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

[Coram: Pramod Kumar (Vice President)
And Saktijit Dey (Judicial Member)

ITA No. 4939/Mum/2018
Assessment year: 2015-16

Hapag-Llyod AG …… **Appellant**
C/o Hapg0Llyod India Pvt. Ltd.,
1121 & 1122 Solitaire Corporate
Park Building No-11, 2nd Floor,
Chakala, Andheri (E), Mumbai 400093
[PAN:AAACH0979G]

Vs

Deputy Commissioner of Income Tax (IT) ……**Respondent**
Range 2(2)(2),
Mumbai

Appearances by
Nishant Thakkar and Jasmin Amalsadvala *for the appellant*
S. Anbuselvam *for the respondent*

Date of concluding the hearing: September 18th, 2019
Date of pronouncement : December 16th , 2019

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of DRP's order dated 18.05.2018 in the matter of assessment under section 143(3) r.w.s. 144C of the Income Tax Act 1961 for the assessment year 2015-16.

2. Grievances raised in the appeal are as follows:

Taxability of freight charges of Rs 20,11,67,921/-from transportation of cargo through feeder vessels

2. erred in holding that freight income from transportation of cargo through feeder vessels is not eligible for benefit under Article 8 of India- Germany DTAA;
3. erred in holding that while income from feeder vessels would fall within the ambit of section 44B of the Act whereas the same shall not eligible for benefit under Article 8 of India-Germany DTAA;
4. erred in not taking cognizance of the decision of jurisdictional Bombay HC/ ITAT in the Assessee's own case for AY 2005-06 to AY 2011-12 and AY 2013-14, wherein the Hon'ble HC/ Hon'ble ITAT has held that freight income from transportation of cargo through feeder vessels is eligible for benefit under Article 8 of the India-Germany DTAA;

Taxability of service tax of Rs 54.30.395/- collected on freight income

5. erred in including service tax, amounting to Rs 54,30,395, on freight income from feeder vessels, in the gross receipts for the purpose of computing income of the Assessee under section 44B of the Act;
6. failed to appreciate that service tax in India is a charge/ levy by the Government and the same does not have any element of income which is chargeable to tax in the hands of the Assessee;
7. failed to appreciate that even if service tax on freight income is held to be taxable in India, the same is covered by Article 8 of India-Germany DTAA and thus, not taxable in India;

Hapag Lloyd India Private Limited ('HLIPL') held to be agency permanent establishment ('PE') of the Assessee in India
8. erred in holding that HLIPL constitutes an agency PE of the Assessee in India, without providing cogent reasons for the same;
9. without prejudice to the above, erred in not appreciating that HLIPL is not a dependent agent of the Assessee as per Article 5 of India-Germany DTAA;
10. without prejudice to the above, failed to appreciate that even if it is held that HLIPL constitutes an agency PE of the Assessee in India, no further profits could be

attributed to such PE since the Assessee has remunerated HLIPL on an arm's length basis;

3. We find that the issue in appeal is covered by series of the orders of the tribunal in assessee's own case and one of these orders assessment year 2007-08 has also been confirmed by Hon'ble Jurisdictional High Court.

4. In the immediately preceding year a coordinate bench has upheld similar plea of the assessee by inter alia observing as follows:-

> ***15. We find that the Tribunal on the matter having been restored for fresh adjudication, had therein in its order passed in the case of the assessee for A.Y. 2007-08 in Hapag-Llyod Container Line GMBH Vs. Addl. Director of Income-tax (International Taxation), Mumbai (ITA No. 8854/Mum/2010; dated. 14.08.2013) keeping in view the observations of the High Court in the case of Director Of Income-tax (International Taxation) Vs. Balaji Shipping U.K Ltd. (2012) 211 Taxman 0535 (Bom), had held that the assessee would be eligible for exemption under the treaty provisions in respect of revenue earned from feeder vessels obtained by the assessee on slot hire arrangement basis. We find that subsequent to the aforesaid order of the Tribunal in the assesses own case for A.Y. 2007-08, the same had thereafter been followed by the Tribunal in the appeals of the department again in the assesses own case for A.Y. 2006-07 and A.Y. 2008-09 to 2011- 12, in Dy. CIT (IT)-2(2)(2), Mumbai Vs. Hapag Llyod AG [ITA Nos. 1624 – 1628/Mum/2015; dated.22.07.2016] and it had been held by the Tribunal that in the backdrop of the aforesaid order of the Tribunal for A.Y. 2007-08 and following the judgment of the Hon'ble High Court of Bombay in the case of DIT (IT) Vs. Balaji Shipping U.K Ltd. (supra), the benefits of DTAA between India and Germany would also be available to the assessee in respect of the revenue earned from the feeder vessels obtained by the assessee by slot hire arrangements. We further find that again the Tribunal in the revenues appeal in the assesses own case for A.Y. 2005-06, had vide its order passed in ITA No. 1776/Mum/2014, dated. 21.09.2016, by referring to the earlier orders of the Tribunal in the case of the assessee for A.Y. 2007-08, dated 14.08.2013 in ITA No. 8854/Mum/2010, as well as the***

consolidate order for A.Y. 2006-07 and 2008-09 to 2011-12, in ITA No. 1624-1628/Mum/2015; dated. 22.07.2016, had taken the same view. We have perused the aforesaid orders and find ourselves to be in agreement with the view taken by the Tribunal in the aforesaid preceding years in the case of the assessee. We thus, finding no reason to take a different view, thus, are of the considered view that the benefits of Article 8 of the DTAA between India and Germany would also be available to the assessee in respect of the revenue earned from the feeder vessels obtained by the assessee by slot hire arrangements. The Grounds of appeal No. 2 to 4 raised by the assessee before us are allowed.

5. We see no reasons to take any view of the matter that the view so taken by the coordinate bench. Respectfully following the same we uphold the plea of the assessee and direct the Assessing Officer to ground resultant relief.

6. In ground no. 11 the assessee has raised the following grievance:

Additional claim of IDS credit of Rs 6,22,911/-

11. erred in not granting IDS credit to the extent of Rs 6,22,911 which was incorrectly deposited in the PAN No. of agent of Assessee whereas agent has not taken credit for the same;

7. We noted that the claim was made by the assessee by moving a letter before the Assessing officer but the Assessing officer did not deal with the same. The DRP also declined to interfere in the matter on the ground that the assessee had not made the claim before the Assessing Officer. The assessee is agree is in appeal before us.

8. Having heard the rival contentions, perused the material on record. We are of constant view that the matter should be examined by the Assessing Officer on merits. There cannot be any dispute that any legal issue can be raised before this

Tribunal and the Tribunal can pass such orders "as it thinks fit" on the same. We direct the Assessing Officer to examine the claim of the assessee on merits.

9. In the result, the appeal is partly allowed, in the terms indicated above. Pronounced in the open court today on the 16th day of December, 2019

Sd/-	Sd/-
Saktijit Dey	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 16th of December, 2019

Nishant Verma Sr.PS

Copies to: *(1) The appellant (2) The respondent*
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai