

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2168/MUM/2019
Assessment Year: 2013-14**

Deputy Commissioner of
Income Tax(IT)-4(2)(1),
Room No. 1708, 17th floor, Air
India Building, Nariman Point,
Mumbai-400021.

Appellant

M/s Safmarines Container Lines
N.V.
Vs. C/o Maersk Line India Pvt. Ltd. 12th
floor, Urmi Estate Tower, A-95,
Ganpatrao Kadam Marg, Lower
Parel, Mumbai-400013.

**PAN No. AACCS0742A
Respondent**

Revenue by : Mr. Avaneesh Tiwari, DR
Assessee by : Mr. Manish Kumar Kanth, AR

Date of Hearing : 16/03/2020
Date of pronouncement : 18/03/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2013-14. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-58, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 144C(3) r.w.s. 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as overleaf:

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in holding that income from inland transportation of cargo within India was covered under Article 8(2)(b)(ii) and 8(2)(c) of the Double Tax Avoidance Agreement between India and Belgium and therefore not taxable in India u/s 44B of the Income Tax Act, 1961.
2. Whether on the facts and in the circumstances of the cases, Article 8(2)(b)(ii) and 8(2)(c) of the Double Tax Avoidance Agreement between India and Belgium includes within its ambit the activity of inland transportation of cargo from various places within India.
3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2013-14 on 26.09.2013 declaring total income at Rs. Nil. During the course of assessment proceedings, the Assessing Officer (AO) found that the assessee is earning income from 'Inland Haulage Charges' and is claiming exemption under Article 8 of the Double Taxation Avoidance Agreement (DTAA). The AO held that revenue is earned by the assessee on account of receipt of 'Inland Haulage Charges' in India is taxable as business profits, since the same is not covered by section 44B of the Act or Article 8 of the DTAA between India and Belgium. As per the AO, the same would be taxable under Article 7 of the 'Treaty' as business income and since the assessee has an exclusive agent in India, through whom such business is carried out, it has agency PE as per Article 5 of the 'Treaty'. The assessee had submitted that total 'Inland Haulage Charges' collected amounted to Rs.75,73,47,458/- during the year under consideration. Thus the AO brought to tax the business income of the assessee from 'Inland Haulage Charges' by estimating @ 7.5% of Rs.75,73,47,458/-. The AO made an addition of Rs.5,68,01,059/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 18.01.2019, the Ld. CIT(A) directed the AO not to charge tax on income separately on collection of 'Inland Haulage Charges' in view of the order of the Hon'ble Bombay High Court, ITAT and CIT(A) upto and including AY 2012-13.

5. Before us, the Ld. Departmental Representative (DR) fairly agrees that the present issue has been decided in favour of the assessee by the order of the Hon'ble Bombay High Court and ITAT for earlier years.

The Ld. counsel for the assessee submits that the issue has been decided in favour of the assessee by the Hon'ble Bombay High Court in assessee's own case for AYs 2001-02, 2003-04, 2006-07, 2009-10 and by the order of the Tribunal for AYs 2001-02, 2003-04, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 and 2012-13.

6. We have heard the rival submissions and perused the relevant materials on record. We find that the same issue has been decided in favour of the assessee by the order of the Hon'ble Bombay High Court in ITA No. 952 of 2011 & ITA No. 147 of 2009 for AYs 2001-02 & 2003-04 ; ITA No. 410 of 2011 for AY 2006-07 ; ITA No. 773 of 2014 for AY 2009-10 ; ITA No. 1741 of 2013. Also we find that the same issue has been decided in favour of the assessee by the order of the ITAT Mumbai in ITA No. 3701/Mum/2015 for AY 2001-02 ; ITA No. 5460/Mum/2006 for AY 2003-04 ; ITA No. 728/Mum/2009 for AY 2005-06 ; ITA No. 570/Mum/2010 for AY 2006-07 ; ITA No. 3073/Mum/2010 for AY 2007-08; ITA No. 6650/Mum/2011 for AY 2008-09; ITA No. 4995/Mum/2012 for AY 2009-10 and ITA No. 5712/Mum/2016 for AY 2012-13.

Facts being identical, we follow the above orders and uphold the order of the Ld. CIT(A).

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 18/03/2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/03/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai