

Vessel operating between Indian ports as part of its international voyage would get benefit of Article 8 of DTAA

Summary – The Rajkot ITAT in a recent case of Taurus Shipping Services., (the Assessee) held that a vessel operating within Indian Ports as part of larger international voyage would get benefit of article 8 of India-Singapore DTAA

Facts

- The issue came up for consideration in appellate proceedings was whether a vessel which had operated within Indian Ports as part of larger international voyage would get benefit of Article 8 of India-Singapore Double Taxation Avoidance Agreement ('DTAA') as term used therein was operation of ship in international traffic.
- It was undisputed that Assessing Officer had never doubted the eligibility of assessee to claim benefit under India-Singapore DTAA. The only issue raised by him was since vessel had performed voyage between two ports in India and not in international traffic, the benefit claimed on the basis of DTAA was not available.

Held

- In case of *Essar Oil Ltd. v. Dy. CIT* [\[2006\] 5 SOT 669 \(Mum.\)](#), it was held that if any ship is operated by a non-resident, it shall be considered to have operated in international traffic even after it is operated between two places in India by chance or along with other voyages. A voyage becomes coastal traffic only if the foreign ship operated solely and exclusively between domestic ports in India.
- Ships made coastal voyage as part of its larger international voyage. A ship or aircraft if operated exclusively between places in foreign country, i.e., during a particular voyage, if the place of departure and the place of arrival of ship or aircraft are both in a foreign country, then the voyage would be termed as 'International Traffic' as used in Article 8 of Treaty.
- A voyage becomes coastal traffic only if foreign ship operated solely and exclusively between domestic ports in India. In present case, ship never operated between Indian Ports solely and exclusively. It operated in international water as established by assessee which is not disputed. After examining the case in terms of Article 8 of treaty, ship had operated in international traffic even while carrying goods from Kandla to Vizag and hence it can be construed that there was no liability to pay tax by assessee in India. Similar view has been taken by ITAT, Mumbai Bench in case of *Dy. DIT v. Safmarine Container Lines NV* [IT Appeal No. 3073 (Mum.) of 2010].

- In view of above legal and factual discussion, it is clear that if ship voyages between two Indian ports, on part of its international voyage, it cannot be termed as Indian voyage as alleged by Assessing Officer. In view of above, Commissioner (Appeals) was justified that assessee will get benefit of Article 8 benefit from operation of ship in international traffic of India-Singapore. Thus, the addition made by Assessing Officer was rightly deleted by Commissioner (Appeals).