

## Assessee with no tax incidence but otherwise liable to tax in UAE allowed DTAA benefits

**Summary – The Mumbai ITAT in a recent case of Simatech Shipping Forwarding LLC., (the Assessee) held that where assessee had no tax incidence but otherwise liable to tax in UAE, benefits of India-UAE DTAA were applicable.**

### Facts

- The assessee was a resident of UAE engaged in the business of shipping. It had entered into joint pool agreement with the other shipping companies whereby the other shipping company and the assessee shipping company shared the space on the vessels owned by others, which came to India.
- The assessee claimed that the article 8 of the India-UAE DTAA would be applicable to it. It was further stated that other pool partners had availed the benefit of section 90. However, in the assessee's case, the controversy pertained to whether the sale of slots in the joint pool agreements with other shipping companies fell under article 8(4) of the DTAA between India and UAE.
- The Assessing Officer held that the assessee was not eligible for Treaty benefit. He, therefore, invoked the provisions of section 44B and computed the presumptive profit on total receipt of Rs. 32.32 crores at Rs. 2.57 crore applying the rate of 7.5 per cent.
- On appeal, the Commissioner (Appeals) deleted the order of the Assessing Officer.
- On second appeal.

### Held

- The ITAT after perusing the language used in the Treaties regarding the issue of availability of DTAA between India and UAE on the assessee, who is tax resident of UAE, but has not paid taxes there, declined to agree with the reason given by Revenue authorities that DTAA applies on juridical double taxation, *i.e.*, if income is not taxed in one state, then it should be taxed in full in the other, if it is otherwise taxable, without granting any benefit of the Treaty.
- ITAT held that the above argument cannot be sustained because, the assessee is 'otherwise liable to tax' in UAE. Simply because there was no tax incidence in UAE, does not mean that the assessee ceases to be otherwise liable to tax, as per article 4. Once the assessee, gets within the expression 'otherwise liable to tax' in UAE Treaty, DTAA becomes operative.
- The assessee shall get the Treaty benefit. It would now embark on the argument of the assessee that the ratio laid down by *Dy. DIT v. Balaji Shipping (UK) Ltd.* [\[2009\] 121 ITD 61 \(Mum.\)](#) should be applied or revenue's argument that the ratio laid down in *Asstt. CIT v. Federal Express Corpn.* [\[2010\] 125 ITD 1 \(Mum.\)](#) should be applied, as the language used for article 8 in UAE Treaty is similar to US Treaty.

- The case of *Balaji Shipping (UK) Ltd. (supra)* cannot be relied upon, simply because article 8 is differently worded, therefore, the arguments of the revenue that the wordings used in article 8 in UAE Treaty is *pari materia* to the language used in US Treaty is convincing. This fact, is accepted by the assessee. In these circumstances, when it there is no detailed reasoning in the orders of the revenue authorities, giving the nature of the receipts from shipping business, it is in the interest of justice, consider that the issue be restored to the file of the Assessing Officer, to reconsider the exact nature of income.
- Therefore, the order of the Commissioner (Appeals) is set aside and the Assessing Officer is directed to consider the nature of income in issue and consequently, the availability of Article 8 of the India UAE Treaty, which shall be in accordance with the ration laid down in the case of *Federal Express Corpn. (supra)*.