

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "I" Bench, Mumbai.

Before Shri Rahul Chaudhary (JM) & Shri Omkareshwar Chidara (AM)

ITA No. 2214/MUM/2025 (Assessment Year : 2018-19)

ITA No. 2239/MUM/2025 (Assessment Year : 2021-22)

DCIT(IT)-1(1)(2) Room No. 533 Kautilya Bhawan Bandra Kurla Complex Bandra East Mumbai-400 051.	Vs.	Avana Global FZCO Albatross Shipping Ltd. 3 <sup>rd</sup> Floor, Himalayas Geetmala Complex Deonar Govandi Mumbai-400 088.
		PAN : AADCB4021A
Appellant		Respondent

C.O. No. 103/MUM/2025 (Assessment Year : 2018-19)

C.O. No. 104/MUM/2025 (Assessment Year : 2021-22)

Avana Global FZCO Albatross Shipping Ltd. 3 <sup>rd</sup> Floor, Himalayas Geetmala Complex Deonar Govandi Mumbai-400 088.	Vs.	DCIT(IT)-1(1)(2) Room No. 533 Kautilya Bhawan Bandra Kurla Complex Bandra East Mumbai-400 051.
PAN : AADCB4021A		
Appellant		Respondent

Assessee by	:	Shri Dhanesh Bafna, Shri Hardik Nirmal & Ms. Hinal Shah
Revenue by	:	Shri Krishna Kumar
Date of Hearing	:	10/06/2025
Date of pronouncement	:	18/07/2025

ORDER

Per Bench :-

ITA No. 2214/Mum/2025:-

In this Departmental appeal, the Revenue filed an appeal with following grounds :

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in granting the benefit of Article 8 of the DTAA of

India and UAE to the assessee for its shipping income of Rs. 10,42,62,782/- derived from operation of ships in international traffic?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in granting the benefit of Article 8 of the DTAA of India and UAE to the assessee for its Inland Haulage Charge income of Rs. 48,77,683/- derived from operation of ships in international traffic?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that above shipping income earned by the assessee under its agreement with OBL FZCO is also covered by Article 8(4) of the DTAA and not liable to tax in India?

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating the ground that the assessee does not have a fixed place PB in India under Article 5(1) of the tax treaty?

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating the ground that BSL Freight Solutions Put. Ltd. is not dependent agent PB of the assessee in India under Article 5(4) of the DTAA?

2. The Ld. DR relied on the assessment order where the Ld. AO denied the benefit of Article 8 of the DTAA of India and UAE to the appellant company for its shipping income which was derived from the operations of ships in international traffic. In this case, the Ld. AO, denied the above said Treaty Benefit and assessed the Inland Haulage receipts and shipping receipts derived from the operation of ships in international traffic @ 3.5% as income.

3. The Ld. AR of the appellant has submitted in their written submissions that the above issues were covered in favour of appellant in the AYs. 2016-17 and 2017-18 by Hon'ble ITAT's order for A.Y. 2016-17 and 2017-18 and the relevant extracts are as follows :-

“Findings of the Hon'ble Tribunal for A.Y. 2016-17 and A.Y. 2017-18 :  
Relevant extracts of the Hon'ble Tribunal for AY 2016-17:

.....

4. The Assessing Officer thus proceeded to decline the Indo UAE tax treaty benefit in respect of the freight receipts of Rs. 216,00,95,105/- and the resultant tax liability of Rs. 16,20,07,132/-. The assessee is aggrieved and is in appeal before us.

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

6. The short question we are now required to adjudicate is whether benefit of article 8 can be declined in respect of freight collections earned from cargo/containers loaded on slot of other vessels that the OEL, FZCO was entitled to under the joint business/pooling arrangements.

7. As learned DRP fairly accepts the issue is covered, in favour of the assessee, by Hon'ble Jurisdictional High Court's judgement in the case of Balaji Shipping (supra). The mere fact that an appeal against the said judgement is pending before Hon'ble Supreme Court does not dilate the binding nature of this precedent. Once Hon'ble Jurisdictional High Court takes a view, we are bound to follow the same-in letter and in spirit. Respectfully following the same, we uphold the plea, of the assessee and direct that benefit of article 8 must be extended to entire freight receipts-irrespective of whether the earnings are relating to feeder vessels or by the ships in international traffic. The assessee gets the relief accordingly."

B. Relevant extracts of the Hon'ble Tribunal for AY 2017-18:

8. We have heard the submissions made by rival sides. Undisputedly, the facts in the present case are identical to the facts in Assessment Year 2016-17. It is also evident from the observations made by DRP in para 8.2 of the directions. The DRP while deciding the issue in impugned assessment year placed reliance on the directions of DRP for Assessment Year 2016-17. The assessee assailed the findings of DRP before the Tribunal in ITA No.7133/Mum/2019 (supra). The Co-ordinate Bench after examining the facts and the decision rendered in the case of CIT vs. Balaji Shipping (UK) Ltd. (supra) held as under:-

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

6. The short question we are now required to adjudicate is whether benefit of article 8 can be declined in respect of freight collections earned from cargo/containers loaded on slot of other vessels that the OEL, FZCO was entitled to under the joint business/pooling arrangements.

