

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

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 659/MUM/2022 (A.Y. 2018-19)

Hapag-Llyod Aktiengesellschaft C/o Hapag-Lloyd India Pvt. Ltd., 501, Satellite Gazebo, B-Wing 5 th Floor, Curu Hargovindji Marg Andheri (E), Mumbai - 400093 PAN: AAACH0979G	v.	DCIT – 2(2)(2) Air India Building Nariman Point Mumbai – 400 021
(Appellant)		(Respondent)

Assessee by	:	Shri Ketan Ved
Department by	:	Ms. Bharati Singh
Date of Hearing	:	27.07.2022
Date of Pronouncement	:	28.07.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (DRP-1), Mumbai-3 [hereinafter in short "Ld.DRP"] dated 24.01.2022 for the A.Y. 2018-19 passed u/s. 144C(5) of Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, assessee filed its return of income for the A.Y. 2018-19 on 27.09.2018 declaring total income of ₹. NIL. The case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response AR of the assessee attended and submitted the information as called for.

3. Assessee is a limited liability company incorporated in Germany and is a shipping company engaged in the operation of ships. It is tax resident of Germany and has claimed relief under Article 8 of the DTAA between India and Germany. As part of its regular business of operation of ships internationally, the assessee is engaged in transportation of cargo to ports outside India. In the course of its shipping operations, Hapag-Lloyd transported cargo on vessels owned/chartered by it as well as through pooled vessels. The assessee claims that at times the vessels of Hapag Lloyd/Consortium partners do not call at the Indian ports on account of various reasons viz., the size of the vessels being too large to enter the Indian ports or the depth of Indian ports is not enough to allow proper anchorage etc. and in such cases, the assessee engages feeder vessel operators who transport cargo from the origin port to the hub port on feeder vessels and from the hub port to the destination port. However,

the assessee issues bill of lading to the exporters for transportation of cargo for the entire journey i.e. from origin port to destination port. The assessee filed its return of income declaring total income at ₹. Nil claiming that the entire income arising to it in India is represented by profits derived from the operation of ships in international traffic. It is claimed that such income is not taxable in India in view of Article 8 of the India Germany DTAA but is taxable only in Germany, being the place of effective management of Hapag-Lloyd.

4. The Assessing Officer observed that assessee has claimed the benefit of Article 8 of India Germany DTAA with respect to income from Feeder vessels. The assessee was asked to show cause whether it has permanent establishment in India or not. In response assessee furnished submissions vide letter dated 17.02.2021, for the sake of clarity it is reproduced below: -

"Hapag-Lloyd is engaged in the business of shipping and carries cargo between ports in India and ports outside India. In the course of its shipping operations, Hapag-Lloyd transports cargo on vessels owned/leased/chartered/pooled by it.

The vessels of Hapag-Lloyd do not call at the Indian ports on account of various reasons viz. the size of the vessels is too large, to enter the Indian ports which have shallow draft; the depth of Indian ports is not enough for the vessels to be anchored, etc.

Hapag-Lloyd therefore books space/ buys slots on feeder vessels and transports cargo through such vessels.

In this regard, it is submitted that companies engaged in the business of operation of ships generally transport cargo by availing the slot hire facility. Without it, the operations of shipping companies would be greatly hampered in its business in relation to international traffic. Enterprises operating in any mode or manner, do not always ply their ships all over the globe. Even if they do, their ships may not be readily available when required on a particular route in connection with a contract of carriage of goods. It is necessary, therefore in such cases for them to resort to slot hire agreements. The slot hire agreements are therefore directly connected and interlinked with and are an integral part of the enterprise's business of operating ships.

By availing the facility of slot hire agreements, shipping enterprises do not arrange the shipment on behalf of the owner of the said vessel, but does so, on their own account on a principal to principal basis with its clients. Such cases have a nexus to the main business of the enterprises of the operation of ships. They are ancillary to and complement the operation of ships by the enterprises.

