IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

[Coram: Pramod Kumar AM and Rajpal Yadav JM]

I.T.A. No.: 392/RJT/2014
Assessment year: 2011-12

Alabra Shipping Pte Ltd, Singapore
GAC Shipping India Pvt Ltd -As agents for ***……Appellant***
Sonali Park, Plot No. 317, Ward 12 B
Gandhidham 370201

Vs.

Income Tax Officer- International Taxation
Gandhidham ***……Respondent***

Appearances by:

Paurami Sheth *for the appellant*
Yogesh Pandey *for the respondent*

Date of concluding the hearing : October 6, 2015
Date of pronouncing the order : October 9th, 2015

O R D E R

Per Pramod Kumar AM:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 21st March 2014 passed by the learned CIT(A) in the matter of assessment under section 172(4) of the Income Tax Act, 1961, in respect of vessel MT Alabra in the assessment year 2012-13.

2. The issue in appeal lies in a very narrow compass of material facts. The appellant, i.e. GAC Shipping India Pvt Ltd, filed a return in respect of MT Alabra, which is owned by Alabra Shipping Pte Ltd of Singapore (**ASPL-S**, in short) and the ASPL-S is freight beneficiary in respect of the same, as an agent of ASPL-S

and under section 172(3) of the Act. In the course of scrutinizing this return, the Assessing Officer noticed that while the assessee has claimed the benefit of India Singapore Double Taxation Avoidance Agreement **[(1994) 209 ITR (St) 1;** *hereinafter referred to* **as Indo–Singapore tax treaty**], the funds were remitted to freight beneficiary's account with The Bank of Nova Scotia in London UK. It was in this background, and noting that the freight has been remitted to a country other than Singapore and that remittance to Singapore is a *sine qua non* for availing the benefits of the Indo-Singapore tax treaty, that the Assessing Officer proceeded to, in view of limitations of benefits set out in Article 24 of India Singapore tax treaty, decline the benefits of Indo-Singapore tax treaty. Aggrieved, assessee carried the matter in appeal before the CIT(A). Broadly, contentions of the assessee, before the CIT(A), were as follows. It was contended that the freight receipts by ASPL-S were taxable in Singapore as the assessee was a tax resident of the assessee. In support of this contention, certificate dated 31st December 2013 from Singapore Inland Revenue Service and certificate dated 4th December 2013 from Independent Public Accountant in Singapore were also filed. It was contended that the provisions of Article 8 of Indo- Singapore tax treaty will apply to this case, and, accordingly, the freight receipts by the ASPL-S cannot be brought to tax in India. None of these submissions, however, impressed the CIT(A). He took note of a decision of this Tribunal, in the case of **Abacus International Pvt Ltd Vs DDIT** [ITA No. 1045/Mum/2008; order dated 31st May 2013; now reported as **(2013) 34 taxmann.com 21 (Mumbai - Trib.)]** which has, inter alia, observed that, "**the requirement of Article 24……. is that the assessee must have received the interest income in Singapore**" and proceeded to conclude, in his rather brief operative portion of the order, that "**humbly following the above decision, and in the absence of any evidence of bank slip or certificate from the bank that the sum has been remitted to Singapore, I hold that the benefit of Article 8 cannot be availed by the appellant**" and that "**accordingly, the actions of the AO are confirmed**".

3. 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.

4. The short issue that we are really required to adjudicate on in this case is whether or not, in view of the limitation of benefits provisions set out in the Indo Singapore treaty, the assessee can indeed be declined the benefits of India Singapore tax treaty.

5. As the assessee seeks benefit of treaty protection, in terms of its shipping income covered by Article 8, the only limitation on benefit provision which comes into play in this case is the provision set out in Article 24. While Indo

Singapore tax treaty does contain certain other significant LOB clauses, as set out in protocol dated 29th June 2005 [(2005) 196 CTR (Stat) 177], these LOB clauses are relevant only for the purposes of treaty protection related to protocol article 1. Coming back to Article 24, for the sake of ready reference, this provision is reproduced below:

> **ARTICLE 24**
>
> **Limitation of relief**
>
> **1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State.**
>
> **2. However, this limitation does not apply to income derived by the Government of a Contracting State or any person approved by the competent authority of that State for the purpose of this paragraph. The term "Government" includes its agencies and statutory bodies.**

6. As a plain reading of Article 24(1) would show, this LOB clauses comes into play when (i) income sourced in a contracting state is exempt from tax in that source state or is subject to tax at a reduced rate in that source state, (ii) the said income *(i.e. income sourced in the contracting state)* is subject to tax by reference to the amount remitted to, or received in, the other contracting state, rather than with reference to full amount of such income; and (iii) in such a situation, the treaty protection will be restricted to the amount which is taxed in that other contracting state. In simple words, the benefit of treaty protection is restricted to the amount of income which is eventually subject matter of taxation in the source country. This is all the more relevant for the reason that in a situation in which territorial method of taxation is followed by a tax jurisdiction and the taxability for income from activities carried out outside the home jurisdiction is restricted to the income repatriated to such tax jurisdiction, as in the case of Singapore, the treaty protection must remain confined to the amount which is actually subjected to tax. Any other approach could result in a situation in which an income, which is not subject matter of taxation in the residence jurisdiction, will anyway be available for treaty protection in the

source country. It is in this background that the scope of LOB provision in Article 24 needs to be appreciated.

7. So far as the case before us is concerned, there is no dispute that the business is being carried on by the assessee in Singapore and that the assessee is tax resident of Singapore. By letter dated 31st December 2013 (Reference no. 200716495G), Inland Revenue Authority of Singapore has confirmed that, in the case of Albara Shipping Pte Ltd, "freight income has been regarded as Singapore sourced income and brought to tax on an accrual basis (and not remittance basis) in the year of assessment". The assessee has also filed a confirmation dated 4th December 2013 from its public accountant that the freight of US $ 6,71,366 earned on MT Albara's sailing from Sikka port has been included in the global income offered to tax by the company in Singapore. On these facts, in our considered view, the provisions of Article 24 cannot be put into service as this provision can only be triggered when twin conditions of treaty protection, by low or no taxability, in the source jurisdiction and taxability on receipt basis, in the residence jurisdiction, are fulfilled. There is nothing on the record to even vaguely suggest that the freight receipts of ASPL-S were taxation only on receipt basis in Singapore. Quite to the contrary, there is reasonable evidence to demonstrate that such an income was taxable, on accrual basis, in the hands of the assessee. All this material was duly confronted to the Assessing Officer, in the remand proceedings, and the Assessing Officer could not demonstrate that the stand taken by the ASPL-S in this regard was incorrect.

8. As regards reliance of the authorities below on the decision of this Tribunal, in the case of Abacus International *(supra),* suffice to say that it was in the context of interest income of the assessee and there was nothing on record to suggest that such an income was to be taxed in Singapore on accrual basis, rather than on receipt basis. The Assessing Officer thus derives no advantage from this decision. Having said that we may add that we are in complete agreement with the coordinate bench that, in order to come out of the mischief of Article 24, the onus is on the assessee is to show that the amount is remitted to, or received in Singapore, but then such an onus is confined to the cases in which income in question is taxable in Singapore on limited receipt basis rather than on comprehensive accrual basis. However, in a case in which it can be demonstrated, as has been demonstrated in the case before us, that the related income is taxable in Singapore on accrual basis and not on remittance basis, such an onus does not get triggered.

9. We have noted that the only reason for declining Indo Singapore tax treaty benefits was the application of Article 24 and that there is no other dispute on the claim of treaty protection of shipping income under article 8(1) which provides that, "Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State". In this view of the matter, entire freight income of the assessee, which is only from operation of ships in international traffic, is taxable only in Singapore. The Assessing Officer was thus in error in bringing the same to tax in India.

10. In view of the above discussions, as also bearing in mind entirety of the case, we uphold the plea of the assessee and direct the Assessing Officer not to tax income of the assessee, from operation of ships in international traffic, in India. The assessee gets the relief accordingly.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced today on 9th day of October, 2015.

Sd/-
Rajpal Yadav
(Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

Dated: 9 th day of October, 2015.

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

By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Rajkot bench, Rajkot