Limitation of relief clause can't be invoked to deny exemption on sale of debt instrument by Singaporean Co.

Summary – The Mumbai ITAT in a recent case of Citicorp Investment Bank (Singapore) Ltd., (the Assessee) held that Income earned by assessee, a Singapore based company, on sale of debt instrument was not taxable in India as per Article 13(4) of India-Singapore DTAA

Facts

- The assessee was tax resident of Singapore and registered as Foreign Institution Investor (FII) in Debt segment, with SEBI. It filed return of income wherein a capital gain on sale of debt instruments was claimed exempt under Article 13(4) of India-Singapore DTAA.
- The Assessing Officer while framing draft assessment order disallowed the benefit of Article 13(4) of the DTAA on capital gain earned in India holding that provisions of Article 24 of Treaty spoke about the restriction of exemption of such Capital Gain to the extent of repatriation of such income to the other country (Singapore). The Assessing Officer further held that assessee had not produced any evidence to show such required repatriation as mandated by Article 24 of Treaty for entitlement of exempt income.
- The DRP opined that as per Article 13(4) of Treaty between India and Singapore, the capital gain earned by resident of Singapore would be taxed on in Singapore, however, in view of Article 24 of Treaty where income that was claimed exempt or taxed at lower rate in India was subject to tax in Singapore on receipt basis, than the exemption (in India) would be applicable to such income which had been remitted to Singapore. The DRP also referred to the certificate of Singapore Tax Authority in their order and concluded that the letter/certificate issued by Land Revenue of Singapore could not override the Treaty between India and Singapore. The DRP finally concluded that assessee had not furnished any evidence that the capital gain earned in India was remitted to Singapore and thus the addition was confirmed.
- On appeal:

Held

- Article 13(4) of Treaty clearly speaks that gain derived by a resident of contracting State (Singapore) from the alienation of any property other than those mentioned in paragraphs 1 & 2 of this Article (13) shall be taxable in that State (Singapore). Article 24 of the Treaty provides the limitation of benefit provision used by such country which imposes on a tax of certain payer on remittance basis. The limitation provided under this Article operates in conjunction with the provisions of Treaty which are related with 'reduced rate of tax' or 'exempted' not tax in the country of source.
- In view of the legal position as held by Co-ordinate Bench of this Tribunal in *SET Satellite (Singapore) Pte Ltd.* v. *ADIT* in [M.A. No. 520 (Mum.) of 2010, dated 11-2-2010] , the limitation prescribed under

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Article 24 of the DTAA was not applicable in the instant case as the income earned by the assessee on sale of debt instrument was not taxable in India as per Article 13(4) of the DTAA. Thus, the observation of DRP that the assessee had not furnished any evidence that the capital gain earned in India, was remitted to Singapore had no relevance.

- Thus, following the decision of Co-ordinate Bench in *ALP Company Pte Ltd.* v. *ADIT* [2017] 78 taxmann.com 240 (Mum.-Trib) and in *SET Satellite (Singapore) Pte Ltd.* (*supra*) it is held that the authorities below erred in denying the benefit of Article 13(4) of India-Singapore DTAA as Article 24 of the Treaty has no application. Hence, the appeal of the assessee is allowed.

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