

आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

**श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

आयकर अपील सं./ ITA No. 1649/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

The Dy. Commissioner of Income Tax, Circle-1(1)(2) Room No. 117, 1 st Floor, Scindia House, N.M. Road, Ballard Estate, Mumbai-400 038	Vs.	AP Moller Maersk A/S C/o Maersk India Private Limited, 12 Floor, Tower A, Urmi Estate, Ganpatrao Kadam Marg, Lower Parel, Mumbai-400 013
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAECA4801C		

अपीलार्थी की ओर से / Appellant by	:	Shri S Anbuselvam, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Divesh Chawla, AR

सुनवाई की तारीख / Date of hearing:	01-04-2019
घोषणा की तारीख / Date of pronouncement :	01-04-2019

आदेश / ORDER

**महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:**

This appeal filed by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-55, Mumbai [in short CIT(A)], Appeal No. CIT(A)-55/IT-187/DCIT(IT)-1(1)(1)/2016-17 vide order dated 12.12.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Central Circle-1(1)(2), Mumbai (in short 'DCIT/ITO/ AO') for



the A.Y. 2014-15 vide order dated 30.12.2016 under section 143(3) read with section 153C of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) in holding that Inland Haulage Charges earned by assessee is covered under Article 9 of the Double Taxation Avoidance Agreement (DTAA) between India and Denmark and therefore not taxable. For this Revenue has raised the following two grounds: -

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in holding that the Inland Haulage Charges earned by the assessee is covered under Article 9 of the Double Taxation Avoidance Agreement between India and Denmark and therefore, not liable for tax in India.

2. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in holding that Article 9 of India – Denmark DTAA includes within its ambit the activity of Inland Haulage Charges (High Court) of cargo by relying on the decision of the Tribunal in the assessee's own case in earlier assessment year which have in turn relied on the decision of the Hon'ble Bombay High Court in the case of Safmarine Container Lines NV (314 ITR 15) wherein the relevant tax Treaty is the India – Belgium DTAA in which Article 8 of the Tax Treaty contains the expanded definition of



shipping business to include 'any other activity directly connected to such transportation' which is absent in the DTAA relevant to this case i.e. the India – Denmark DTAA.”

3. Briefly stated facts are that the assessee is a Danish Public Limited Company, which is tax resident of Denmark. It is engaged in the business of shipping, chartering and related activities in international traffic and has earned revenue from such shipping operations with India. The assessee submitted that the gross freight earning of ₹ 87,87,61,39,062/- is not taxable as per Article 9(1) of India- Denmark DTAA as the profits derived from the operations of Ships in international traffic by an enterprise of Denmark are taxable only in Denmark and not in India. The freight income earned by the assessee includes the amount recovered towards IHC for export cargo amounting to ₹ 167,62,75,385/- and import cargo amounting to ₹ 288,71,48,470/- aggregating to ₹ 456,34,23,854/-. The AO considered the applicability of section 44B of the Act to IHC of ₹ 456,34,23,854/- collected by the assessee for which the assessee has claimed exemption under Article 9 of the DTAA. The assessee claimed exemption under Article 9 of the DTAA on the basis that IHC are part and parcel of its business of shipping in International Traffic. But the AO was of the view that the activities of 'inland transportation' cannot be considered as 'international transport' activities and by virtue of that income from inland transport should be exclusively taxed as in the source country. Accordingly, the AO disallowed the claim of the assessee. Aggrieved, assessee preferred the appeal before CIT(A). CIT(A) deleted the addition by observing in Para 4.2 as under: -

“4.2



The fact of the case are appellant undertaken transportation of goods on behalf of various shippers across the globe In ships owned or chartered by it which ply in international waters. During the year the appellant erred freight from business of operation of ships in international traffic. For earning the freight income, the containers through which goods are transported internationally require to be brought from various destinations in India to the load port and Inland Haulage Charges (IHC) are collected. The appellant claimed benefit of Article 9 of the DIM between India and Denmark for its II-IC. However, the AO did not allow this claim on the reasoning that India Haulage Charges (IHC) are not covered under Treaty with Denmark. The AO considered that the activity of inland Transportation' cannot be considered as international transport and by virtue of that the fiscal or taxing power should be exercised by the source country. The provisions of sec 9(1)(i) are applicable for IHC and now are covered by sec. 44B of the Act and not by Article 9 of the DTAA between India & Denmark.

