

## Benefit of India-UK DTAA can't be denied to a UK based partnership firm

**Summary –** The High Court of Calcutta in a recent case of *Maersk Line U.K. Ltd.*, (the Assessee) held that where assessee, a partnership firm based in UK, had two partners one located in UK whereas another one based in Netherlands, it was to be regarded as person covered under India-UK DTAA and since it had fiscal domicile in UK, its income from operation of ships in international traffic was not exigible to tax in India

### Facts

- The assessee was a partnership firm based in UK. It had two partners one was based in UK whereas another one was based in the Netherlands.
- In course of assessment, the department was of the view that as per the provisions of the India-UK DTAA income from operation of ships in international traffic was not liable to tax in India in the hands of either of the two corporate partners. However the assessee being a partnership firm, based in UK, it was fiscally transparent entity in UK and hence outside the ambit of the treaty between India and UK and its income was therefore, exigible to tax as per the provisions of domestic law.
- The petitioner being a partner of assessee-firm, filed instant petition contending that distinction between a partnership and its partners regarding the same income could not be drawn for the purpose of taxing the partnership in India. It was submitted that the DTAA had everything to do with income and avoidance of double taxation on it. The income sought to be made subject-matter of the assessment proposed by the impugned notices, was already accepted as *nil* in the hands of the partners and that same income could not thereafter be taken to be income exigible to tax in India in the hands of the assessee firm.

### Held

- The contention of the revenue appears to be that the noticee is a fiscally transparent entity in the UK being outside the ambit of the treaty between India and that country as not being a person thereunder, its income is exigible to tax in India under the Act, while the partners thereof were exempt under section 10(2A). It follows that the revenue has treated the noticee as a person within the meaning of section 2(31) to apply the charging section 4.
- Similar situation was dealt with in *P & O Nedlloyd Ltd. v. Asstt. DIT* [\[2014\] 369 ITR 282/52 taxmann.com 468/\[2015\] 228 Taxman 90 \(Cal.\)](#) where this Court held the noticee to be a person covered by the treaty. Applying that decision to the facts of this case the noticee stands covered by the treaty as a person thereunder and being an enterprise of a contracting State, taxable only in that State.

- Nevertheless, since on behalf of the petitioner it was also submitted in the alternative that the noticee is not a person covered by the treaty though such submission not made in agreement with the submission to the same effect made by the Revenue, the purportedly similar submissions must be considered. At the first instance, if the noticee is not covered by the treaty then the contention of the revenue will be correct that it is tax transparent in the UK and, therefore, its income exigible to tax under domestic law. At the second instance if by application of Article 3, paragraph 2 of the treaty only Indian partnerships are to be covered thereby then such partnerships cannot be taxed in the UK as having fiscal domicile in India. That situation is not however borne out by the facts in this case.
- The court is unable to take a different view than the one already taken *P& O Nedlloyd Ltd. (supra)* on this issue. Partnerships are not taxed in the UK, be it a partnership based there or here in India. Only partnerships established in the UK are required to file a return there as noted above. On the other hand, where a partnership based in the UK is treated as a person under domestic law as its income exigible to tax thereunder, it follows that paragraph 2 of Article 3 of the convention is to be given an interpretation so as to benefit such a partnership based in the UK which since not taxed under the laws there might be treated as liable to tax in India. The revenue fairly submitted that there was a subsequent amendment made to the treaty and duly notified whereby similar issue would not arise in future against the noticee.
- For the reasons aforesaid, it is held that the noticee is a person covered under the treaty and being an enterprise of the UK, the same has fiscal domicile in the UK where it is based. Its income from operation of ships in international traffic is not exigible to tax under domestic law. Consequently, the impugned notice is set aside and the writ petitions disposed of.