

Inland Haulage Charge is income from shipping operations; exempt as per Article 9 of India-France DTAA

Summary – The Mumbai ITAT in a recent case of Delmas S.A.S., (the Assessee) held that IHC being part of income derived from operation of ship in international traffic is exempt under article 9 of India-France DTAA; hence, not taxable in India

Facts

- The assessee a tax resident of France was engaged in shipping business in international water and had carried out its business activities in India through its agent.
- The Assessing Officer noticed that the assessee had not offered to tax Inland Haulage Charges (IHC), and service tax in relation to IHC and called upon the assessee to explain why it should not be brought to tax.
- The assessee submitted that these charges were not taxable as they were income forming part of the operation of ships in international traffic and, hence, exempt under article 9 of India-France Double Taxation Avoidance Agreement.
- The Assessing Officer noted that IHC was earned from the activity of Inland transportation and not from International transport and opined that it, was taxable in India under section 44B and held that the assessee was not entitled to the benefit of article 9 and service tax collected by the assessee had to be included in the gross receipt of the assessee for the purposes of taxation.
- The DRP ultimately concluded that IHC not being part of international traffic, had to be brought to tax under section 44B.

Held

- The issue in dispute now stood decided in favour of the assessee in assessee's own case by virtue of order of the Tribunal in [IT Appeal No. 6649 (Mum.) of 2017, dated 14-3-2018]
- Thus, the Tribunal held that Inland Haulage Charges (IHC) received by the assessee shall form part of income from operation of ships in international traffic and, accordingly, article 9 of India-France DTAA shall apply to it.
- Thus, IHC being part of the income derived from the operation of shipping in international traffic, is exempt under article 9, hence, not taxable in India.
- Consequently, service tax collected on IHC is not taxable in India as per article 9.