Without availing slot hire facilities, shipping enterprises would be unable to carry on their business of operating ships in international traffic at all in many cases. They may well lose much of their business. This indicates the close nexus between slot hire and the business of operation of ships in international traffic. If the Double Taxation Avoidance Agreement (DTAA) is construed to include activities directly or indirectly connected to the operation of ships, it would include slot charters/feeder vessels.

Further, the Hon'ble Bombay High Court in the case of Balaji Shipping (UK) Ltd (77 DTR 361) has reiterated the above and held that income from slot is income from operation of ships and is an integral part of the business of shipping companies.

We wish to respectfully submit that in the case of Hapag-Lloyd also, income from slot arrangement is part of the business of Hapag Lloyd and in light of the Hon'ble Bombay High Court ruling be considered as part of income from operation of ships in traffic. The conclusions drawn by the Hon'ble Bombay High Court squarely apply to Hapag-Lloyd and accordingly, income of Hapag-Lloyd from slot arrangement would be covered under Article 8 of the DTAA between India and Germany and is thus, would not be taxable in India.

Further, Hon'ble ITAT, Mumbai in the case of CGM France [27 SOT 367(Mum)] has also held that when income from slot arrangement

is ancillary to the main business activity, the said income is covered under Article 8. Hence, income from slot arrangement is income from operation of ships in international traffic.

Further, we wish to invite your goodself's attention to the Organization for Economic Co-operation and Development (OECD) commentary on Article 8 which states as under.

Para 4.1:

"The profits covered consist in the first place of the profits directly obtained by the enterprise from the transportation of passengers or cargo by ships or aircraft (whether owned, leased or otherwise at the disposal of the enterprise) that it operates in international traffic. However, as international transport has evolved, shipping and air transport enterprises invariably carry on a large variety of activities to permit, facilitate or support their international traffic operations. The paragraph also covers profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ships or aircraft in international traffic as long as they are ancillary to such operation." (Emphasis supplied) PART

In view of the above, it is submitted that the activity of transportation of goods on slot charter by Hapag-Lloyd is ancillary and incidental to the operation of ships in international traffic and is hence, eligible for relief under Article 8 of the India-Germany DTAA.

Further, we wish to highlight that in the case of Hapag-Lloyd, the Hon'ble Bombay High Court vide its order dated 1 February 2013 had restored the matter back to the ITAT to decide the matter in view of the decision passed by the Hon'ble Bombay High Court in the case of DIT(IT) vs Balaji Shipping (supra).

Additionally, we wish to highlight that based on the directions of the Hon'ble Bombay High Court, the Hon'ble Mumbai ITAT has passed an order dated 14 August 2013 for AY 2007-08 holding that the freight amount earned by Hapag-Lloyd from transportation of cargo through use of feeder vessels is entitled to the relief provided in Article 8 of India-Germany tax treaty and hence, the same would not be taxable in India.

Further, the Hon'ble Mumbai ITAT has upheld the above in its order dated 21 September 2016 for AY 2005-06 and order dated 22 July 2016 for AY 2006-07, 2008-09, 2009-10, 2010-11, 2011-12, order

dated 31 October 2017 for 2013-14 and order dated 28 June 2019 for AY 2014-15.

Additionally, the Hon'ble Bombay High Court has dismissed the appeal filed by the tax department for AY 2007-08 vide its order dated 28 September 2016.

In view of the above, we wish to state that the income earned by Hapag-Lloyd by transportation of cargo under slot arrangement should not be taxable in India as per Article 8 of India-Germany DTAA."

5. Further, assessee submitted that identical issue in case of assessee's own case has been decided by the ITAT in favour of the assessee, which has been confirmed by the Hon'ble Bombay High Court, wherein appeal filed by the Assessing Officer is dismissed. Therefore, the issue is squarely covered in favour of the assessee. However, Assessing Officer held that revenue has not accepted the decision of the Hon'ble Bombay High Court in the case of Balaji Shipping (supra) and in assessee's own case the decision of Hon'ble Bombay High Court has been challenged before Hon'ble Supreme Court. Further, Assessing Officer stated that Article 8 of India Germany DTAA does not cover issue as stood in the Assessment Order for the A.Y. 2007-08. Assessing Officer also held that as the assessee is carrying out its business of operation of shipping through its agent in India through Hapag-Lloyd who concludes the contract. Thus it is a permanent establishment of assessee in India as per Article 5 of DTAA. Therefore, the income of the assessee is also chargeable to tax in India

and he applied provisions of section 44B of the Act. Accordingly, he determined the income of the assessee as under and accordingly, he passed order u/s. 143(3) of the Act.

SI. No.	Particulars	Amount (₹.)
1.	Income declared by the assessee in RoI	0
2.	Freight & other charges as per section 44B of the Act on feeder vessels	16,68,06,241/-
3.	Total income @ 7.5% u/s. 44B	1,25,10,468/-
4.	Taxable Income Rounded Off to u/s. 288A of the IT. Act	1,25,10,4707/-

6. Aggrieved assessee filed objection before Ld.DRP, who rejected the objection of the assessee with respect to the taxability and applicability of Article 8 to the feeder vessels income. With respect to the permanent establishment, the learned DRP following its directions for Assessment Year 2017-18 upheld the view of the Assessing Officer that assessee has a permanent establishment in India in the form of a subsidiary Hapag Lloyd India Pvt Ltd . The assessee also raised an additional ground of objection and also submitted additional evidence with respect for claiming tax credit of tax deducted at sources in the name of the subsidiary Indian Company. The learned DRP after obtaining the remand report of the Assessing Officer and rejoinder of the assessee thereon, directed Assessing Officer to carry out verification as directed by the ITAT in

assessee's own case in earlier years and then grant credit of tax. Such directions were issued on 24.01.2022.

7. Aggrieved assessee preferred appeal before us raising following grounds in its appeal: -

"1. Relief under Article 8 of the India-Germany Double Taxation Avoidance Agreement

1.1 *The learned Assessing Officer / Dispute Resolution Panel [DRP] has erred in not appreciating the facts in the case of the appellant and therefore appellant prays that the impugned order be treated as void ab initio.*

1.2 *The learned Assessing Officer/DRP erred in rejecting the appellant's claim for relief under Article 8 of the Double Taxation Avoidance Agreement entered into and subsisting between India Germany India Germany DTAA] in respect of its freight earnings of Rs. 16,68,06,241 on the premise that the earnings attributable to the carriage on feeder vessels were not eligible for the relief.*

1.3 *The learned Assessing Officer erred in refusing to follow the decision of jurisdictional Bombay High Court (HC)/ Income Tax Appellate Tribunal (Hon'ble TTAT) in the Appellant's own case for AY 2005-06 to AY 2011-12, AY 2013-14, AY 2014-15, AY 2015- 16 and AY 2016-17 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.*

1.4 *The appellant prays that the learned Assessing Officer / DRP be directed to allow relief of Rs. 16,68,06,241 under Article 8 of the India- Germany DTAA.*

1.5 *Without prejudice to the above, the learned Assessing Officer/ DRP erred in holding that income from feeder vessels/ slot arrangement would fall within the ambit of section 44B of the Act however, has not applied the same rationale to hold that the said income falls under the ambit of Article 8 of the India- Germany DTAA.*

1.6 The learned Assessing Officer erred in not realizing that as per the provisions of Article 24 of DTAA, any term covered under any definition in the Act ought to be covered under the DTAA. Thus, where 'slot chartering is covered under 'operation of ships' under the Act, the same ought to be covered under 'operation of ships' under the DTAA.

2. Existence of a Permanent Establishment (PE)

2.1 The learned Assessing Officer / DRP erred in holding that the Appellant has a Permanent Establishment (PE) in India in terms of Article 5 of the India-Germany DTAA.

2.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, it has no PE in India and hence, the stand taken by the Assessing Officer/DRP that Hapag-Llyod India Private Limited (HLIPL) is a dependent agent of the appellant in terms of Article 5(5) of the DTAA is erroneous, misconceived and not in accordance with law,

2.3 The Appellant submits that the learned Assessing Officer/ DRP have failed to appreciate that HLIPL is an independent agent in terms of Article 5(6) of the DTAA and hence cannot be held to be a PE of the Appellant in India. 2.4 The Appellant submits that stand taken by the learned Assessing Officer / DRP in holding that the Appellant has a PE in India ought to be struck down.

2.5 Without prejudice to the above, the learned Assessing Officer/ DRP failed to appreciate that even if it held that HLIPL constitutes an agency PE of the appellant in India, no profits could be attributed to the PE in India since the appellant has remunerated HLIPL on an arm's length basis in terms of Article 5(6) of the DTAA.

3. Non-granting of credit for Taxes Deducted at Source (TDS) amounting to Rs. 54,89,753/

3.1 The learned Assessing Officer/DRP has erred in not granting credit for TDS to the extent of Rs. 54,89.753/-.

3.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject it is entitled to a credit of Rs. 54,89,753/- being the total tax deducted at source from its income.

3.3 The Appellant submits that the learned Assessing Officer be directed to grant full credit for tax deducted at source and to re-compute its tax liability accordingly.

3.4 The learned Assessing Officer ought to have considered the fact that the credit of the TDS of Rs. 36,76,585 is appearing in the Form 26AS of the appellant.

3.5 The learned Assessing Officer failed to appreciate that though the TDS of Rs. 18,13,168 is appearing in the Form 26AS of HLIPL, the same is claimed by the appellant since the income was offered to tax by the appellant for AY 2018-19 and on which it claimed treaty benefit.

3.6 The learned Assessing Officer failed to appreciate that the issue of grant of TDS appearing in the Form 26AS of HLIPL is covered in favour of the appellant by the order of the Hon'ble ITAT for the AY 2016-17 and AY 2017-18.

3.7 The learned Assessing Officer erred in not complying with the directions of the Hon'ble DRP wherein, the learned Assessing Officer was directed to grant claim of TDS pursuant to verifying the claim of the appellant in line with Rule 37BA of the Income tax Rules, 1962 and the decision of the Hon'ble ITAT in favour of the appellant's own case for the AY 2016 17 and AY 2017-18.

3.8 The learned Assessing Officer erred in merely stating that it does not have jurisdiction over HLIPL and hence, is unable to verify the credit of TDS appearing in the system under the PAN of HLIPL.

4. General

4.1 The appellant craves leave to add to, amend, alter, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as it may be advised."

8. At the time of hearing, Ld. AR submitted that the issue relating to permanent establishment is covered in favour of the assessee in assessee's own case in earlier assessment years and he brought to our notice recent order of ITAT relating to the A.Y. 2017-18 in ITA.No.

972/Mum/2021 dated 31.01.2022. Further, he submitted that Assessing Officer has not granted TDS credit amount of ₹.57,89,753/- he prayed the bench may give direction in this regard to the Assessing Officer.

9. On the other hand, Ld. DR relied on the orders passed by DRP and Assessment Order.

10. Considered the rival submissions and material placed on record, we observe that similar issue has been considered and adjudicated by the Coordinate Bench in A.Y. 2017-18. The relevant finding of the Coordinate Bench is as under: -

"15. Ground number 2 – 4 is with respect to the taxability of freight charges amounting to ₹ 172,195,959/- from transportation of cargo through feeder vessels. During the year, assessee has earned total freight income of ₹ 24,923,710,917/-, out of which income from feeder vessels was ₹ 172,195,959/-. Which is approximately 0.69% of the total freight income earned by the assessee. Undisputedly, assessee is a resident of Federal Republic of Germany and therefore the agreement for avoidance of double taxation and prevention of fiscal evasion between India and Germany is applicable for determination of taxability of income of the assessee. Article 8 of the DTAA relates to shipping and transport income provides as Under:-

ARTICLE 8 SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. *If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.*

3. *For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.*

4. *The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.*

016. *On the basis of above it is required to be decided that whether the freight income received on account of transportation of cargo on vessel Under slot arrangement is eligible for benefit of exemption to the assessee or not. In assessee's own case for assessment year 2007 – 08, identical issue arose wherein the honourable Bombay High Court in (2013) 31 taxmann.com 64 (Bombay) following the decision in case of DIT (International taxation) versus Balaji shipping UK Ltd (2012) 211 taxmann 535/24 taxmann.com 229, per paragraph number 2, in appeal filed by the assessee against the order of the coordinate bench which held that the agreements among consortium members were not cool/joint men's business arrangements but were merely slot arrangements and that the freight income received on account of transportation of cargo on feeder vessel would be ineligible for benefit of article 8, the honourable High Court set aside the order of the coordinate bench and remanded the matter back to the coordinate bench for fresh consideration in the light of decision of the honourable court in case of Balaji shipping UK Ltd (supra).*

017. *Pursuant to above remand by the honourable High Court, the coordinate bench in ITA number 8854/MUM/2010 on 14/8/2013, while recording the fact of the order of the honourable High Court, as per para number 7 – 8.5 has held as Under:-*

"7. We have perused the records and considered the rival contentions carefully. The dispute is regarding allowability of exemption of income Under the provisions of double taxation avoidance agreement. The assessee is a shipping company engaged in the operation of ships in the international traffic and is a tax resident of Germany. The assessee for the relevant year had declared gross freight collection of ₹ 6,879,957,893/- and the entire income was claimed as exempt Under the provisions of DTAA between India and Germany. Under article 8 of the India Germany treaty, profit from operation of ships or aircraft in international traffic is taxable only contracting State in which place of effective management of the enterprise is situated. Further clause 4 of article 8 also provides that these provisions will apply to the profit from participation in pool or a joint-venture business or in international operating agency. The AO took the view that the provisions of DTAA would apply only to income from operation of ships which were either owned or chartered by the assessee and not to income from other ship/vessels. AO noted that the freight in respect of Germany by the ship, owned, chartered by the assessee or through vessel was only to the extent of ₹3,007,821,923/-. He, therefore, granted relief only in respect of income arising from said freight. On objections filed by the assessee, the DRP took the view that the assessee was also entitled to exemption in respect of revenue from goods transported through feeder vessel owned or chartered by the assessee. He therefore, allowed relief in respect of further freight revenue earned by the assessee to the tune of ₹ 956,379,908/-. Thus income from balance freight revenue relating to feeder vessels amounting to ₹ 1,677,537,979/- has been taxed by AO u/s 44B of the income tax act on the ground that the revenue had been earned on the basis of slot sharing arrangement which was not eligible for relief Under the provisions of DTAA.

