

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 847 of 2015

TO

TAX APPEAL NO. 849 of 2015

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COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

TAURUS SHIPPING SERVICES....Opponent(s)

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Appearance:

MR NITIN K MEHTA, ADVOCATE for the Appellant(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 01/12/2015

ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue has filed these appeals raising identical question for our consideration which reads as under:

“Whether the impugned order is perverse in law and on facts in wrongly interpreting the voyage of the vessel between two ports in India, as 'international voyage' and permitting the Assessee to avail the benefit of Article 8 of India-Singapore Double Taxation Avoidance Agreement?”

2. Briefly stated, the facts are that:

The respondent-assessee is a company and had acted as an agent of three vessels which had transported goods from Kandla Port to Visag. The freight beneficiary was one M/s. Jaldhi Overseas Pte Limited, who claimed benefit of DTAA between India and Singapore. The vessels had undertaken such freight transportation during the journey from Singapore elude to Dubai. The Assessing Officer came to the conclusion that such transportation between Kandla to Visag cannot be considered as international traffic as defined in DTAA and between India and Singapore. The Tribunal, however, ultimately held in favour of the assessee relying on the decision of the Tribunal in similar cases.

3. We noticed that the term 'international traffic' has been defined in Clause 3(h) of the DTAA in question and reads as under:

“ (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.”

4. In terms of Article 8 of the DTAA, profits derived by an enterprise of a contracting state from the portion of ships or aircraft in international traffic would be taxable only in that state. In this context, therefore, the interpretation of term 'international traffic' becomes relevant. If the transport by the

ships in question from Kandla to Visag fall within the definition of the term 'international traffic', in terms of Article 8, the assessee would be entitled to the benefit of Article 8 of the DTAA.

5. The term 'international traffic', as noted, is defined to mean any transport by a ship or aircraft operated by an enterprise by a contracting state. This definition, however, has an exception clause which excludes the transport when the ship or aircraft is operated solely between the places in the other contracting state. Thus, any transaction by a ship or aircraft operated by enterprise or contracting state would be an international traffic. However, this would be not so if a ship or the aircraft is operated solely between the places in the other contracting state. If ships in question, therefore, were operated solely between Kandla and Visag, in the present case, such transport would be excluded from the definition of term 'international traffic'. Here, the word 'solely' is all important. It is not even the case of the revenue that the journey being undertaken by such vessels in question were confined between the two ports in India either routinely or even in individual isolated case. Admitted facts, as noted above, are that such transportation was undertaking during a larger journey of the vessels from Singapore to Dubai. Under such circumstances, the requirement of such journey being solely between places in the other contracting state is not satisfied. The exclusion clause of the definition of term 'international traffic', therefore, would not apply. In other words, the transport, which

was otherwise in the nature of international traffic, would be so treated in terms of Clause (h) of Article 3 of the DTAA. We see no error in the view of the Tribunal. Tax Appeals are, therefore, dismissed.

(AKIL KURESHI, J.)

(MOHINDER PAL, J.)

Jyoti

