

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

I.T.A. No. 355/Rjt/2018  
(Assessment Year: 2017-18)

M/s. Magnum Shipping Services, Gandhidham, Gujarat	Vs.	ITO (International Taxation), Gandhidham, Gujarat
[PAN No. AAQFM3926K]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Anil N. Shah, A.R
<b>Respondent by :</b>	Shri B.D. Gupta, Sr. D.R.
<b>Date of Hearing</b>	08.06.2023
<b>Date of Pronouncement</b>	02.08.2023

**ORDER**

**PER SUCHITRA KAMBLE - JM:**

This appeal is filed by the assessee against the order dated 31.07.2018 passed by the Ld. CIT(Appeals)-13, Ahmedabad for A.Y. 2017-18.

2. The grounds of appeal raised by the assessee read as under:

“1. The order passed is beyond jurisdiction of Ld. A.O., is passed against the rule of natural justice and is based on an inappropriate appraisal of facts, DTAA between India and Singapore as well as by ignoring and misinterpreting the submissions and law and case law cited before him and the order is bad in law and liable to be quashed and even the Ld. CIT(A) have erred in law and on facts in upholding the said order based on inappropriate appraisal of facts, law and case law by making unwanted, unwarranted and irrelevant observations in the order passed by her.

2. The Ld. AO have erred in law and on facts in coming to the conclusion that, the appellant was an agent of vessel M. V. New Caledonia Maru of freight beneficiary M/s. Jaldhi Overseas Pte. Ltd., Singapore (Freight Beneficiary) and thereby treating him liable to be assessed as such and also to pay the tax demanded by him and even the Ld. CIT(A) have erred in law and on facts in upholding the said order based on inappropriate appraisal of facts, law and case law by making unwanted, unwarranted and irrelevant observations in the order passed by her.

3. The Ld. AO have erred in law and on facts in coming to the conclusion that, the appellant and the owner/freight beneficiary was not entitled to the benefits of DTAA between India & Singapore in respect of the freight earned by the journey under taken by Vessel- M. V. New Caledonia Maru Salied on 01.10.2016 and even

*the Ld. CIT(A) have erred in law and on facts in upholding the said order based on inappropriate appraisal of facts, law and case law by making unwanted, unwarranted and irrelevant observations in the order passed by her.*

4. *The Ld. AO erred in law and on facts in coming to the conclusion that, the VESSEL WAS OPERATED SOLELY BETWEEN TWO PORTS IN India and was not part of international traffic/journey from port KEMBLA, Australia and it again reverted it's journey to foreign run after it's arrival to OKHA Port in India and performing a journey between two ports in India being larger voyage/ run International water/traffic and even the Ld. CIT(A) have erred in law and on facts in upholding the said order based on inappropriate appraisal of facts, law and case law by making unwanted, unwarranted and irrelevant observations in the order passed by her.*

5. *The Ld. AO erred in law and on facts in coming to the conclusion and erroneously working out that, the appellant was liable to pay tax of Rs.4,50,470 on the taxable income worked out at Rs.10,66,701 being 7.5% of the total amount of freight earned in Indian Rupees of Rs.1,42,22,687 and even the Ld. CIT(A) have erred in law and on facts in upholding the said order based on inappropriate appraisal of facts, law and case law by making unwanted, unwarranted and irrelevant observations in the order passed by her.*

6. *The Ld. AO have erred in law and on facts in coming to the conclusion that, the appellant furnished inaccurate particulars and concealed income and thereby erred in initiating penalty proceedings U/s.271(1)(c) of the Act and even the Ld. CIT(A) have erred in law and on facts in upholding the said order based on inappropriate appraisal of facts, law and case law by making unwanted, unwarranted and irrelevant observations in the order passed by her.*

7. *Without considering the facts of the case and the law proper, the Ld. AO have erred in law and facts in holding that, the appellant is liable to be assessed and taxed u/s.172(4) of the Act and thereby have also erred in determining the tax under the said section 172(4) of the Act to which i.e. the determining the tax and passing the order u/s. 172(4) of the Act, assessee appellant do not agree and challenges the same under the appeal and even the Ld. CIT(A) have erred in law and on facts in upholding the said order based on inappropriate appraisal of facts, law and case law by making unwanted, unwarranted and irrelevant observations in the order passed by her.*

8. *The Ld. CIT(A) have erred in law and on facts in holding that, though the appellant was charter who hired the ship, was not entitled to the benefit of Article 8 of DTA between India – Singapore and thereby she erred in law and in facts in ignoring the judicial precedents cited before her.*

