

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.213/VIZ/2018
(निर्धारण वर्ष/Assessment Year : 2015-16)**

M/s Navship Marine Services (P) Ltd. Vs. Income Tax Officer
Agent of M/s Voyage Ship Management (International Taxation)
(P) Ltd. Singapore, Navship House Visakhapatnam
D.No.31-1-29/2, NSN Towers,
Flat No.104, Vivekananda Colony
Allipuram, Visakhapatnam
[PAN : AACCN5510B]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Smt Suman Malik, DR
सुनवाई की तारीख / Date of Hearing : 12.06.2019
घोषणा की तारीख/Date of Pronouncement : 03.07.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-10, Hyderabad vide ITA No.0075/CIT(A)-10/2016-17 CIT(A), Hyd-10/10254/2016-17 dated

22.03.2018 for the Assessment Year (A.Y.) 2015-16.

2. All the grounds of appeal are related to the tax demand of Rs.11,30,086/- raised u/s 172 of the Income Tax Act, 1961 (in short 'Act'). In this case, M/s Navship Marine Services Private Ltd., Visakhapatnam (Rep. Assessee) is an Indian agent of M/s Voyage Ship Management Pte. Ltd., Singapore. The Rep. assessee has filed No Objection Certificate (NOC) on 13.06.2014 in respect of the vessel M.V.Arnad Queen with a request to treat M/s Navship Marine Services Private Ltd as agents to the Master of the said vessel and also to the non-resident freight beneficiary i.e. M/s Voyage Ship Management Pte. Ltd., Singapore. The AO had issued NOC on 13.06.2014 along with order u/s 163 of the Act treating M/s Navship Marine Services Pvt. Ltd., Visakhapatnam as agent of the Master of the vessel and also to the said non -resident shipping company (M/s Voyage Ship Management Pte. Ltd., Singapore.) i.e. freight beneficiary. The agent was also directed by the AO to file the return of income u/s 172(3) of the Act in respect of freight tax payable by the above stated non-resident freight beneficiary for the said voyage within 30 days from the date of departure of the vessel from Visakhapatnam.

2.1. In response to the notice, the Representative assessee filed the return of income u/s 172(3) on 28.11.2014 declaring total income of Rs.11,49,633/- and claimed the entire amount as exempt under DTAA. The AO found that the vessel left Visakhapatnam on 18.06.2014 carrying 30,470 MTS of Calcinated Alumina Powder to Jebel Ali, UAE. Accordingly, the total income earned and tax payable on the freight of the said non-resident shipping company on account of this particular voyage was computed as under :

	(Rs.)
Gross Freight Earnings (30470X20.50)X58.55 (As per Rule 115(1))	36572379
Taxable freight (@7.5.% on Gross Freight)	2742928
Income-tax (@40% on taxable freight)	1097171
Add : Surcharge	0
Tax payable	1097171
Add : Education Cess	32915
Total Tax Payable	1130086
Less : Relief *	0
Balance Tax payable	1130086

Since there was no remittance proof furnished by the assessee, keeping in view of the provisions of Article 24 of Indo Singapore DTAA, the Assessing Officer (AO) raised the demand of Rs.11,30,086/- on the

representative assessee and completed the assessment by an order 172(4) dated 29.12.2015.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and argued that in the assessee's case, Article 24 has no application and relied on the decision of ITAT Rajkot Bench in the case of Alabra Shipping Pte Ltd. (2016) 129 DTR (Rjt) (Trib) 43. The Ld.CIT(A) considered the submissions made by the assessee and observed that Inland Revenue Authority of Singapore has confirmed that the freight income has been regarded as Singapore sourced income and brought to tax on accrual basis and not on remittance basis in the year of the assessment. The assessee also filed confirmation in the case of Alabra Shipping Ptd. Ltd., that the freight earned from the vessel was included in the global income offered to tax by the company in Singapore. Accordingly, the Ld.CIT(A) distinguished the case law relied upon by the assessee. Since the assessee failed to produce any evidence with regard to the remittance made to Singapore or the relevant income is taxable on accrual basis in the source country, the Ld.CIT(A) held that in the instant case, Article 24 of DTAA is applicable and accordingly confirmed the demand raised by the AO and dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that the AO has applied Article 24 of DTAA and raised the demand, since, the assessee has not produced evidence for remittance to Singapore. The income of the assessee is taxable in Singapore on accrual basis. Hence, argued that there is no application of Article 24 in the assessee's case, but Article 8 is applicable. The Ld.AR further submitted that Article 8 supersedes Article 24, when Article 8 is applicable, there is no case for application of Article 24. The Ld.AR relied on the decision of Hon'ble High Court of Gujarat in the case of M.T.Maersk Mikage &Ors. Vs. Director of Income Tax (International Taxation) 242 Taxman 0300 in paragraph Nos.8, 10, 15,16, 18 and 20 of the order of the Hon'ble High Court of Gujarat, which reads as under :

"8. Before the Commissioner, during the proceedings under section 264 of the Act, the petitioner also produced a letter dated 09.01.2013 issued by Inland Revenue Authority of Singapore, in which, it was stated that the income in question derived by the ST Shipping would be considered to be income accruing in or derived from a business carried on in Singapore and the income would be therefore assessable to tax in Singapore on accrual basis.' This was in response to the petitioner's letter to the said Revenue authority of Singapore concerning the applicability of Article 24 of the DTAA. The contents of the letter dated 09.01.2013 of the authority may be reproduced.

