

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL No. 12 of 2012****For Approval and Signature:****HONOURABLE MR.JUSTICE V. M. SAHAI****HONOURABLE MR.JUSTICE N.V. ANJARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment?	
2	To be referred to the Reporter or not?	
3	Whether their Lordships wish to see the fair copy of the judgment?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?	
5	Whether it is to be circulated to the civil judge?	

DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION)**Versus****MITSUTOR SHIPPING AGENCY PVT LTD****Appearance :**MRS MAUNA M BHATT for Appellant(s) : 1,
None for Opponent(s) : 1,**CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI****and****HONOURABLE MR.JUSTICE N.V. ANJARIA****Date : 04/07/2012****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE N.V. ANJARIA)**

The present appeal preferred by the Revenue is directed against the order dated 12th August 2011 of the Income-tax Appellate Tribunal,

Rajkot Bench, Rajkot in ITA No. 26/RJT/2011 for the Assessment Year 2007-08.

2.0 The appellant has raised following two questions, formulated in the memorandum of appeal, as substantial question of law.

“[A] Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by CIT(A) in deleting the addition of Rs.58,66,795/-, made on account of not allowing relief of the DTAA by the Assessing Officer?

[B] Whether the Appellate Tribunal is right in law and on facts in not considering the fact that assessee has not submitted any evidence regarding place of effective management before CIT(A) or Appellate Tribunal?”

3.0 The relevant facts involved in the appeal and with reference to which the aforesaid questions are framed, are that one MV African Halcyon, a Shipping Company, which is registered in Netherlands and represented in India by respondent herein i.e. M/s. Mitsutor Shipping Agency Pvt Ltd. which is the respondent herein filed its provisional returns on 22nd February 2008 under Section 172(3) of the Act. The Port Clearance Certificate was thereupon issued to it. In the final return submitted on 5th March 2008, the said assessee claimed the benefit of Double Taxation Avoidance Agreement (DTAA) entered into between Government of India and Government of Netherlands. The covenant was entered into with an object of avoiding double taxation and preventing the fiscal evasion.

3.1 The Assessing Officer in his Assessment Order dated 30th December 2008 determined the taxable income at Rs.58,66,795/- demanding the tax of Rs.24,77,547/- as payable rejecting the benefit which was claimed

by the assessee under DTAA. According to the Assessing Officer, the assessee had failed to supply documents necessary to avail the benefit.

3.2 In the proceedings of appeal, upon an application by the respondent, the appellate commissioner permitted production of certain documents by the assessee. He was of the view that due to short time the assessee could not produce the same before the Assessing Officer. Copies of certificate of incorporation in Netherlands, certificate of residence, minute of the Annual General Meeting etc. were produced by the respondent assessee. These evidences were sent to Assessing Officer for his comments and the Assessing Officer submitted his remand report.

4.0 Article 8A of the Double Taxation Avoidance Agreement between the Government of India and the Government of Netherlands *inter alia* provides that profits from the operation of ships in international traffic shall be taxable only in the state in which the place of effective management of the enterprise is situated. Therefore what was required for the assessee in order to earn the benefit of the covenant was to show and establish before the Income Tax Authorities that the place of effective management of its company was at Netherlands. On the basis of the documents which were permitted by the Appellate Commissioner to be produced before him in course of hearing of the appeal and as there was no adverse comments made on these documents in the remand report of the Assessing Officer, the Commissioner (Appeals) found that assessee was able to the place of its effective management was Netherlands. Accordingly, he held that the assessee was eligible for benefit of DTAA and the income which was assessed by Assessing Officer for the purpose of tax was ordered to be deleted.

5.0 The Revenue went in appeal against the order of the Appellate

Commissioner. However, the Income-tax Appellate Tribunal by its order, which is impugned in the present appeal, dismissed the appeal of the Revenue and confirmed the order of the Appellate Commissioner. The Tribunal observed *inter alia* as under:

“ We find that though, certain details were not filed before the AO but same was filed before the CIT(A). The CIT(A) has accepted the document as there were sufficient reason for which the assessee could not file certain documents. The documents filed before the CIT(A) and the CIT(A) called the remand report from the AO. The AO submitted the remand report dated 27-02-2010. The CIT(A) after considering the relevant material and remand report of the AO, find that the effective management of the assessee-company is in Netherlands. Accordingly, the benefit disallowed by the AO has been allowed. The revenue has failed to point out any contrary material either at the time of hearing or from the record against the finding of the CIT(A). The documents pointed out by the Id. D.R. That those were filed first time before ITAT does not effect to the conclusion as effective management of the company was same as in earlier years. Under the circumstances, we do find any infirmity in the order of the CIT(A).”

6.0 From the material documents allowed to be produced, the assessee could satisfy the Commissioner (Appeals) that the place of effective management of its enterprises was situated at Netherlands and thus, the requirement of condition in Article 8A of DTA agreement was met with. The Tribunal has rightly confirmed the decision of the Appellate Commissioner holding the assessee to be eligible for benefits of DTAA. While confirming the findings of the Commissioner, the Tribunal also observed that Revenue had failed to point out any contrary material either from the record or at the time of hearing before it.

6.1 The Commissioner (Appeals) as well as the Tribunal, have

concurrently arrived at the findings that the assessee is eligible for the benefit. The finding arrived at by the Tribunal is based on material before it and was based on the reading of the documents submitted by assessee whereby it was pointed out that necessary requirement about place of effective management under the relevant clause of agreement was satisfied. No substantial question arises for consideration of this Court.

7.0 Accordingly, this Tax Appeal is dismissed.

[V. M. SAHAI, J.]

[N. V. ANJARIA, J.]

Amit