9. *The Ld. CIT have erred in law and on facts in holding that, the income of the trip of the ship charter by the appellant had not suffered tax in Singapore and therefore the appellant was not entitled to the benefits of the treaty between India-Singapore as evident from Article 24 of the said treaty.*

10. *Your appellant craves a leave to add, alter or amend the grounds of appeal, if the occasion demands.”*

3. M/s Magnum Shipping Services filed provisional return on 29.09.2016 for the vessel M. V. New Caledonia Maru arrived at the port of Mundra. The

vessel sailed on 01.10.2016 and the final return was filed on 21.10.2016 for the vessel u/s 172 of the Act. The freight beneficiary for the said vessel was M/s. Jaldhi Overseas Pte. Of Singapore. The provisional return accompanied with certain details like charter party agreement, certificate of incorporation, Tax Residency certificate of freight beneficiary company, Indemnity Bond and an undertaking stating that M/s. Magnum Shipping Services, Mundra was acting as agents to the freight beneficiary and any liability arising on account of Government dues would be fulfilled by M/s Magnum Shipping Services, Mundra. The return filed by the agent contained Master Certificate issued and signed by the Master of the vessel and who authorizes the agent M/s Magnum Shipping Services, Mundra to file the Income Tax Return on freight earning on the vessel. From the documents furnished by M/s Magnum Shipping Services, the Assessing Officer observed that goods were loaded on the abovementioned vessel at Mundra Port for discharge at Mumbai Inner/Outer Anchorage. On further verification, the Assessing Officer observed that the Singapore Revenue Authority has issued “Certificate of Residence” on the basis of freight beneficiary confirmation that the control and management of its business for the whole of 2016 will be exercised in Singapore. Therefore, to verify the effective management of the company and details of coastal run, a letter dated 12.07.2017 was issued to the assessee by the Assessing Officer thereby calling upon various documents. The assessee through its agent filed submissions dated 21.07.2017. On perusal of the same, the Assessing Officer observed that the freight beneficiary assessee company has furnished all documents in support of effective management, therefore no adverse view was taken on this issue. On verification of the clearance certificate issued by custom authority of JSW Jetty Dharamtar Port, Raigad, the Assessing Officer observed that the vessel has not run into international traffic. The Assessing Officer noted that

exemption is not available for the reason that the vessel made a coastal run. The Assessing Officer further noted that Article 8 in the Double Tax Avoidance Agreement (DTAA) between India and Singapore states that the benefit of taxation in the resident shall be available to an enterprise for profits derived from the operation of ships in international traffic. The vessel performed a journey within two ports of India in pursuance of a charter party agreement. Since the load port and discharge ports were in pursuance of a fixed and decided voyage, the vessel has performed a journey solely in India. Therefore, Show Cause Notice dated 18.08.2017 was issued to M/s Magnum Shipping Services. In response to the said notice, the C.A. of the assessee furnished the submissions. After considering the submissions and contentions of M/s Magnum Shipping Services, the Assessing Officer held that the assessee furnished inaccurate particulars in the sense that it had claimed exemption of freight tax where it was not allowable as the assessee completely ignored, the provisions of law and the DTAA. Thus, the Assessing Officer worked out the freight income at Rs. 1,42,22,687.50 and worked out taxable income at 7.5% i.e. Rs. 10,66,701.56. Thus, the Assessing Officer determined total tax payable at Rs. 4,50,468.07 vide assessment order dated 29.09.2017 passed under Section 172(4) of the Income Tax Act, 1961.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. A.R. submitted that as regards Ground No. 1 relating to the order passed by the Assessing Officer the assessee has challenged the same stating therein that the said order is beyond jurisdiction, against rule of natural justice, bad in law, liable to be quashed. The Ld. A.R. submitted that the CIT(A) as well as the Assessing Officer has not taken cognizance of the fact

and DTAA between India and Singapore thereby ignoring and misinterpreting the submissions and case law cited before the authorities by the assessee. As regards, Ground No. 2, the Ld. A.R. submitted that the CIT(A) was not correct in coming to the conclusion that the assessee was an agent of vessel M. V. New Caledonia Maru of freight beneficiary M/s. Jaldhi Overseas Pte. Ltd., Singapore (Freight Beneficiary) and treating him liable to be assessed and to pay tax demanded and against the assessee. As regards Ground No. 3, the Ld. A.R. submitted that the Assessing Officer was not right in observing that the assessee and the owner / freight beneficiary was not entitled to the benefits of DTAA between India and Singapore in respect of the freight earned by the journey undertaken by Vessel M. V. New Caledonia Maru sailed on 01.10.2016 and against upholding the same by the Ld. CIT(A) the same is factually incorrect. As regards Ground No. 4, the Ld. A.R. submitted that the conclusion arrived by the Assessing Officer that the vessel was operated solely between two ports in Indian and was not part of international traffic / journey from port Kembla, Australia and it again reverted it's journey to foreign run after it's arrival to Okha Port in India and performing a journey between two ports in India being larger voyage / run in international water / traffic and against upholding the same by the CIT(A) based on inappropriate appraisal of facts. The Ld. A.R. in respect of Ground No. 5 submitted that the Assessing Officer was not correct in stating that the assessee was liable to pay tax of Rs. 4,50,470/- on taxable income worked out at Rs. 10,66,701/- being 7.5% of total amount of freight earned in Indian Rupees of Rs. 1,42,22,687/-. The Ld. A.R. submitted that in the case of CIT vs. Taurus Shipping Services (Tax Appeal No. 847 to 849 of 2015 order dated 01.12.2015) passed by the Hon'ble Gujarat High Court, similar issue related to the similar facts of the assessee's case was taken into consideration. The Ld. A.R. submitted that the Hon'ble Gujarat

High Court also observed that the goods were loaded on the vessel M. V. Nord Leader which sailed on 24.06.2012 at Kandla Port for discharge at Vizag Port. In both the assessee's case as well as in case of Taurus Shipping Services the goods were loaded from the ports of India and were to be discharged at the ports of India. The Ld. A.R. further submitted that effective management at Singapore has been accepted by the Assessing Officer and hence the CIT(A) was not right in taking adverse view. It is an accepted fact that the beneficiary company is tax resident of Singapore and further effective control and management of its business for the assessment year under appeal is exercised from Singapore. The Assessing Officer, at no point of time doubted the residential status as well as permanent establishment status of freight beneficiary Jaldhi Overseas Pte. Ltd. as NRI which is situated at Singapore. The Ld. A.R. submitted that the freight beneficiary of the vessel was changed with Charter Party dated 13.07.2012 between M/s. Polaris Shipping Col Ltd. and M/s. Jaldhi Overseas Pte. Ltd., a charter of the city of Singapore and vessel was operated between two ports in India during the charter period of about 14/20 days not solely as have been alleged but as part of its voyage in international traffic. In the present case also, the Ld. A.R. submitted that the vessel was operated between two ports in India during the Charter Period of about 30 days and there is no distinguishing facts. The vessel was sailed at Mundra Port on 01.10.2016. The Charter Party agreement was accepted on 26.09.2016, even before the vessel were sailed at Mundra Port. The Ld. A.R. further submitted that the vessel had converted to foreign run on 02.08.2012 as per certificate by the Assistant Commissioner of Custom, Port Area Vishakhapatnam. The conversion to costal run from foreign run (From Port Kembla AUKPL) Australia to Okha dated 28.09.2016, Vessel sailed Mundra Port from Okha Port on 29.09.2016, arrival of Vessel at Mundra Port on

29.09.2016, vessels sailed port Dharnantar Port from Mundra on 01.10.2016 and re-conversion from Costal Run to Foreign Run to sail to Jingtang, China on 27.10.2016. Thus, the vessel undertook the voyage between two ports of India solely and voyage began at Okha Port and voyage ended at Dharamtar Port in India. In fact, the vessel undertook the journey from Port Kembla AUKPL Australia and it ended at Jingtang, China. In between the journey undertaken by the vessel of two Indian Ports cannot be termed as costal run as has been done by the Assessing Officer in light of the decision of Hon'ble Gujarat High Court. The Ld. A.R. further submitted that the said Jaldhi Overseas Pte. Ltd. has issued a certificate specifically confirming the fact that they have considered the income of Rs. 1,42,22,687/- which is the impugned income under the present appeal on accrual basis earned on New Caledonia Maru during its voyage from 28.09.2016 to 27.10.2016 while it is on international traffic / foreign run and passed through Indian Water and accordingly is taxable income in Singapore and the assessee has paid taxes on the same. In fact, the income to offer tax was Singapore \$ 2,357,000 as per the earlier notice. Thus, the CIT(A) was wrong in misinterpreting the notice. The tax have been paid in Singapore. Thus, the freight income assessed by the impugned order and the action of the CIT(A) is incorrect. The income of the trip of the ship Chartered by the assessee as offered tax in Singapore and therefore, the assessee was entitled to avail benefits of the treaty between India – Singapore in accordance with Article 24 of the said treaty. Thus, the Ld. A.R. prayed that the order passed under Section 172(4) was not tenable and the Tribunal may grant the benefit under Article 8 as well as Article 7 of India – Singapore treaty to the assessee. Thus, the amount assessed and tax determined may be deleted.

6. The Ld. D.R. submitted that M/s Magnum Shipping Services, Mundra filed provisional return on 29.09.2016 for the vessel MV Caledonia Maru bearing Panama Flag which had arrived at Mundra port. Finally, the vessel sailed on 01.10.2016 and the final return was filed on 21.10.2016. As per the document furnished before the Assessing Officer i.e. ITO, International Taxation, Gandhidham, the freight beneficiary of the above vessel was M/s Jaldi Oversees Pte. Ltd., Singapore. The provisional return filed by the Indian agent of the foreign ship i.e. M/s Magnum Shipping Services, Mundra was accompanied by details like charter party agreement, certificate of incorporation, Tax Residency Certificate, Indemnity Bond and an undertaking that the above agent would act as an agent of the foreign shipping company. From the documents furnished the AO noted that the vessel carried cargo from Mundra Port in Kutch to Mumbai (outer anchorage). The Assessing Officer during the course of scrutiny proceedings had examined the charter party between the owner and disponent owner as well as the Port Clearance Certificate (PCC) issued by the Customs Authority at Dharamtar Port, Raigadh from which the following facts emerged:

(i) M/s Jaldi Oversees Pte. Ltd., Singapore had hired the vessel from M/s Daichi Chuo Kisen Kaisha Tokyo vide charter party dated 22.09.2016. The vessel was converted from foreign to coastal run for the journey which was from Okha port. This conversion can be seen from the certificate issued by the Inspector of Custom, Custom House Okha dated 28.09.2016 which is appearing at page no. 141 of the assessee's submission dated 21.03.2023. The goods were loaded at Mundra Port and discharged at Mumbai. The freight arising from the above journey was claimed as exempt on the basis of the

DTAA between India and Singapore as the freight beneficiary M/s Jaldi Oversees Pte. Ltd. is a resident of Singapore.

(ii) Thereafter the reconversion certificate was issued by the Inspector of Custom (Preventive) Dharamtar Port, JSW-jetty on 27.10.2016.

(iii) On the basis of the above coastal run, the AO taxed the freight of Rs. 1,42,22,687.50 arising from the above journey as it was not eligible for exemption as the vessel had not performed international traffic.

(iv) Further, the AO in para 5 of his order also held that the benefit of Article 8 in the DTAA agreement between India and Singapore, the benefit of taxation would be available to an enterprise only if the ship operated in International traffic which was not the case here as the vessel operated in Indian waters.

(v) The AO in para 2 of his order has noted the fact that the goods were loaded at Mundra port to be discharged at Mumbai. The assessee has not produced any documents to show that the goods loaded at Mundra was in continuation to the foreign journey by the vessel, otherwise how can it explain the berthing of the vessel at Dharamtar Port for almost 28 days after which it was converted to foreign run. Further, if the vessel was indeed on an onward journey to a foreign destination, then what was the need to obtain the two conversion certificates as mentioned above.

(vi) The assessee before the CIT(A) as well as before the Tribunal has tried to prove that the above journey was in fact a part of the international journey which it undertook from Okha. The assessee has in its return before the Assessing Officer produced details of Cargo carried by it which disclosed that

the goods were to be unloaded at Mumbai Port. This is also proved from the submissions made on 08.06.2023 from page 146G, 146H, 146I and 146J which shows that the goods were meant to be offloaded in Mumbai. The freight in US dollars as per the 2 invoices comes to US \$ 213875 which was disclosed by the assessee in the final return before the AO, which was brought to tax in the assessment order. No other details were mentioned in the return. This means that no other cargo was carried by the assessee in the vessel from Mundra which was meant for a foreign country and therefore the journey from Okha to Mumbai was a coastal run and it was only after 27.10,2016, i.e. the after issue of reconversion certificate by Customs, Dharamtar Port, the international journey of the vessel commenced. The return in respect of income earned if any for carriage of goods from Mumbai to any other foreign port would be required to be filed before the AO in Mumbai. Thus, the journey from Okha to Mumbai was a coastal run.

(vii) The AR of the assessee has on 8th June, 2023 made a further submission wherein further documentary evidences have been enclosed, notably the tax assessment intimation issued by the "INLAND REVENUE AUTHORITY OF SINGAPORE" from pages 1 to 7. During the course of hearing on 08.06.2023, the Ld. AR had argued that as the assessee had paid taxes in Singapore, the same could not be taxed again in India. In support, he had furnished the tax assessment intimation issued by the "INLAND REVENUE AUTHORITY OF SINGAPORE" from pages 1 to 7. From these documents it is seen from page no. 4 (146C) which is a 'notice of addition' assessment dated 23.10.2019 relevant to AY 2017, an amount of Singapore \$ 3049103 has been shown as exempt income under the Singapore Income Tax Act as 'The Economic Expansion Activities (relief from Income Tax) Act-

Shipping Enterprise'. Thus, the Ld. AR has wrongly presented the facts before the Hon'ble court in so far as taxes paid in Singapore on the income accrued as in fact no taxes have been paid.

The CIT(A) in an order has rejected the claim of the assessee that it was not a coastal run but a part of the international voyage. The Ld. CIT(A) also denied the benefit of Article 8 and 24 of the India-Singapore DTAA holding that as per Article 24 an income which is not taxed in Singapore cannot be granted tax exemption in India. Article 24 makes it clear that what has not actually suffered tax in one country cannot at all be allowed treaty benefit in the other country, and therefore denied the benefit of Article 8 of the India-Singapore tax treaty. The Ld. AR in his submission dated 08.06.2023 has relied upon the decision of the Chennai ITAT in the case of Bengal Tiger Line Pte. Ltd. Chennai Vs. DCIT which was pronounced on 04.05.2023 which is not applicable in present case.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the M/s. Magnum Shipping Services filed provisional return on 29.09.2016 for the vessel M. V. New Caledonia Maru. The vessels sailed on 01.10.2016 and the final return was filed on 21.10.2016 for the vessel under Section 172 of the Income Tax Act. It is undisputed fact that freight beneficiary for the said vessel was M/s. Jaldhi Overseas Pte. Of Singapore. The provisional return filed before the Revenue Authorities was accompanied with certain details such as charter party agreement, certificate of incorporation, Tax Residency Certificate of freight beneficiary company, Indemnity Bond and an undertaking stated that M/s. Magnum Shipping Services, Mundra was acting as agents to the freight beneficiary and any liability arising on account of Government dues would be

fulfilled by M/s. Magnum Shipping Services, Mundra. From the perusal of records it appears that the said Jaldhi Oversead Pte. Ltd. has issued a certificate specifically confirm the fact that they have considered the income of Rs. 1,42,22,687/- on accrual basis earned on New Caledonia Maru during its voyage from 28.09.2016 to 27.10.2016 while it is on international traffic / foreign run and passed through Indian water and accordingly the assessee offered its taxes to the Singapore Revenue Authorities. The income offered for tax was Singapore \$ 2,357,500. The certificate of the Singapore Revenue Authorities issued on 10.12.2016 clearly mentioned that the assessee has discharged estimated tax as per the original assessment dated 29.03.2016 wherein the estimated tax payable was \$ 354,765/- in Singapore Dollar. Those documents clearly reveal that the assessee has discharged its estimated tax on 10.12.2016 with the Singapore Revenue Authorities. Thus, the assessee has paid the tax on the income received from the international voyage of vessel M.V. New Caledonia Maru which was sailed on 01.10.2016 and the journey concluded on 28.09.2016 to 27.10.2016. The contention of Ld. A.R. that the benefit under Article 8 as well as Article 7 of India Singapore Treaty (DTAA) is applicable in the present case. It appears that the said treaty is applicable in the present case as the assessee has already paid taxes for the said voyage for the period 28.09.2016 to 27.10.2016 while it is on international traffic / foreign run which includes the voyage from one Indian Port to another Indian Port. The stand of the Revenue that the assessee has not paid the taxes in Singapore appears to be incorrect and in fact it was not just a costal run but a part of an international voyage and therefore, Article 8 and Article 23 of India-Singapore DTAA is applicable in the present case. The decision of the Hon'ble Gujarat High Court in case of Taurus Shipping Services (supra) is squarely applicable in the present case wherein it is held that the benefit of India Singapore Tax

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Treaty is applicable in assessee beneficiary's case and is covered under Article 8 of India Singapore Tax Treaty and profit attributable to M/s. Jaldhi Overseas Pte. Ltd. is taxable only in Singapore and not in India. In fact, in the present assessee's beneficiaries case the assessee has paid the taxes with the Singapore Revenue Authorities and it is on a better footing than in case of Taurus Shipping Services. Thus, the appeal filed by the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

<b>This Order pronounced in Open Court on</b>	<b>02/08/2023</b>
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Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 02/08/2023

*TANMAY, Sr. PS*

**TRUE COPY**

**आदेश की प्रतिलिपि अद्येभित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**