"We refer to your letter dated 2 January 2013.

2. You have stated that ST Shipping and Transport Pte Ltd's principal business activity revolved around the shipping and it received charter

payments for such services. During the calendar years 2011 and 2012, the company derived such charter income from the following parties in India:

(1) related companies in the form of intercompany charges; and
 (2) third parties where the money was remitted to London or Switzerland bank accounts.

3. You have raised the concern that the benefits accorded under Article 8 of the Singapore-India DTA to the profits of your company were limited by the provisions of Article 24.1 of the said DTA which state that any reliefs provided by the DTA would only apply to the amount of income-remitted into Singapore. As such, the Indian tax authorities were likely to impose a tax on your company's charter income.

4. Based on the information provided in your Letter, we would consider the charter income derived by your company to be income accruing in or derived from a business carried on in Singapore and the income is therefore assessable to tax in Singapore on an accrual basis. This means the full amount of the charter income is assessable to tax in Singapore, and not by reference to the amount remitted to or received in Singapore. Consequently, we are of the view that Article 24.1 of the Singapore-India DTA is not applicable in this case and the provisions of Article 8 would prevail. This being the case, Article 24.2 would not be applicable in the first instance. For clarity, we should add that Article 24.2 seeks to make clear that Article 24.1 does not apply to Government income. Accordingly, Article 24.2 is not relevant to income derived by a taxpayer where the income is assessable to tax in Singapore by reference to the amount remitted to or received in Singapore.

10. Before recording the rival contentions, we may reproduce relevant provisions of the DTAA.

SHIPPING AND AIR TRANSPORT

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.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships or aircraft.

15. This brings us to the core issue strenuously debated by both sides viz, that of applicability of Article 8 vis-a-vis Article 24 of DTAA. We may quickly refresh the facts. ST Shipping is a company based in Singapore. Through the shipping business carried out at Indian ports, ST Shipping earned income, on

which, it claims immunity from Indian income tax. The Revenue contends that the remittance of such accrued income not having taken place at Singapore, Article 24 will apply and consequently Article 8 providing for avoidance of double taxation would not apply.

16. The fact, that the income in question which arises out of shipping operations by virtue of Clause- 1 of Article 8 of the DTAA would be taxable only in Singapore, is not in serious dispute. The moot question therefore is whether operation of Article 8 is ousted by virtue of Clause-1 of Article 24. As noted, Article-24 of DTAA pertains to limitation of relief. Under clause-1 thereof where the agreement provides that the income from sources in contracting states (in the present case, India) shall be exempt from tax or tax at a reduced rate and under the laws in force in other contracting states (i.e. Singapore), such income is subject to tax by reference to the amount thereof which is remitted or received in that State and not by reference to the full amount thereof then the exemption or reduction of tax under the agreement would be limited to so much of the income as is remitted to or received in that contracting State. In plain terms therefore, if the income in question was taxable in Singapore on the basis of receipt or remission and not by reference to the full amount of income accruing, clause 1 of Article 24 would apply and dependent on the facts of the case, exemption as per Article 8 either in whole or in part would be excluded

18. To this later opinion of the Revenue authority of Singapore, we may not be fully guided since it falls within the realm of interpretation of the relevant clauses of DTAA. However, in absence of any rebuttal material produced by the Revenue, we would certainly be guided by the factual declaration made by the said authority in the said certificate and this declaration is that the income would be charged at Singapore considering it as an income accruing or derived from business carried on in Singapore. In other words, the full Income would be assessable to tax on the basis of accrual and not on the basis of remittance. This certificate was before the Commissioner while he passed the impugned order. The contents of this certificate were not doubted. If that be so, what emerges from the record is that the income in question would be assessable to tax at Singapore on the basis of accrual and not remittance. This would knock out the very basis of the Assessing Officer and Commissioner for invoking clause-1 of Article 24 of DTAA. Both the authorities considered the question of remittance of income as the sole requirement for Invoking Article 24.1 of DTAA an interpretation which according to us does not flow from the language used. As noted the essence of Article 24.1 is that in case certain income is taxed by a contracting State not on the basis of accrual, but on the basis of remittance, applicability of Article 8 would be ousted to the extent such income is not remitted. This clause does not provide that in every case of

non-remittance of income to the contracting state, Article -8 would not apply irrespective of tax treatment such income is given. When in the present case, we hold that the income in question was not taxable at Singapore on the basis of remittance but on the basis of accrual, the very basis for applying clause-1 of Article 24 would not survive. The contention of Shri Mehta for revenue that the certificate of the Singapore revenue authorities is opposed to provisions of section 10 of the Singapore Income Tax Act also cannot be accepted. The Revenue does not question genuineness of the certificate. It cannot dispute the contention on the ground that the same are opposed to the statutory provision.

20. *Under the circumstances, in our opinion, Assessing Officer and the Commissioner committed serious error in passing the Impugned orders. Before closing, we may briefly touch on one more aspect sought to be raised by the Revenue viz. of the actual tax being paid by the assessee on such income at Singapore. On the ground that such income is exempt from payment of tax, the Revenue desired to impose tax in India. In this context, the petitioner has relied on the decision of Delhi High Court in case of Emirates Shipping Line, FZE (supra), in which it was held that the assessee, a UAE based shipping company, whose income from such business was exempt from tax in such country, would still not be liable to pay tax in India by virtue of Article 8 of the DTAA between the said two countries. It was held that a person does not have to actually pay taxes in other country to be entitled to benefit of DTAA."*

Therefore, argued that since the income of the assessee is taxable on accrual basis with the Singapore, there is no requirement of furnishing of any evidence, hence requested to set aside the order of the Ld.CIT(A) and delete the demand made by the AO.

5. Per contra, the Ld.DR argued that the assessee has not filed any details such as remittances made to CFD or taxability of income at Singapore on accrual basis. No certificate has been issued by the Singapore tax authorities. Therefore, argued that the case law relied upon by the

assessee is not applicable in the case of the assessee. Hence, argued that no interference is called for in the order of the Ld.CIT(A).

5.1. Responding to the argument of the Ld.DR, the Ld.AR argued that the issued raised by the Ld.DR was addressed in para No.20 of the cited order, hence, requested to cancel the demand raised u/s 172(3).

6. We have heard both the parties and perused the material placed on record. In this connection we extract the relevant Articles of DTAA i.e. Article 8 & 24 which reads as under :

Article 8 : SHIPPING AND AIR TRANSPORT

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.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships or aircraft.

Article 24 : LIMITATION OF RELIEF

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.

Perusal of Article 8 of Double Taxation Avoidance Agreement (DTAA) with Singapore shows that profits derived from operation of ship or international traffic shall be taxable in the contracting state. The above Article clearly shows that the profits from operation of ship or aircraft are taxable in the Contracting State. Since the assessee is non-resident and he is the owner of the ship, income is taxable in Singapore, but not in India. However, there is no evidence as per information filed by the assessee to show that the income representing voyage undertaken in India in June 2014 was admitted in the income tax return of the assessee filed in Singapore. In the case law relied upon by the assessee in para No.15, it was clarified by the Hon'ble High court that if the income in question is taxable in Singapore on the basis of receipt or remission and not by reference to the full amount of income accruing, Clause-1 of Article 24 would apply and dependent on the facts of the case, exemption as per Article 8 either in whole or in part would be excluded. In para No.17, the Hon'ble High Court observed that as per certificate dated 09.01.2013 issued by the Inland

Revenue Authority of Singapore, it was certified that the income in question derived by ST Shipping company would be considered as income accrued in or derived from the business carried on in Singapore and such income therefore would be assessable in Singapore on accrual basis. Hon'ble High Court decided the issue on the basis of Inland Certificate issued by the Inland Revenue Authorities, Singapore and held that in the case of the assessee, in the cited case, Article 8 is applicable, but not Article 24. From the reading of the order of the Hon'ble High Court, it shows that it is a case specific, but cannot be applied in general. In the instant case, though the representative assessee has filed the return of income u/s 172(3), he has not furnished any evidence to show that the assessee's income was taxed on accrual basis or filed the evidence including the income relating to voyage undertaken in India. Therefore, in our considered opinion, the issue requires further examination with regard to admission of income on accrual basis in the contracting state. Hence, we deem it fit to remit the matter back to the file of the AO to reexamine the issue with regard to admission of income and filing the return in the contracting state and decide the same on merits. We direct the assessee to file necessary information or certificate confirming that the income relating

to the voyage undertaken in India, in respect of the vessel, M.V.Arwad Queen was included in the return of income filed by the assessee or to obtain the certificate from the Inland Revenue Authority that in the assessee's case also, the shipping income is taxed on accrual basis on similar lines of ST Shipping Company referred to in the case law relied upon by the assessee. Accordingly, the appeal of the assessee is allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 3rd July 2019.

Sd/-

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER
विशाखापटणम /Visakhapatnam

दिनांक /Dated : 03.07.2019

L.Rama, SPS

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Navship Marine Services (P) Ltd., Agent of M/s Voyage Ship Management (P) Ltd. Singapore, Navship House, D.No.31-1-29/2, NSN Towers, Flat No.104, Vivekananda Colony, Allipuram, Visakhapatnam
2. राजस्व /The Revenue – Income Tax Officer, (International Taxation), Visakhapatnam
3. The Commissioner of Income Tax (IT&TP), Hyderabad
4. The Commissioner of Income Tax (Appeals)-10, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam