

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.123/RJT/2012
Assessment Year: 2009-10**

M/s. Qawareb Ship Management – vs. The Income Tax Officer
LLC Dubai, (International Transaction)
C/o. Shantilal Shipping & Chartering Gandhidham – Kutch.
Pvt. Ltd.,
C-6, NU-10/B, Shakti Nagar,
Gandhidham – Kutch.
[PAN – AACCS 9877 L]

**ITA No.124/RJT/2012
Assessment Year: 2009-10**

M/s. Saba Shipping International vs. The Income Tax Officer
LLC - Dubai, (International Transaction)
C/o. Shantilal Shipping & Chartering Gandhidham – Kutch.
Pvt. Ltd.,
C-6, NU-10/B, Shakti Nagar,
Gandhidham – Kutch.
[PAN – AACCS 9877 L]
(Appellants) (Respondents)

Appellant by : Shri Vimal Desai, AR
Respondent by : Shri B.D. Gupta, Sr. DR

Date of hearing : 18.01.2023
Date of pronouncement : 06.03.2023

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These two appeals are filed by the assesseees against two separate orders, both dated 30.01.2012, passed by the CIT(A), Gandhinagar for the Assessment Years 2009-10 for both the appeals.

2. The grounds of appeals are as under: :-

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- “1. The order passed by the Learned CIT(A) is erroneous and contrary to the provisions of law & facts of the case and therefore needs to be suitably modified.
2. The Learned CIT(A) erred in confirming the decision of the AO of not granting the benefit as per DTAA between India & UAE as claimed by the appellant in return of income filed u/s.172(3) and also confirmed the demand of Rs.8,39,267/- arising therefrom.
3. The Learned CIT(A) erred in holding that Qawareb Ship Management LLC – Dubai was not wholly managed & controlled from UAE and hence it is not resident of UAE as per Article No.4 of DTAA between India & UAE and hence benefit of DTAA between India & UAE is not available to the appellant.”

ITA No.124/RJT/2012 – A.Y. 2009-10

- “1. The order passed by the Learned CIT(A) is erroneous and contrary to the provisions of law & facts of the case and therefore needs to be suitably modified.
2. The Learned CIT(A) erred in confirming the decision of the AO of not granting the benefit as per DTAA between India & UAE as claimed by the appellant in return of income filed u/s.172(3) and also confirmed the demand of Rs.4,88,471/- arising therefrom.
3. The Learned CIT(A) erred in holding that SABA Shipping International LLC – Dubai was not wholly managed & controlled from UAE and hence it is not resident of UAE as per Article No.4 of DTAA between India & UAE and hence benefit of DTAA between India & UAE is not available to the appellant.”

3. Firstly we are taking ITA No.124/RJT/2012 M/s. Shantilal Shipping & Chartering Pvt. Ltd., a local Agent in India, had filed the provisional return under Section 172 of the Income Tax Act, 1961 on 10.06.2008 in respect of freight earned on corn transported through Vessel M.V.A. SHUJAA-1. In the said return, income of Rs.11,56,692/- was declared being 7.5% of the amount of Rs.1,54,22,560/- of freight received in India. Tax thereon comes to Rs.4,83,497/- at 41.8% and the same was claimed as exempt as per DTAA between Government of India and U.A.E. The Assessing Officer observed that local Agent has not submitted certain documents in respect of company which is incorporated in the UAE and which is managed and controlled only in UAE. The local agent produced certain documents and after taking cognisance of the said documents, the Assessing Officer observed that the said

companies not residents of UAE as per Article 4 of DTAA agreement executed with Government of India and UAE and its place of effective control and management which is situated out of UAE. Thus, the Assessing Officer made addition of Rs.4,88,471/- and passed Assessment Order under Section 172(4) of the Act. Thus, the assessment order dated 21.12.2009, the Assessing Officer denied the exemption claimed by the assessee on the basis of DTAA between India and UAE.

4. Being aggrieved by the assessment order, the assessee through Local Agent filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee has taken additional ground by stating that the Assessing Officer erred in passing the final Assessment Order under Section 143(3) of the Act without completing the procedural mandate under Section 144C of the Act being foreign Company. The Ld. AR submitted that the assessee is non-resident foreign company and, therefore, Section 172(4) of the Act will not be applicable in the present case. The Ld. AR further submitted that the Assessing Officer who have proceeded on the basis of Section 143(3) of the Act for which Section 144C of the Act has to be invoked. Thus, the Ld. AR submitted that the Assessment Order is null and void.

6. The Ld. DR submitted that the assessee company is non-resident and is in Shipping business and Section 172(4) of the Act and Section 172(7) of the Act which is for summary assessment is squarely applicable in assessee's case.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Income Tax Act specifically have the provision under Section 172 of the Act for shipping business of non-resident. It is admitted fact that the assessee company is into shipping business and is a non-resident. This fact was never denied by the assessee at any point of time. The plea of the Ld. AR that Section 144C of the Act is related to overriding effect to any other Act/provisions related to Income Tax Act, but Section 144C of the Act is related to reference to Dispute Resolution Panel and for this particular case there was no reference to Dispute Resolution Panel. When there is specific Statute/Section given under any Act for a particular classified category then that Section will be applicable to

that particular category only. The Ld. AR never contended that the assessee does not fall in that category of shipping business of non- resident. Thus, the additional ground taken by the assessee is dismissed.

8. On merit, the Ld. AR submitted that the assessee has filed additional evidences before us relating to business licence of the assessee company which was not before the Assessing Officer as well as before the CIT(A) as it took longer time as principal company was not in touch with the Local Agent after the Vessel left Indian soil. The Ld. AR further submitted that during the assessment proceedings, the assessee has filed copy of Double Tax Avoidance Agreement between India and UAE, copy of Tax Residency Certificate, copy of Memorandum of Association, copy of letter head of the Company, copy of Bank Statement, copy of Commercial Licence issued by Dubai Maritime City, Passport copies of the Directors of the Company and the clarification related to UAE resident of the Directors as well as that of Company. Before the CIT(A) the said documents were also produced but the CIT(A) as well as the Assessing Officer overlooked the details and granted exemption under DTAA between India and UAE as the assessee is a tax payer/resident of UAE.

9. The Ld. DR submitted that during the assessment proceedings, the assessee did not file the company's AGM. Ld. DR pointed out that the AGM taken into general assembly of UAE and thereafter the UAE residency can be obtained but in assessee's case the same was not done and three of the Directors/Partners are of the Nationality of Yemeni. The Ld. DR relied upon the Assessment and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. It is undisputed fact that the assessee is a limited liability company which is non-resident. As relates to commercial licence of the company, the same is issued by Dubai Maritime City which is UAE country. Besides this, the assessee has also submitted the Bank details of Standard Chartered Bank related to outward payment customer advise that of UAE only. Though the partners/Directors are Yemenis national except one of the partner, the address of that partner/director of the resident is Dubai, United Arab Emirates (UAE) only. The UAE court (Ministry of Finance) has issued Tax Residency Certificate to the assessee company on 19.06.2008 which set out that licence No.234584 has been given to the assessee company which is domiciled in UAE. From the perusal of the additional evidence, the assessee

company has given business licence details once again which clearly set out that the assessee company is a resident of UAE. Thus, the Assessing Officer as well as the CIT(A) has totally ignored these facts. Merely Partner's/Director's nationality will not suffice the company's residency when the company is registered and operational in a particular country in the present case is in UAE Dubai and has obtained the business licence from the said resident company is the resident of UAE.

11. Now coming to whether the exemption claimed by the assessee is applicable to assessee company or not is the question for which Article 4(1) defines the residents and it clearly set out that the individual who is present in the UAE for period or periods totalling in the aggregate at least 183 days in the calendar year concerned, and a company which is incorporated in the UAE and which is managed and controlled wholly in UAE. In the present case, the company is incorporated in UAE and is managed and controlled only in UAE. In fact, the company and its business is operational from UAE only. Thus, it is a tax resident of UAE and, therefore, treaty between India and UAE (DTAA) is applicable in the present case. Thus, Article 8 where Shipping Business and its profit has been determined in respect of taxability the same is applicable in the present case and thus the assessee is entitled for the treaty benefit. The Assessing Officer was not right in denying the exemption and hence the addition does not sustain. Therefore, ITA No.124/RJT/2012 is allowed.

12. As relates to ITA No.123/RJT/2012,Memorandum of Association clearly set out that the company is incorporated in UAE Dubai and the partner who is having 51% is resident of UAE only. Business licence is also issued by Government of UAE and the Bank details of Bank of Sharjah is also that of UAE only. The UAE Ministry of Finance issued the tax resident certificate in respect of the said assessee company with the licence no.547567 on 19.06.2008. The remaining facts are identical to the other company which is discussed hereinabove. Therefore, the ITA No.123/RJT/2012 is allowed in respect of Merit.

13. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on this 06th March, 2023

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 06th day of March, 2023

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot*