or received in Singapore where the laws in force in Singapore provides that the said income is subject to tax by reference to the amount which is remitted or received in Singapore. When under the laws in force in Singapore, the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case Article 24(1) would not apply.*' Paragraphs 10, 11, 12 and 13 of *Citicorp Investment Bank (Singapore) Ltd. (Supra)* reads as under:

3 [2023] 151 taxmann.com 501 (Bombay)

"10 Article 24 of DTAA reads as under:

ARTICLE 24

LIMITATION OF RELIEF

"1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting India State shall be exempt from tax, or taxed at a reduced rate III 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.

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

Applying Article 24 to the facts of this case, where the income from sources in India shall be exempted from tax or taxed at a reduced rate in India and under the laws in force in Singapore the capital gain is subject to tax by reference to the amount thereof which is remitted to or received in Singapore and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this agreement in India shall apply to so much of the income as is remitted to or received in Singapore. Clause 2 of Article 24 is not relevant to the case at hand.

11 Therefore, the exemption or reduction of tax to

be allowed under the DTAA in India shall only apply to so much of the income as is remitted to or received in Singapore where the laws in force in Singapore provides that the said income is subject to tax by reference to the amount which is remitted or received in Singapore. When under the laws in force in Singapore the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case Article 24(1) would not apply.

12 The AO while framing the draft assessment order has disallowed the benefit of Article 13(4) of DTAA on capital gain earned in India holding that provisions of Article 24 of DTAA speaks about the restriction of exemption of such capital gain to the extent of repatriation of such income to Singapore. The AO has held that the assessee has not produced any evidence to show such required repatriation as mandated by Article 24 of DTAA for entitlement of exempted income. This is an incorrect statement as rightly held by the ITAT. The assessee placed on record even before the AO a certificate dated 16th April 2012 from Singapore Tax Authorities certifying that the income derived by the assessee from buying and selling of Indian Debt Securities and from Foreign Exchange transactions in India would be considered under Singapore Taxes Law 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.

13 Therefore, Singapore authorities have themselves certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore. The AO could not have come to a conclusion otherwise. As stated in the circular No.789 dated 13th April 2000, though it applied to Indo-Mauritius Double Tax Avoidance Convention with reference to certificate of residence, the purport and principle is clear. Such certificates issued by the Singapore Tax Authorities will constitute sufficient evidence for accepting the legal position. We also find support for this view in

Lakshmi Textile Exporters Ltd. (Supra).
(emphasis supplied)

8. Even in *M.T. Maersk Mikaje (Supra)*, the Hon'ble Gujarat High Court was pleased to hold that shipping company's income is not taxable in Singapore on the basis of remittance, albeit on accrual basis and, therefore, paragraph 1 of Article 24 would not be applicable.

9. In both the cases, i.e., *Citicorp Investment Bank (Singapore) (Supra)* and *M.T. Maersk Mikage (Supra)*, the Courts relied on letters/confirmation issued by the IRAS which confirmed the taxability of income in Singapore on accrual basis. In those two cases also Assessee had submitted certificate issued by the IRAS. Even in the case at hand, Assessee has submitted certificate from the IRAS but the CIT (A) chose to disregard that certificate on the basis that it has been issued by an officer of the IRAS and it is a non binding opinion without any statutory authority.

10. This Court in *Citicorp Investment Bank (Singapore) (Supra)* has held that such certificate issued by Singapore Tax Authorities will constitute sufficient evidence for accepting the legal position.

This Court while coming to such a conclusion, also relied upon in the judgment of the Hon'ble Madras High Court in the case of *Commissioner of Income Tax v. Lakshmi Textile Exporters Ltd.*⁴

11. Therefore, in our view, no substantial questions of law arise as regards the first 4 questions proposed.

12. As regards the 5th question proposed, in view of the judgment of this Court in the case of *Balaji Shipping UK Ltd. (Supra)*, in our view, no question would arise. In another matter of Assessee which came up before this Court in *Director of Income Tax (IT)-I, Mumbai v. APL Co. Pte. Ltd.*⁵, the Court relying upon *Balaji Shipping UK Ltd. (Supra)*, held that no substantial question of law would arise.

13. Mr. Chhotaray submits that an SLP has been admitted against the judgment of this Court in *Balaji Shipping Uk Ltd. (Supra)* and, therefore, the Hon'ble Apex Court has doubted the correctness of judgment in *Balaji Shipping UK Ltd. (Supra)* and this Court therefore, cannot rely upon *Balaji Shipping UK Ltd.*

4 245 ITR 522

5 [2016] 75 taxmann.com 32 (Bombay)

(Supra). We are unable to accept such submission of Mr. Chhotaray.

14. Appeal dismissed.

INCOME TAX APPEAL (IT) NO. 744 OF 2018

15. This pertains to Assessment Year 2012-13. The questions of law proposed are almost identical. Factually in this case, the certificate issued by the Singapore Authorities was received after the assessment order was passed and, therefore, to that extent the matter has been remanded to the Assessing Officer.

16. In view of our conclusions in Income Tax Appeal (IT) No.429 of 2018, this appeal does not survive and the appeal is dismissed.

DR. N. K. GOKHALE, J.)

(K. R. SHRIRAM, J.)