ITAT refused to invoke LOB clause of India-UAE treaty as shipping Co. wasn't a conduit Co. in UAE

Summary – The Rajkot ITAT in a recent case of MUR Shipping DMC Co., UAE., (the Assessee) held that Shipping company in UAE could not be said to have been created for the purpose of availing India-UAE tax treaty benefits on the ground that such company was owned by shareholders in Switzerland when treaty protection in respect of income of such a nature was anyway available under India-Swiss tax treaty

Facts

- The Assessing officer denied benefit of India-UAE DTAA to shipping company by invoking Limitation of Benefit ('LOB') clause of DTAA.
- The AO had given two reasons for invoking LOB clause – First, that vessel is owned by an entity based in Marshall Island which has no tax treaty with India; and – Second, that the assessee company is owned by shareholders in Switzerland and if the assessee company were to carry on business directly, the treaty protection would not have been available.

Held

A. On first ground

- Though the merchant vessel was owned by a Marshall Island based entity and it was given to the assessee under long-term time charter arrangement but ownership of vessel is not a *sine qua non* for availing treaty protection of shipping income under Article 8.
- Article 29 of DTAA can be pressed into the service only when main purpose, or one of the main purposes of the creation of an entity was to obtain benefits of DTAA which would otherwise not be available but then since nothing really turns on the situs of ownership of the ships so far as treaty benefits, are concerned, the fact of the ships being owned by an entity in Marshall Island is wholly irrelevant for invoking Article 29.

B. On second ground

- Coming to the second ground on which the AO had invoked Article 29, it has been stated that the income from operations of ships of the Switzerland based entities in international traffic is not covered by Article 8 of India-Swiss DTAA and therefore, if the shareholders, which wholly own capital of the assessee-company, were to carry on business directly, the treaty protection would not have been available.
- Whether a Swiss tax resident earns Indian sourced income from operations of ships in international traffic or whether a UAE tax resident earns Indian sourced income from operations of ships in

international traffic, the income is not taxable in India – in the former case because of provisions of Article 22(1) of India-Swiss tax treaty, and in the later case of because of provisions of Article 8 of India-UAE tax treaty.

- When treaty protection in respect of income of such a nature was anyway available, though under a different kind of provision of the India-Swiss tax treaty, the assessee entity could not be said to have been created for the purpose of availing India-UAE tax treaty benefits. The action of the AO in invoking the provisions of Article 29 was vitiated in law on this count.