The appellant submitted before me that this issue is covered in his favour by virtue of following.



Decision: (I) In appellant's own case, the Hon'ble ITAT for A.Y. 2010-11 has held as under. -

"IHC is not only directly connected with the business of shipping but it is also a part of overall international voyage and hence it is directly covered within the definition of profits from operation of ships in international traffic. Accordingly, IHC earned by the assessee is taxable only in Denmark and not in India as per Article 9(1) of the India Denmark Tax treaty

(ii) The Tribunal has also relied on the decision in the case of Solmarine Container Lines N.V. [314 ITR (AT) 15 (Mumbai) which was affirmed by the Bombay High Court [367 ITR 209 (Bom)].

(iii) The Hon'ble ITAT has also held that the language of Article 9(4)(b) of the India Denmark tax treaty is similar to Article 8(2)(c) of the India Belgium Tax Treaty which merely list down certain income as mere example of items cover under this Article.

(iv) The aforesaid ratio has been followed by the ITAT in A.Y. 2011-12 and by the 1)1W in A.Y. 2012-13. It is seen that the Hon'ble Mumbai High Court has under order dt. 17.01.203 (ITA No. 952 of 2011 & ITA No. 147 of 2009) for A.Y.



2001-02 & 2002-03 in the case of Sofmarine Container Lines N.V. dismissed the appeal filed by the revenue on the same issue against the order of Mumbai ITAT.

(v) Following the above pronouncements of Mumbai ITAT in appellant's own case & DRP's order and also other judicial pronouncements it is settled proposition that the benefit of shipping Article of the tax treaty is available to IIC also. The appellant further submitted that assuming without accepting that IHC is attributable to a PE of assessee in India since MLIPL is remunerated at an arm's length consideration, no part of appellant's IUC income can be brought to tax in India as per the ratio laid down by Hon'ble Supreme Court in Morgan Stanley and Co. Case (Supra) and Hon'ble Bombay High Court in set satellite (Supra) and Hon'ble Mumbai Tribunal in the case of ANL Singapore FM. Ltd.(Supra).

From the above analysis it is summarized that in the light of appellant's case covered by FEAT ruling the addition made by the AO is deleted. This ground of appeal is allowed.”

Aggrieved, now Revenue is in appeal before Tribunal.

4. The learned Counsel for the assessee also took us through the order of Tribunal in assessee's own case for AY 2010-11 in ITA No.



2054/Mum/2014 vide order dated 07.10.2016, wherein the Tribunal has considered the issue and held that the activities of the IHC are connected directly or an ancillary activity, though minor contribution should not be treated as a separate business to the operations of ships. The Tribunal held as under: -

“12. In view of the facts of this case and precedence discussed above, we are of the view that the entire IHC of the assessee is necessarily in connection with transport of containers either discharged or loadable at Indian ports for the purpose of delivery through international waters and is directly connected with such transportation will always be included within the term "operations of ships". The activities of the IHC are connected directly or an ancillary activity that provides minor contribution and should not be regarded as a separate business to the operations of ships. These activities are linked or connected to each other and as such one cannot say that one is to be conducted efficiently without the other and which have a nexus to the main business of the assessee of operations of ships should be considered as integral part of income from shipping operations. Accordingly, we allow the claim of assessee and hence, this common issue of assessee appeal is allowed and that of revenue is dismissed.”



ITAs No. 1649/Mum/2018

5. When these facts were confronted to the Ld. Departmental Representative, he could not controvert to the same. Going by the CIT(A)'s order and also Tribunal decision in assessee's own case in earlier year, we find no infirmity in the order of CIT(A). Hence, we confirm the same.

6. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 01-04-2019.

(जी. मंजुनाथ /G MANJUNATHA)
(लेखा सदस्य / ACCOUNTANT MEMBER)

(महावीर सिंह /MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 01-04-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai