

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

ITA No. 5670/MUM/2013 (A.Y: 2006-07)

Dy. Director of Income-tax (IT) – 4(2) Room No. 11, Ground Floor Scindia House, Ballard Pier Mumbai – 400 038	v.	M/s. Delmas (UK) Limited {Previously known as OT Africa Line Limited} C/o. CMA CGM Agencies (India) Pvt. Ltd., Hamilton House, 8 J.N. Heredia Marg Ballard Estate, Mumbai – 400 038 PAN: AAACO4453G
(Appellant)		(Respondent)

**C.O. No. 12/MUM/2015
[ARISING OUT OF ITA No. 5670/MUM/2013 (A.Y: 2006-07)]**

M/s. Delmas (UK) Limited {Previously known as OT Africa Line Limited} C/o. CMA CGM Agencies (India) Pvt. Ltd., India Bulls Finance Center Tower 3, 8 th Floor, Senapati Bapat Marg Elphinstone(W), Mumbai – 400 013 PAN: AAACO4453G	v.	Dy. Director of Income-tax (IT) – 4(2) Room No. 11, Ground Floor Scindia House, Ballard Estate N.M. Road, Mumbai – 400 038
(Appellant)		(Respondent)

Assessee by : **Shri M.P. Lohia &
Shri Nikhil Tiwari**

Department by : **Shri Harshad Vengurlekar**

Date of hearing : **28.11.2019**

Date of pronouncement : **28.11.2019**

ORDER

PER C.N. PRASAD (JM)

This appeal and cross objection are filed by the revenue and assessee against the order of the Learned Commissioner of Income Tax (Appeals)-11, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.06.2013 for the Assessment Year 2006-07.

2. The Revenue in its appeal has raised the following grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that assessee is engaged in the business of shipping and therefore income is not assessable in India applying Article 9 of India-UK Treaty, without appreciating the fact that the assessee is non vessel owning container operating company and does not own any ship and Para 4 of the Article 9 only extends the scope of benefit available under Para 1 and 2 of DTAA.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in decoupling the article 7 and 9 of DTAA and thereby wrongly held that the income of the assessee is covered by Article 9 of the Treaty. It was further wrongly held that Article 7 of the Treaty has no application without appreciating the fact that the Article 7 clearly mentions that the Income generated through PE will be taxed in other states.

3. The Appellant prays that the order of the Ld. CIT(A) on the above ground(s) be set aside and that of the Assessing Officer be restored.

4. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. At the time of hearing, Ld. Authorized Representative of the assessee submitted that tax effect on the issues in the present appeal is below ₹.50 Lacs and in view of the CBDT Circular No. 17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ (Pt), the appeal of the Revenue is not maintainable.

4. Departmental Representative also agreed with the above submission of the Authorized Representative of the assessee.

5. We have heard the submissions, perused the grounds of appeal and the orders of the lower authorities in this appeal. We find that the tax effect in this appeal is less than ₹.50 Lakhs and therefore the appeal of the revenue is not maintainable on account of low tax effect in view of the CBDT Circular No. 17/2019 dated 08.08.2019. Hence this appeal is dismissed.

6. Coming to cross objection filed by the assessee it is submitted by the Ld. Counsel for the assessee that as the revenue's appeal is dismissed the cross objection filed by the assessee may be treated as infructuous. In view of the submission of the Ld. Counsel for the assessee the cross objection filed by the assessee is treated as infructuous and dismissed accordingly.

7. In the result, appeal of the revenue and cross objection of the assessee are dismissed.

Order Pronounced in the Open Court on the 28th November, 2019.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER
Mumbai / Dated 28/11/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum