No tax on sum received by Dutch Airlines for line maintenance facilities provided to other Airlines

Summary – The High Court of Delhi in a recent case of KLM Royal Dutch Airlines., (the Assessee) held that Amount received by assessee-international airlines as IATP members by rendering technical facilities i.e. line maintenance facilities to other member airlines at various Indian airports being covered under article 8(4) of DTAA between India and Germany and article 8(1) and 8(3) of DTAA between India and Netherlands respectively, was not liable to tax in India

Facts

- The assessees namely 'Lufthansa' and 'KLM', were international airlines with headquarters and controlling offices in Cologne, Germany and Amsterdam, Netherlands respectively and branch offices in India.
- They operated aircraft in the international traffic business; these activities were also carried out in India inasmuch as they operated aircraft in international traffic from, and to, various Indian airports.
- Both the assessees were members of the International Airlines Technical Pool ('IATP' or the 'Pool'). As IATP members they extended minimal technical facilities (line maintenance facilities) to other International Air Transport Association ('IATA') member airlines at Indian airports.
- The assessees claimed that the amounts received from various IATP member airlines for the above services rendered in India were not taxable in India.

  The Assessing Officer held that such amounts received by them in India were taxable, holding that these activities were not covered under the term 'Air Transport Services'.

- He held that the assessees' branch offices in India constituted permanent establishments and, therefore, the income relating to the engineering and traffic handling was taxable in India, as the same was not covered under article 7 of DTAA.
- The Tribunal held that the assessees profit due to participation in a pool was covered under article 8(4) of the DTAA between India and Germany and by articles 8(1) and 8(3) of DTAA between India and Netherlands and such profit could not be brought to tax in India.

Held

- While interpreting tax treaties and conventions, the emphasis is upon the context in the instrument itself, and 'any subsequent agreement between the parties' as to the interpretation of the treaty or the application of its provisions. The expression 'profit from the operation of ship or aircraft in international traffic' has not been defined in the Indo-Dutch DTAA, or in the Indo-German DTAA.
- The Tribunal while explaining the meaning of profit from the operation of ships or aircraft in international traffic in both Lufthansa and the KLM cases took into consideration the bye-laws of IATP, because this organization authorized its members to share aircrafts, aircrafts pooling, ground

handling equipment and manpower all over the world. The Tribunal also considered the relevant clauses of the IATP manual and held that any receipt by the assessee due to participation in the IATP pool as provided in its manual and dealt with in article 8(4) of Indo-German DTAA will not be taxable in India under article 8(1); a similar finding was rendered in the case of KLM too.

- The assessees participated in the IATP pool and earned certain revenues from such activities and also incurred expenditure. There is, clear reciprocity as to the extension of services; IATP membership is premised upon each participating member being able to provide facilities for which it was formed (line services, OMR services, *etc.*) of a required mandate standard. As there was reciprocity in the rendering and availing of services, there was clearly participation in the pool; in terms of the two DTAAs (Indo-German and India-Netherlands) the profits from such participation were not taxable in India.