7. As learned DRP fairly accepts the issue is covered, in favour of the assessee, by Hon'ble jurisdictional High Court's judgement in the case of Balaji Shipping (supra). The mere fact that an appeal against the said judgement is pending before Hon'ble Supreme Court does not dilate the binding nature of this precedent. Once Hon'ble jurisdictional High Court takes a view, we are bound to follow the same-in letter and in spirit. Respectfully following the same, we uphold the plea, of the assessee and direct that benefit of article 8 must be extended to entire freight receipts-irrespective of whether the earnings are relating to feeder] vessels or by the ships in international traffic. The assessee gets the relief accordingly.

8. Ground no 1 & 2 are thus allowed."

In the absence of any contrary material we see no reason to take a different view. Respectfully following the order of Co-ordinate Bench ground No.2 of the appeal is allowed."

In view of the above, the Respondent submits that the CIT(A) has rightly observed that the issue is squarely covered by the decision of the Hon'ble Tribunal in the Respondent's own case and in fact, the Assessing Officer had also placed reliance on the earlier year's DRP directions which in turn is over-turned by the Hon'ble Tribunal vide its order dated 30 August 2021 in ITA No.7113/Mum/2019 (which was tendered in course of hearing). Accordingly, the Respondent prays that the claim of the Respondent on Article 8 benefit be allowed.

II Ground No.2 of Department's Appeal - Denial of Article 8 Benefit of India - United Arab Emirates on Inland Haulage Charges:

7. Facts of the case :

7.1. Inland Haulage Charges ('IHC') is not a separate business activity of the Respondent and no separate agreement is entered into between the Respondent and its customers for Inland haulage services.

7.2. The Respondent submits that a single/consolidated bill of Lading is issued by the Respondent to its customer which is for contract for carriage of goods. The billing of lading issue is from point to point and not port to port. Further, the bill of lading includes the leg of inland transportation and thus, it cannot be segregated from the international voyage.

7.3 The Respondent submits that IHC is incidental to the freight collection and are part of the operation of ships. Accordingly, in view of the decision of the Hon'ble Tribunal in case of Safemarine Container Line NV (ITA No.410/Mum/2012) which is further affirmed by the Hon'ble Jurisdictional High Court in case of DIT(IT) v. Safemarine Container Line NV [(2014) 367 ITR 209], the claim of the Respondent be allowed.

8. Action of Assessing Officer (Para 5.1-5.8 page No. 5-6 of the Final Assessment order):

The Assessing Officer denied the claim of the Respondent by noting that the Department has filed a SLP against the decision of the Hon'ble Bombay High Court in case of Safemarine Container Line NV (*suprqj*) and accordingly, the contention of the Respondent was rejected.

9. Findings of the CIT(A) [Para No. 12.3 at page 110-113 of the Ld. CIT(A) order] :

CIT(A) notes that it is recurring issue in the Respondent's own case and accordingly, following the order of the Hon'ble Tribunal for Assessment

Year 2017-18 has held that Respondent is eligible for the benefit of the Article 8 of India-UAE DTAA with respect to IHC charges earned by the Respondent.

Findings of Hon'ble Tribunal for A.Y. 2017-18 :

Relevant extracts of the Hon'ble Tribunal for AY 2017-18:

13. Article - 8 of DTAA deals with profits derived by operation of ships in international traffic. Clause 2(b) of Article-8 refers to profit from the rental of ship including operation of container and related equipment used in connection with operation of ships in international traffic. Though Article-8 of India -UAE DTAA does not spell out explicitly that rental of containers include trailers and related equipment for the transport of container as has been mentioned in India -Belgium DTAA Article 8(2)(c) or India -Denmark DTAA, Article 9(4)(b), nevertheless, considering the nature of activity and the services provided by the assessee to its customers vide a composite Bill of Lading it can be safely inferred that the activity of Inland Haulage is directly connected with transportation of goods in international traffic. The leg of transportation of containers from Inland to Port for further transportation in International traffic is a composite activity for which single Bill of Lading is issued by the assessee.

