IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 466 of 2011

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI
HONOURABLE MR.JUSTICE N.V. ANJARIA

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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 ?

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DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) - Appellant(s)
Versus
M V LION GLORY M/S WORLDGLORY SHIPPING LTD - Opponent(s)

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Appearance :
MRS MAUNA M BHATT for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI

and

HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 14/06/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

We have heard Mr. M.R. Bhatt, learned senior counsel for the Revenue, in this Tax Appeal. The question proposed by the Revenue is as under:

> *"Whether the Appellate Tribunal is right in law and on facts in holding that the assessee is entitled to claim benefit under DTAA between Union of India and Government of Malta?"*

2. The Assessing Officer as well as the CIT(A) have held that the assessee could not prove his place of residence in Malta, and therefore, the assessee is not entitled for the benefit of Section 8 of the Treaty entered between India and Malta. The assessee has filed a certificate, which showed that M/s. World Glory Shipping Limited is liable to tax in Malta under the Income-tax Acts in respect of gains or profits from the operations relating to the carriage of goods or passengers of MV Lion Glory. On the basis of this certificate, the Income Tax Appellate Tribunal has recorded a finding that the assessee has proved the place of effective management and his residency on the basis of liability to tax in the contracting State. Therefore, the assessee was entitled for the benefit of DTAA, a Treaty between India and Malta. The relevant part of the finding in this regard is quoted hereunder:

> *"Therefore, as per Article 8 of the treaty the profits derived by the assessee company is taxable in contracting state I.e. Malta. It was also contended that the assessee company is incorporated in Malta and also liable to tax in Malta. As per Article 4 of the treaty, the assessee company way of incorporation and registration in Malta is liable to tax in Malta. The AO and CIT(A) has held that the assessee could not prove the place where the effective management is situated however as per Article 4 of the treaty the assessee is required to prove the residency on the basis of liable to tax in the contracting state. Therefore, the basis of rejecting the benefit of treaty by the lower authority is incorrect. Since, the assessee is also engaged in the International Traffic and residence of Malta. As per Article 8 of the*

treaty, the income of the assessee is exempt in India. Therefore, respectfully following the above decision it is held that the AO has no jurisdiction to tax the said income u/s 172 of the Income-tax tax (sic) Act. Therefore, the assessee is allowed the benefit DTAA and the income on operation of ships in the International traffic is exempt. The appeal of the assessee is allowed."

3. The Income Tax Appellate Tribunal has set aside the finding of the Assessing Officer as well as the CIT(A). We do not find any error in the order of the Tribunal. The appeal is concluded on the finding of fact. No substantial question of law arises for consideration of this Court. This Tax Appeal is accordingly dismissed.

(V.M. SAHAI, J.)

(N.V. ANJARIA, J.)

(SN DEVU PPS)