8. We find that the issue raised in this appeal as to whether the double taxation exemption provision will be available even in respect of sipping facilities used by the assessee on slot sharing arrangement basis has already been considered and decided by the honourable High Court of Delhi in case of Director Of Income Tax (International Taxation) Versus Balaji Shipping vide order dated 6 August 2012 in income tax appeal number 3024 and 3215 of 2009. In that case also the assessee in addition to own/chartered ships had also availed slot hire facilities Under connecting Agreements with owner/charter of feeder vessels. In some cases the cargo had been transported to the final international destinations/port on the vessels used on slot arrangement basis. In some other cases goods had been transported through feeder vessels availed on slot higher facilities to the international hub port from where they had been shipped to final destination to the vessels owned/chartered by the assessee. The honourable High Court noted that the AO had taxed such income from federal vessels u/s 44B of the income tax act which dealt with income from operation of ships , a provision similar to the provisions of article 9 (1) of the treaty which referred to profit and gains of business operation of ships . Therefore, the High Court held that the income arising from slot hire arrangement had to be considered as the income referred to Under article 9 (1) of the treaty as the phrase "operation of ship" not being defined in the treaty, it must be given the same meaning as described in Section 44B. The High Court also held that are availing of slot hire facility had a close nexus with the business operation of ships in the international traffic as an enterprise may not be able to carry on business at all in many situations. The enterprise may not ply ships owned or chartered by it in respect of certain routes or on a particular route on a given day or for a particular period and, therefore, slot hire facility becomes necessary for carrying on the business and such cases have to be considered as having close nexus with the main business of

enterprise of operation of ships. They are ancillary and complement the operation of the enterprise.

8.1 The High Court referred to judgement of Honourable High Court of Delhi in case of Director Of Income Tax versus KLM Royal Dutch airline (178 taxmann 241) in which assessee was engaged in the business of operating an airline in international traffic had obtained license in respect of premises at Mumbai from airport authority of India. The assessee had entered into an agreement with CSC (P) Ltd for cargo handling. The assessee had adjusted the license fee/rent paid to the airport authority against the payment made to CSC (P) Ltd. The High Court held that the rental income was inextricably [sic. inextricably] linked to cargo handling business of the assessee and, therefore, it was the part of the income from business of operating an airline in international traffic and was eligible for exemption Under the treaty.

8.2 The High Court also referred to OECD model convention on avoidance of double taxation which provides that the treaty provisions relating to shipping will also apply to the activities directly connected with the operation of ships and also to activities indirectly connected which were ancillary to such operations. The article 4.1 of the model convention provided that any activity carried out primarily in connection with transportation by ships or aircraft should be considered directly connected with such transportation and article 4.2 provided that other operations which are so closely related that they should not be regarded as separate business or source of income held to be considered as ancillary to the operation of ship and aircraft in international traffic. The High Court therefore held that slot sailing arrangement was covered by the provision of clause 4.1 and 4.2 of the model OECD Convention.

8.3 Thus after considering the OECD model convention as well as the judgement of Honourable High Court of Delhi in case of Director Of Income Tax versus KLM

Royal Dutch airline (supra) the High Court held that both types of cases relating to direct transportation of cargo to the international destinations/port through the slot hire facility as well as the case where the cargo had been transported through the slot hire facility to the hub point and, thereafter, through the vessels owned/chartered by the assessee were eligible for exemption Under the treaty provisions. Though the said judgement was in the context of Indo UK treaty but we find that provision of treaty relating to income from operation of ships in international traffic are similar to the provisions of Indo German treaty with which we are concerned in this case.

8.4 The learned DR pointed out that the judgement in case of Balaji sipping UK Ltd (supra) was restricted to the facts of only those type of cases as held by the honourable High Court. In that case the revenue from slot hire arrangement was only 12% whereas in the present case revenue from slot hire arrangement was substantially high at a 29%. We have considered this aspect carefully. We find that in para 19 of the judgement, honourable High Court of Delhi clearly held that judgement would not apply to the assessee who are carrying on the business of shipping cargo only by availing slot hire facility is obtained by them. In the present case sipping revenue is not only from slot hire facilities. The revenue from owned/chartered ships constitutes more than 2/3rd of revenue and only 29% of the revenue from slot higher facility is. Therefore, the judgement of the honourable High Court of Delhi in case of Balaji sipping UK Ltd (supra) is applicable to the facts of the case of the assessee.

8.5 Considering the facts and circumstances of the case and for the reasons given earlier, we hold that the assessee will 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, therefore, set-aside the order of CIT (A) and allow the claim of the assessee."

018. *The above order of the coordinate bench was subject matter of challenge before the honourable Bombay High Court in Income Tax Appeal number 602 of 2014, (which is reproduced at paragraph number 5 of the order of the honourable High Court in Income Tax Appeal number 1362 of 2017 for assessment year 2009 – 10 which is decided on 6 January 2020, placed at paper book page number 4 – 6). The honourable High Court held that the impugned order of the coordinate bench has allowed the appeal of the assessee by following the decision of honourable High Court in Director Of Income Tax, International taxation versus Balaji shipping UK Ltd (2012) 211 taxman 535 and further the learned counsel appearing for the revenue in that case stated that the issue stands concluded in the favour of the respondent assessee by the decision of honourable Bombay High Court in Balaji shipping UK (supra). Based on this the honourable High Court held that no substantial question of law arises and the appeal of the revenue was dismissed.*

019. *Further as the fact shows that for assessment year 2009 – 10 also the honourable High Court following its own order for assessment year 2007 – 08 and also on the submission made by the learned counsel for the revenue that the issue stands covered, the appeal filed by the learned assessing officer was not admitted by order dated 7 January 2020.*

020. *Further the coordinate bench for assessment year 2006 – 07 to assessment year 2011 – 12 (except assessment year 2007 – 08) as per order dated 22/7/2016, following the order of the coordinate bench for assessment year 2007 – 08 dated 14/8/2013 allowed the claim of the assessee and dismissed appeals of the revenue. Further, for assessment year 2005 – 06 in ITA number 1776/2014 the coordinate bench wide order dated 21/9/2016 wherein the appeal was filed by the assessee was allowed as per paragraph number 7 holding that slot hire charges income is eligible for benefit as per article 8 of the treaty. Subsequently also for assessment year 2013 – 14 per order dated 31/10/2017, for assessment year 2014 – 15 per order dated 28/6/2019, for assessment year 2015 – 16 per order Dated 16/12/2019 and for assessment year 2016 – 17 per order dated 31/1/2020, the claim of the assessee for the benefit to the slot hire income Under article 8 of the treaty was allowed.*

021. As per chart submitted by the learned authorised representative the percentage of income from feeder vessels to the total freight income for the impugned assessment year is merely 0.69%. All the arguments raised before us by the learned departmental representative has been considered in the decision of the coordinate benches as well as in the decision of the honourable High Court holding in favour of the assessee. Therefore, respectfully following the decisions of the honourable High Court and coordinate benches in assessee's own case, we allow ground number 2 – 4 of the appeal holding that freight charges of ₹ 172,195,959/- earned by assessee from transportation of cargo through feeder vessels is also eligible for benefit of Article 8 of the Double Taxation Avoidance Treaty between India and Germany.

022. In view of our decision in ground number 2 – 4 of the appeal, no adjudication is required on ground number 5 – 7 and 12 – 14 of the appeal of the assessee, hence those grounds become infructuous and hence dismissed.”

11. Respectfully following the above said decision, we allow the ground raised by the assessee in this regard.

12. Coming to Ground No. 3 raised by the assessee relating to non-granting of tax credit at source. We observe from the record that this is a regular issue raised by the assessee and even in A.Y. 2017-18 assessee has raised similar ground requesting for direction of the bench that Assessing Officer may be directed to verify the claim of the assessee and give the proper tax credit and the Coordinate Bench has given the similar direction to the Assessing Officer to consider the submissions of the assessee and after verification the proper tax credit may be granted.

Even in this year assessee has raised the similar issue and accordingly, we direct the Assessing Officer to verify the claim made by the assessee and the similar direction also given by DRP in this regard. For the sake of repetition, we also remit this issue back to the file of the Assessing Officer to verify the claim made by the assessee and allow the same as per law. Accordingly, Ground No. 3 raised by the assessee is allowed for statistical purpose.

13. In the result, appeal filed by the assessee is allowed as per above directions.

Order pronounced in the open court on 28th July, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 28.07.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT 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