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

**[Coram: Pramod Kumar (Vice President),**
**and Sandeep Singh Karhail (Judicial Member)]**

ITA No. 1014/Mum/2021
Assessment year: 2017-18

**ANL Singapore Pte Ltd** ..............................**Appellant**
*C/o CMA CGM Agencies (India) Private Limited*
*India bulls Finance Centre, Tower 3, 8th floor*
*Senapati Bapat Marg, Elphinstone Road West*
*Mumbai 400 013 [PAN: AAFCA6372F]*

***Vs.***

**Deputy Commissioner of Income Tax**
**International Taxation Circle 1(1)(2), Mumbai** ..........................**Respondent**

**Appearances by:**
**Nikhil Tiwari** *for the appellant*
**Milind Chavan**, *for the respondent*

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|---|---|---|
| Date of concluding the hearing | : | 05/04/2022 |
| Date of pronouncing the order | : | 04/07/2022 |

**O R D E R**

**Per Pramod Kumar VP**

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 12th April 2021 passed by the Assessing Officer under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961, for the assessment year 2017-18.

2. The core issue requiring our adjudication, in this case, is whether or not the inland haulage charges of Rs 13,32,16,141 received by the assessee are covered by the scope of article 8 of the India Singapore Double Taxation Avoidance Agreement [(1994) 209 ITR (Statute)1; **Indo- Singapore tax treaty**, in short], and are, as such, taxable only in Singapore.

3. The issue in appeal lies in a very narrow compass of material facts. The assessee before us is a company incorporated in, and fiscally domiciled in, the Republic of Singapore, and is engaged in the shipping business. The assessee had earnd an inland haulage charges of Rs 13,32,16,141 which was not offered to tax. When, during the course of the assessment proceedings, it was put to the assessee as to why the said income not be brought to tax in the hands of the assessee, it was, inter alia, submitted by the assessee as follows:

> **As stated in our submissions above in respect of point no. 4 i.e. ancillary charges, Inland Haulage Charges are also covered within the ambit of Article 80f India Singapore Tax Treaty.**
>
> **Inland Haulage Activity consists of carrying the cargo from Port of Discharge to the final place of destination in case of Imports and carrying the cargo from Place of Origin to the Load Port in case of Exports. The activity of Inland Transportation of Cargo is directly connected to and ancillary to the transportation of cargo in International Traffic.**
>
> **Hence, Inland Haulage is an integral and inseparable part of the Operation of Ships in International Traffic. Thus, Article 8 benefit cannot be denied on Inland Haulage Charges.**
>
> **In the case of Safmarine Container Lines N. V.(2009), the honorable ITAT has held that inland transportation of cargo coupled with further shipping of cargo by the assesse from the Indian port to the foreign country would be construed as directly connected to such transportation of cargo in International Traffic. This order has also been confirmed by the Bombay High Court. Case law is enclosed as Annexure 3**
>
> **Since Article 8 of India - Singapore Tax Treaty includes specific provisions "any other activity directly connected with such transportation", Inland Haulage Charges forms part of income from operation of ships in international traffic and accordingly Article 8 of India-Singapore DTAA shall apply to it."**

4. These submissions, however, did not find favour with the Assessing Officer. The Assessing Officer proceeded to reject the above submissions, and conclude as follows:

5. The submission of the assessee has been perused and the same is not acceptable for the detailed discussion as hereunder

> **The assessee in its submissions has relied upon the decision of Hon'ble ITAT in Safmarine Container Lines N.V. (314 IT 15) (Mum). Assessee has also stated that the activity of Inland Haulage is, directly related to Shipping Business in International traffic and has claimed benefit of Article 8 of the Indo Singapore Treaty.**
>
> **6. The contention of the assessee is not correct. If the Inland haulage transportation is for transportation between the Port and the destination then the issue involved herein is whether such receipts are exempt under the Treaty or not. As per Article 8 of India Singapore Treaty, only income from operation of ship in "International Traffic" is exempt. The activity of "inland transportation" cannot be considered "international transport" and by virtue of that, the fiscal or taxing power should be exercised exclusively by the source country in which the activities are carried out. Moreover it is not an activity which is directly connected with the transportation of goods or merchandise in the International Traffic. In case such transportation is handled by a local player in India, his income would be taxable. It is illogical to hold**

**that only because the assessee is a foreign entity, its income on the same activity in India should not be liable to tax.**

**7. The assessee is mainly relying on the phrase "any other activity directly connected with such transactions". The assessee's argument is that the activity of Inland transportation is directly connected with international traffic. This is not factually correct or acceptable as can be seen from the divergent views expressed by the developing countries who are members to the United Nations Model Convention. The directly connected activities to shipping are loading, unloading, demurrage, terminal handling etc. Any link with sea transport would not make all activities as directly connected. Due emphasis is to be given to the word "directly". It follows that the relief under the DTAA is not available to the assessee on its receipts of Inland haulage charges which will become liable to be taxed in India as per section 9(1)(i) of the Act, which reads as under:-**

**"The following incomes shall be deemed to accrue or arise in India:-**

**II] all income accruing or arising, whether directly or indirectly, through or from any business connection In India, or through or from any property in India, or through or from any asset or source of income in India or through the transfer of a capital asset situate in India".**

**From the above, it is quite cleat the revenues earned by the assessee on account of receipt of Inland Haulage Charges in India is taxable in India as shipping income since the same is covered by section 44B of the Act is not covered under Article 9 of the DTAA between India and Singapore as discussed above.**

**8. In its submission assessee has placed reliance on decision of ITAT in Safmarine Container Lines N.V.(2009). Assessee has not quoted the proper citation. However, on perusal of the facts of the case it is seen that ITAT has decided the issue in favor of assessee in the case of Safmarine Container Lines N.V. for various years. Revenue had filed appeals against the same before Hon'ble High Court of Bombay, which have again been decided against the revenue. However, it is seen that in the case of Inland Haulage Charges, revenue has filed an SP in the case of M/s.Safmarine Container Lines NV against the order of Hon'ble High Court dated15.11.2016 (ITA 773/2014 for AY 2009-10).**

**In view of the above, the contention of the assessee is not accepted. Thus, the activity of "inland Transportation" cannot be considered as "International Transport" and by virtue of that it should be taxed in the source country. In view of the above, the AO in its Draft order dated 23.12.2019 (herein after referred to as "Draft Order"), held that "Inland Haulage Charges" is taxable in India as shipping income, as it is covered by section44B of the Act and is not eligible for the benefits of the Article of the Treaty between India and Singapore. Thus, as per the Draft Order, the Inland Haulage Charges Rs. 13,32,16,141/- received were treated as taxable in India as per section 44B.**

5. Aggrieved, assessee raised the objections before the Dispute Resolution Panel but without any success. Even as the DRP did not dispute the fact that the issue is covered by the decision of the coordinate benches as also Hon'ble jurisdictional High Court, the DRP confirmed the action of the Assessing Officer on the basis of, inter alia, the following reasoning:

> **8.16 Further, with regards to the decision of the ITAT in assessee's own case and to the decision of the Hon'ble Bombay High Court in the case of Safmarine Container Lines N.V., it is respectfully noted that the Revenue has not accepted the decision of Hon'ble High Court and SLP is pending before the Hon'ble Supreme Court. It is also necessary to point out that though judicial discipline mandates that the decision of a higher Court/judicial body is binding, the same is not possible for the DRP to follow. The orders of the DRP are binding on the AO and there is no provision of any appeal from the orders of the DRP. Therefore, accepting the decision of the Hon'ble ITAT/High Court would mean pre-empting the stand of the Revenue before the Hon'ble Supreme Court.**

6. We have heard the rival contentions, perused the material on record, and duly considered the facts of the case in the light of the facts of the case and the applicable legal position.

7. We have noticed that admittedly the issue in the appeal is covered, by the coordinate bench decisions in assessee's own case and of several group entities, as also by the Hon'ble jurisdictional High Court's decision in the case DIT Vs Safmarine Container Lines NV [(2014) 367 ITR 209 (Bom)], in favour of the assessee, and yet the learned DRP has confirmed the action of the Assessing Officer only so as to keep the issue alive before Hon'ble courts above. These decisions, however, constitute binding judicial precedents for us, and we have no reasons not to follow the same. Just because an SLP is pending before the Hon'ble Supreme Court, the binding nature of the judgment of the Hon'ble High Court does not stand diluted, curtailed or otherwise narrowed down. In any event, no specific reasons have been pointed out, by the learned Departmental Representative, as to why we should take a stand different from the stand taken in these binding judicial precedents. We, therefore, see no reasons to take any other view of the matter than the view so taken in the binding judicial precedents, and, as evident from the observations in the learned DRP's order, it is an undisputed position that the issue in the appeal is covered, in favour of the assesee, by these binding judicial precedents.

8. In view of the above discussions, as also bearing in mind the entirety of the case, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned addition of Rs 13,32,16,141. Once this issue is decided in favour of the assessee, all other issues raised in the appeal are no more than academic, and do not, therefore, call for any adjudication by us.

9. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 04th day of July, 2022.

| *Sd/-* | *Sd/-* |
|---|---|
| **Sandeep Singh Karhail** | **Pramod Kumar** |
| (Judicial Member) | (Vice President) |

**Mumbai, dated the 04th day of July, 2022**

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

*By order etc*

*Assistant Registrar/ Sr PS*
*Income Tax Appellate Tribunal*
*Mumbai benches, Mumbai*