14. The Co-ordinate Bench in the case of A.P.Moller Maersk A/S after considering OECD Commentary and the decision rendered in the case of Balaji Shipping (UK) Ltd. observed as under:-

"9. In view of the OECD commentary we have considered the issue that internationally and by the Tribunal and Hon'ble High Court accepted that any activity directly connected with such transportation will always be included within the term "operations of ships". The Activities of the IHC are connected directly or an ancillary activity that provides minor contribution and should not be regarded as a separate business to the operations of ships. Further, the decision of Hon'ble Bombay High Court in the case of Balaji Shipping (UK) Ltd.(20i2) 253 CTR 460 (Bom) the issue was whether receipts from slot chartering can be considered as shipping income eligible to the beneficial provision of the Tax Treaty between India and UK. The Hon'ble High Court observed that the slot hire agreements are at least indirectly, if not directly connected and interlinked with and is an integral part of the enterprise's business of operating ships. The High Court further observed that the slot hire agreements also have a nexus to the main business of the enterprise of operation of ships. They are ancillary to and complement the operations of ships by the enterprise. Accordingly, Hon'ble Bombay High Court upheld the view that the benefit of the Tax Treaty would even be extended to income from such activities. Noting the OECD commentary the High court held as follows:-

"35. Paragraph 4of the commentary indicates that Article applies to profits directly obtained from the transportation of passengers or cargo by ships owned, leased or otherwise at the disposal of a person as well as the profits from the activities which are not directly connected with the

acquisition of the assessee's ships. In the latter case however, the activities must be ancillary to such operations viz. the operation of ships owned, leased or otherwise at the disposal of the assessee in international traffic. It indicates that the provision also applies to the activities that permit, facilitate or support the international traffic operations.

36. As far as the first type of case is concerned viz. where the slot hire facility is availed of for carriage of goods from a port in India only up to the hub port abroad and is thereafter transshipped on vessels actually operated by the assessee up to the final destination, it is irrelevant whether slot hire agreements are considered to be directly connected with the operation of ships or not directly connected with the operation of ships by the enterprise. In such cases, the slot hire agreements are inextricably interlinked with and connected to the operation of ships by the enterprise. The first type of case would in fact be covered by paragraphs 4 and 4.1 of the commentary."

The Hon'ble High Court then concluded in para 42 as under:-

"42. Our views on the two types of cases involved in the present appeal are in consonance with the view of the Delhi High Court, the OECD commentary and the commentaries referred to above."

10. We further noted that Hon'ble Bombay High court in Balaji's case followed the decision of the Hon'ble Delhi High Court in case of Director of Income-Tax. vs. KLM Royal Dutch Airlines (2009) 178 Taxman 291 (Del.). Hon'ble Delhi High Court which was followed by the Tribunal and Hon'ble Bombay High has held that where the activities are linked to each other, there is no scope for dissecting the activities. In that case, the recovery of rent from the Indian company was held to be income from international air traffic and not taxable in India as the same would construe activities directly and inextricably linked to the cargo handling business of the assessee. As per the ratio of this decision, activities which are linked or connected to each other such that one cannot be conducted efficiently without the other and which have a nexus to the main business of the assessee of operations of ships should be considered as integral part of income from shipping operations. As informed by Ld. Counsel the fact that these issues are also decided in favour of the assessee in subsequent year even by the Dispute Resolution Panel for AY 2011-12 by placing reliance on the decision of Hon'ble Mumbai Tribunal and Jurisdictional High Court in case of Safmarine (supra)."

The aforesaid observations of the Bench are de hors the terms of Article - 8(2)(c) of India -Belgium Tax Treaty and Article 9(4) of India Denmark Tax Treaty.

15. The Hon'ble Jurisdictional High Court in the case of CIT vs. Safmarine Container Lines NV (supra) reiterated the law expounded in the case of Balaji Shipping (UK) Ltd. (supra). Thus, in the facts of the case and the decisions referred above we find merit in ground No.5 of the appeal. We have no hesitation in holding that Inland Haulage Charges earned by

the assessee are inextricably linked to shipping business in international traffic. The activity of shipping container from inland to the Port for further shipping it to international traffic is an integral part of operation of ships. Hence, 'IHC' cannot be disintegrated from profit derived from shipping business as envisaged under Article-8 of India-UAE DTAA. Ergo, 'IHC' are not taxable as business profit in India. The ground No.5 of appeal is allowed."

In view of the above, the Respondent submits that the CIT(A) has rightly observed that the issue is squarely covered by the decision of the Hon'ble Tribunal in the Respondent's own case. Accordingly, the Respondent prays that the claim of the Respondent on Article 8 benefit be allowed."

4. Respectfully following the decision of Hon'ble ITAT's order in the case of appellant for earlier years where ITAT placed reliance on Balaji Shipping (UK) Ltd. (supra), the appeal of the department is dismissed.

5. Ground Nos. 3,4&5 are not adjudicated as the Ground No. 1&2 are decided in favour of the appellant, the said issues become academic.

6. The Revenue's appeal is dismissed.

C.O. No. 103/mum/2025

7. As the Department's appeal is dismissed, the Cross objection of respondent becomes academic and hence dismissed.

ITA No. 2329/Mum/2025

8. The facts in this appeal are pari materia with the appeal of A.Y. 2018-19. In view of the same, Department's appeal is dismissed.

C.O. No. 104/Mum/2025.

9. As the Department's appeal is dismissed, the Cross objection of respondent becomes academic and hence dismissed.

Order pronounced in the open Court on 18/07/2025.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

*PS*

BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai