आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.(TP)A.No.11/CHNY/2020

(**निर्धारण वर्ष** / Assessment Year: 2015-16)

M/s. Bengal Tiger Line Pte Ltd., Indian Chamber Building Annexe, 1st Floor, N.6, Esplanade, Chennai – 600 108.	Vs	**The DCIT,** International Taxation 1(1), Chennai – 600 006.
PAN: AADCB6864F		
(**अपीलार्थी/**Appellant)		(**प्रत्यर्थी/**Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S.P. Chidambaram, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri S. Bharath,CIT & Ms. R. Anitha, JCIT
सुनवाई की तारीख/Date of hearing	:	22.10.2020
घोषणा की तारीख /Date of Pronouncement	:	06.11.2020

आदेश / **O R D E R**

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the final assessment order passed by the Assessing Officer u/s.143(3) read with section 144C(13) of the Income Tax Act, 1961 (hereinafter the 'Act') dated 22.11.2019, which in turn passed in pursuant to directions of the Dispute

Resolution Panel (DRP)-2, Bengaluru u/s.144C(5) of the Act dated 23.09.2019 and pertains to assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:-

1. The order of the Deputy Commissioner of Income Tax. International Taxation l(1), Chennai ["AO/Assessing Officer'] is contrary to law, facts and circumstances of the case.

2. International shipping income from freight operations assessed to tax in India.

2.1 The directions of the Dispute Resolution Panel (DRP) - 2, Bengaluru ('DRP') and the consequential final assessment order is erroneous in so far as assessing the international shipping income from freight operations as income taxable in India under section 44B of the Act.

2.2 The AO / DRP ought to have appreciated that as per the provisions of Article 8 of the India - Singapore DTAA, any shipping income of a non-resident is taxable only in the country of residence, i.e. Singapore and as such cannot be assessed to tax in India.

2.3 The AO / DRP ought to have appreciated that the essential conditions for invoking the provisions of Article 24 of the DTAA is not satisfied and therefore it cannot be invoked.

2.4 The AO / DRP erred in imputing conditions for applicability of a tax treaty which are not present anywhere in the India-Singapore DTAA and therefore the order of the AO read with DRP Directions is ultra vires.

2.5 The AO / DRP ought to have appreciated that merely because international shipping income is exempt in one contracting state (i.e. Singapore), it does not alter the taxing rights of the said income so as to shift the same to the other contracting state (i.e. India).

2.6 The AO / DRP ought to have appreciated that Article 8 of the DTAA is not an exemption provision but only an enabling provision which provides an exclusive right of taxation of income to the residence country and as such the provisions of Article 24 (Limitation of Benefit) will not apply to the income covered under Article 8 of the DTAA.

2.7 The AO / DRP ought to have appreciated that Article 8 of India - Singapore DTAA is unambiguous and clearly states that only the country of residence has the right of taxation of income earned by an Assessee from the operation of ships in international traffic.

2.8 The AO / DRP erred in rejecting the certificate issued by the Singapore Tax Authorities [i.e. Inland Revenue Authority of Singapore (IRAS)] which clearly states that international shipping income is taxable in Singapore only on accrual basis and not on receipt basis and therefore the provisions of Article 24 of the DTAA would not apply.

2.9 The AO / DRP ought to have appreciated that the provisions of Article 24 would apply only to incomes which are exempt from tax under the treaty and not to shipping income under Article 8 which grants a specific right of taxation to the residence country.

2.10 The DRP ought to have appreciated that the AO has already issued a DIT relief certificate under section 172 of the Act for the subject AY wherein the Appellant was granted relief under Article 8 of the India - Singapore treaty and as such the AO is precluded from subjecting to tax the same income under section 44B of the Act for the same AY.

2.11 The DRP ought not to have enhanced the assessed income from INR 18,22,82,012 to INR 19,48,19,987 without issuing a show cause notice which is against the principles of natural justice.

2.12 Without prejudice to the above. the DRP ought to have restricted the amount taxable in India by invoking the provisions of Article 24 of the India - Singapore DTAA to the amount of income claimed as exempt in Singapore.

3. The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.

4. The Appellant craves leave to add, alter, amend, substitute and / or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

3. Brief facts of the case are that the assessee M/s. Bengal Tiger Line Pte Limited is a resident of Singapore and involved in the business of

operation of ships in International Traffic. The assessee was the freight beneficiary in respect of various vessels which sailed from ports in the Indian sub-continent and South East Asia during the financial year 2014-15. The assessee has claimed exemption from tax on income received from shipping operations in India in pursuant to the India-Singapore tax treaty on the ground that as per Article 8 of India-Singapore DTAA, tax resident of Singapore involved in the operations of ships in international traffic, is assessable to tax in Singapore on global income received [including income earned in India] from its shipping business. The assessee has filed its return of income for the assessment year 2015-16 on 28.09.2015 declaring exempt income of Rs.19,48,19,987/-. The case was selected for scrutiny and notice u/s.143(2) and 142(1) of the Act were issued. In response to notice, the authorized representative of the assessee appeared from time to time and filed various details as called for. In this case, a draft assessment order was passed u/s.143(3) r.w.s.144C(1) of the Act on 29.12.2018, and in the draft assessment order, the AO has denied the benefit of Article 8 of India Singapore DTAA and further, taxed income received from shipping operations in India u/s.44B of the Act on the ground that Article 24 of India Singapore DTAA limits the benefits of exemption, in case income received outside India is exempt from tax under

Singapore Income Tax laws. Since, the income of the assessee from its shipping operations is exempt u/s.13F of the Singapore Income Tax Act, the Assessing Officer was of the opinion that the benefit of Article 8 of India Singapore DTAA is not applicable to the assessee because of specific restriction provided under Article 24 of India Singapore DTAA.

4. Against draft assessment order, the assessee preferred an application before the DRP and filed an intimation of filing the objections to the Assessing Officer. Before the DRP, the assessee has challenged the draft assessment order passed by the AO by raising various grounds and argued that the AO has erred in assessing international shipping income from freight operations as income taxable in India, ignoring the specific provisions of Article 8 of India Singapore DTAA, which categorically says that any shipping income of a non-resident is taxable only in the country of resident and as such cannot be assessed to tax in India. The assessee has also challenged the findings of the AO in invoking the provisions of Article 24 of the India Singapore DTAA and argued that the AO ought to have appreciated that the essential conditions for invoking the provisions of Article 24 of DTAA is not satisfied. The assessee further contended before the DRP that Article 8 of the India Singapore DTAA is not an exemption

clause, but only an enabling provision which provides an exclusive right of taxation of income to the residence country and as such the provisions of Article 24 [limitation of benefit] will not apply to the income covered under Article 8 of the DTAA. The assessee has also challenged the action of the AO in rejecting the certificate issued by the Singapore Tax Authorities, which clearly states that international shipping income is taxable in Singapore only on accrual basis and not on receipt basis and therefore Article 24 of the DTAA would not apply.

5. The Ld.DRP after considering the submissions of the assessee and also by taking note of findings recorded by the AO in draft assessment order came to the conclusion that Article 24 of DTAA between India and Singapore is applicable to the assessee, because shipping income earned from operations in India was specifically exempted from tax u/s.13F of the Singapore Income Tax Act and consequently, the assessee cannot claim the benefit of relief provided under DTAA. The DRP further held that undoubtedly, by virtue of the tax payer being fiscally domiciled in Singapore, income received in India by shipping operations are liable to tax in the place of tax residency, but then as has been held ‘liable to tax’ is not

the same thing as 'subject to tax'. The factum that the income was actually exempt from tax in Singapore is sheet anchor to the decision about applicability of Article 24 of the India Singapore treaty. No doubt under Article 8 of India Singapore DTAA, profit derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic will be taxable only in that state. Since, the assessee being tax resident of Singapore, global income from operation of ships is taxable only in Singapore. But, because of specific exemption as per Section 13F of the Singapore Income Tax Act, the assessee lose the benefit of Article 8 of treaty but falls within the purview of Article 24 of India Singapore DTAA, which limit the treaty benefit to the extent of income being exempted in other Contracting State or income which is subject to tax at lower rates and which has been remitted or received in other Contracting State [country of residence]. Therefore, the DRP opined that assessee is not entitled for the benefit of Article 8 but subjected to tax in India as per Article 24 of India Singapore treaty which specifically limits the exemption. The DRP has also discussed the issue in light of various judicial precedents and interpreted India-Singapore treaty in the light of Vienna Convention. The DRP has taken support from the decision of Mumbai ITAT in the case of Hindalco Industries Limited vs. ACT [2005] 2 SOT 528 (Mum) and observed that the

purpose of object of DTAA between two sovereign countries is to avoid double taxation of similar income in two countries. If you consider the purpose and object of DTAA, the benefit of relief is available only when a particular income is taxable in one Contracting State (source country) and the same income is subject to tax in another Contracting State (country of residence). If a particular income is exempt from tax in one Contracting State (country of residence) then the other Contracting State (source country) will bring particular income in to tax as per the laws of that Contracting State, but the benefit of relief can be availed by the assessee as per DTAA. Since, income of assessee from shipping operations is exempt under the Singapore Income Tax Act (country of residence), the other Contracting State (source country) is very much within its power to tax the particular income as per the laws of that country. Since income of non-residents is taxable u/s.172 of the Act, the assessee is liable to tax on income earned in India from shipping operations. The AO on the basis of relevant facts has rightly passed draft assessment order and denied the benefit of Article 8 of India Singapore DTAA and hence there is no reason to take different view. Accordingly, rejected objections filed by the assessee.

6. Consequent to DRP directions issued u/s.144C(5) of the Act, the AO has passed final assessment order u/s.143(3) r.w.s 144C(13) of the Act, on 22.11.2019 and taxed shipping income earned in India u/s.44B of the Act. The AO, has threadbare discussed Article 8 and 24 of India Singapore DTAA, Section 13F of Singapore Income Tax Act and other relevant provisions in light of various averments made by the assessee before arriving at a conclusion that shipping income earned in India does not qualify for tax exemption in India as per the provisions of Article 24 of India Singapore DTAA and therefore, relief claimed by the assessee under DTAA in incorrect. The relevant findings of the AO are as under:-

> 5. Since the assessee is claiming relief from taxation by virtue of the provisions of the DTAA, it would be prudent to begin our discussion there. Every agreement is entered into because two or multiple parties are desirous of achieving some purpose. The agreement therefore flows from that purpose and provides context to it. Any reading of an agreement without keeping in mind that purpose will be incomplete and flawed. **The Vienna Convention en. the Law of Treaties in Article 31** has clearly established the significance of "purpose" of a Treaty. It states that,
>
> > *"I.* ***A treaty shall be interpreted*** *in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and* ***in the light of its object and purpose"***
>
> *6*. Therefore the international standards of treaty interpretation treat the 'object' and 'purpose' of the treaty as the prism through which all treaties should be interpreted. The India- Singapore DTAA begins by enunciating the purpose of the treaty with the following lines:
>
> > *"The Government of the Republic of India and the Government of the Republic of Singapore, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, Have agreed as follows:"*

From the above mentioned introductory sentence of the India-Singapore DTAA it is clear that the 'purpose' of entering into this agreement is the **"avoidance of double taxation" and "prevention of fiscal evasion**".

7. In simple terms, the meaning of "double taxation" is the taxation of the same income twice. In the parlance of International Taxation, this usually implies taxation of the same income by two different countries - the **Resident State** and the **Source State**. So the purpose of this DTAA is to prevent an income from being taxed twice. However, in a case where a certain category of income is not taxable at all in one state, then the question of double taxation would not arise at all.

8. On the basis of examination of documents received from Inland Revenue Authority of Singapore, the assessee has filed their return of income for FY 2015 before the Inland Revenue Authority of Singapore vide Tax Reference No 20081851 5R. In its return it claimed exemption of S$ 4,019,449 under Section 13F of ITA. The relevant section of Singapore Income Tax act is as follows;

"Exemption of International Shipping Profits

Section 13F. *- (1) Subject to subsections (IA) and (2), there shall be exempt from tax the income of an approved international shipping enterprise derived*

('a,) on or after 1st April 1991 from

i. the carriage of passengers, mail, livestock or goods from o outside the limits of the port of Singapore by any foreign ship;

ii. the charter of any foreign ship to any person where such ship is used by the person for the carriage of passengers, mail, livestock or goods outside the limits of the port of Singapore; and

iii. the carriage of passengers, mail, livestock or goods by any foreign ship to Singapore solely for the purpose of transhipment;

9. On the reading of the above it is clear that the assessee had claimed exemption of S$ 4,019,449 under Section 13F of SITA for the profits earned by way of International Shipping operations. In this circumstance the assessee was asked to provide the details of freight income received from India which is included in section 13F of the Singapore ITA. The assessee's submission clearly shows that the assessee had received freight income of Rs. 259,75,99,821/- from vessel operation in India and Computed profit of Rs. 19,48,19,987/- under provisions of Section 172 of the Income Tax Act, 1961.

10. The assessee in his submission has stressed on the wording "Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State ". The main thrust of the assessee's argument is that only the country of residence of a shipping company has exclusive rights to tax the income from operation of ships in international waters. This however, is a skewed interpretation. The DTAA seeks to prevent a situation where both the signatory countries lay claim to taxation rights on the same income. In such a scenario, the DTAA comes into picture only to clarify as to which country will have the first right of taxation. In other words, in a situation where both India and Singapore are laying claim to taxation rights on the shipping income of the assessee company, then in that case the country of residence, will have the exclusive right of taxation. However, in a situation where the country of residence itself is not taxing the income in question, then the question of double taxation does not arise in the first place and the other country i.e the source country (India) very much gets the right of taxation. All DTAAs have been entered into for the purpose of avoiding double taxation. **The intention has never been to allow or enable 'Double Non-Taxation'.** What can be gauged from the above discussion is that there are certain pre-requisites that need to be satisfied to invoke the provisions of the DTAA:

- *Existence of an income that has accrued in a foreign country.*

- *The country of source and country of residence, both contending for the right to tax that income.*

11. Only when both these conditions exist, can the provisions of DTAA be applied because it would result in a situation of "double taxation". However, when either one of the conditions does not exist then the application of DTAA becomes pointless. Similarly, the word "only" comes into picture as a tie breaker of sorts only where multiple parties are taxing the same income. However, when only one party remains as a contender then the term "only" loses all significance.

12. In the case at hand, the country of residence i.e Singapore is not laying any claim of taxation at all on the shipping income of the assessee. The assessee company is claiming its entire income from shipping as exempt under section 13A (Income derived from the operation of Singapore Ships) and 1 3F (Income derived from the operation of foreign ships) as per the Income Tax Act of Singapore. So when the country of residence is not laying any claim to taxation of shipping. income, then this Article itself becomes redundant and paves way for the country of source to lay its claim on the taxation of this shipping income and the word "only" is stripped of its meaning.

13. The assessee in his submission stated that the provisions of Article 24 of India Singapore tax treaty cannot be invoked on the facts of the elementary reason that the

Indian Shipping Income of the Singaporean assessee is "neither exempt from India nor taxed at reduced rate". The assessee itself accepts that the income received by way of freight of shipping business is exempt from tax in Singapore. Thereby it cannot be said to be have been subjected to tax in Singapore. As per section 1O(1)(a) of Singapore Income Tax Act (SITA),

Charge of income tax

10*.—(I) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of-*

(a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

14. From the above it is clear that income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of profits from any trade or business is chargeable to Tax. Since the assessee claimed exemption 13F of Singapore Income Tax Act, the income earned from Indian operations neither taxed at Singapore nor taxed at India. The unambiguous thrust of treaty on income being subject to tax in one contracting state to be able to claim treaty protection in other contracting state, and avoidance of Double non-taxation being a clear objective of the Indo-Singapore tax treaty, such exempt income will not be eligible to get treaty protection in Source state. For reference, the Article 24 of the India-Singapore DTAA is reproduced hereunder.

"Where this Agreement provides (with or without other conditions) that income from sources in a contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State"

15. It is evident from the Article 24, the scheme of India Singapore treaty which specifically states that only such income can be given treaty benefit in India which has suffered tax in Singapore. Further it evidences that an income which is not taxed in Singapore cannot be granted tax exemption in India.

16. The expression 'exempt from tax' is an undefined term in the treaty and the context in which it is used in article 24 is that when an income is granted an exclusion from taxable income in one of the contracting state or taxed at a lower rate in one of the contracting state, such an exclusion must depend on its status of taxability in the other contracting state. The context in which expression 'exempt from tax' is set out in article 24, essentially implies that the treaty benefit of non-taxation of an income, or its being taxed at a lower rate, in a contracting state depends on the status of taxability in another contracting state. In such a situation, to hold that only income covered by article 20, 21 and 22 can be said to be exempt in the source state because the expression 'exempt from tax' is used therein, is plainly contrary to the context in which expression 'exempt from tax' is used; it is the net effect not the wording which is relevant in the present context.

17. In any case, what is referred to as exemption under article 20, 21 and 22 of India Singapore tax treaty in the source country are conditional exemptions subject to the riders, whereas an income exempt under Article 8 is plain vanilla provision. Whether an income is taxed only in the residence country or whether an income is exempt from tax in the source country, the effect on exemption of income in the source country is the same particularly in the context of the treaty benefit being dependent on the taxation in the residence country is concerned. The wordings may differ but the impact is the same, and that is all the more clear when seen in the context in which the issue arises. Even if the meaning canvassed by the assessee was to be defined in the statute or the treaty itself, in view of the contextual requirements, such a meaning was to be discarded.

18. According to provisions of Section 172 of the Income Tax Act, 1961, in the case of any ship, belonging to or chartered by a non- resident, which carries goods shipped at a port in India seven and a half per cent of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.

The relevant section is reproduced hereunder;

"Section 172 in Income- Tax Act, 1995

172 Shipping business of non- residents

(1) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non- resident, which carries passengers, livestock, mail or goods shipped at a port in India..

(2) Where such a ship carries passengers, livestock, mail or goods shipped at a port in India, 2 seven and a half] per cent of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage……"

19. In light of the above, the Freight Income received from India, which might have been included in the above mentioned exempted income and was not subjected to tax in Singapore. Since, the tax payer had availed itself of exemption u/s 13F of Singapore Income Tax Act, showing that the income embedded in the freight receipt was not actually taxed in Singapore. Therefore a show cause notice dated 12.12.2018 was sent to the assessee company seeking why Article 24 of India - Singapore DTAA should not be invoked for the relevant AY 2015-16 for the reason that given unambiguous thrust of treaty on income being subject to tax in one contracting state to be able to claim treaty protection in other contracting state, and avoidance of Double non-taxation being a clear objective of the Indo-Singapore tax treaty, such exempt income will not be eligible to get treaty protection in Source state.

20. The assessee company filed its reply on 20.12.20 18 for the above said show cause notice and the relevant submission is reproduced hereunder;

".....The tax treaty clearly specifies that only the residence country have the right of taxation of freight income earned from operation of ships in international traffic. As may be seen from the above provision, Article 8(1) is not an 'exemption 'provision, but an enabling provision which provides an exclusive right of taxation of income to the residence country...."

"……The provisions of article 24 of the India — Singapore DTAA would apply only for incomes which are "exempt" from tax as per the tax treaty. As has been clarified above, it may be noted that Article 8 is unambiguously not an exemption provision but only a provision which provides a taxing right to the country of residence. We submit that the international shipping income earned by the assessee is not per se exempt in India whereas it is taxable only in the country of residence i.e Singapore. We therefore submit that the exclusive right of taxation in one contracting state is not the same as a specific exemption being available in the other contracting state. There is a fundamental conceptual difference between right of taxation and specific exemption."

"……The shipping income dealt with under Article 8 states that profits derived by an enterprise of a contracting state from the operation of ships in international traffic shall be taxable only in that state i.e resident state. The word only debars the other contracting state to tax the shipping income, that is India is precluded from taxing the shipping income even if it is sourced from India An enterprise which is a tax resident of Singapore is liable for taxation oil its shipping income only in Singapore and not in India. When India does not have any taxation right on a shipping income of non-resident entity, exemption or reduced rate of taxation in the source state. It only envisages territorial and jurisdictional rights for taxing the income and India has no jurisdiction for any taxing right which are governed by Article 8. There is no stipulation about exemption under Article 8 of the shipping income which has been specifically provided in some of the Articles like Article 20,21 & 22. Hence, it cannot be reckoned that shipping income earned from India is to be treated as exempt from tax or taxed at reduced rate, which is a condition precedent for applicability of Article 24, albeit India at the threshold does not have jurisdiction to tax the shipping income of the non-resident entity. Thus, the condition of Article 24 is not satisfied in the present case."

"We submit that the inland revenue authority of Singapore (IRAS) vide its letter dated 17.09.2018 has already clarified and held that the provisions of article 24 of the India — Singapore would not apply to shipping income as specified in Article 8.

21. The assessee's submission is carefully considered and rejected due to the facts that the assessee company claimed the exemption of the income in both the states. The assessee company has violated objective and protection of the Indo-Singapore tax treaty by way of claiming exemption in both the states on the income which is subject to tax in one state. Therefore the exemption claimed under Article 8 of the India-Singapore tax treaty with respect to income embedded in the relevant freight receipts amounting to Rs 19,48,19,987/- computed under section 172 of the Indian income Tax Act, 1961 is brought back to tax in India.

22. The Honourable Dispute Resolution Panel after hearing the assessee passed order vide F. No. 97/DRP-2tBANG/20 18-19 dated 23/09/2019 (received on 03/10/2019) under section 1 44C(5) of the income tax Act, 1961. The DRP has upheld the order of the Assessing Officer to the extent that the shipping income earned in India does not qualify for tax exemption in India under the provisions of Article 24 of the DTAA between India and Singapore and therefore the relief claimed by the assessee under DTAA between India and Singapore is rejected. Further the DRP noted that the assessee has filed its return of income computing the income as per the provisions of section 44B of the Income tax Act, 1961. As the assessee itself opted for an

assessment order under normal provisions under section 44B of the Income Tax Act, the DRP has issued **directions to modify and make assessment of the total income as per normal provisions under section 44B by taking the Gross Freight Income attributable to India Operations."**

7. The Ld.AR for the assessee submitted that the Ld.DRP / AO erred in not appreciating the provisions of Article 8 of the India Singapore DTAA, which specifically provides that any shipping income of a non-resident is taxable only in the country of residence i.e., Singapore and as such cannot be assessed to tax in India. The Ld.AR further submitted that the Ld.AO / DRP ought to have appreciated that the essential conditions in invoking the provisions of Article 24 of DTAA is not satisfied and in order to invoke the provisions of Article 24, the first condition is that income sourced in a Contracting State and such income should be exempt or taxed at a reduced rate by virtue of any article under the India Singapore DTAA. He, further submitted that Article 8 of the India Singapore DTAA does not provide for exemption or reduced rate of taxation of such income and hence the conditions prescribed for applicability of Article 24 is not satisfied. This fact is strengthened by the letter issued by the Inland Revenue Authority of Singapore (IRAS) dated 17.09.2018 where the authority has clarified that the provisions of Article 24 of the India Singapore DTAA would not be applicable to the shipping income. The AR

further submitted that second condition that required to be looked in to before applying Article 24 of India Singapore DTAA is that the income of the non-resident should be taxable on “receipt” basis in Singapore. Inland Revenue Authority of Singapore has clarified that the income by a Singaporean company from operation of ships in international traffic is taxable in Singapore on “accrual” basis. Thus, both the conditions of Article 24 are not satisfied in this case.

8. The Ld.AR further submitted that in the given facts and circumstances of this case, Article 8 is applicable as per which international shipping income of resident of a Contracting State is taxable only in that state i.e., the international shipping income of a Singaporean resident by the operation of shipping in international waters is taxable only in Singapore. Since it is resident based taxation under Article 8 of DTAA, India has given up its right to tax such income in India. He further submitted that these facts has been clarified by the Singapore Tax Authorities and it was further supported by the DDIT Relief Certificate issued by the AO for the impugned assessment year after considering the TRC and supporting documents, where relief has been granted to the assessee for whole assessment year by holding that Article 8 of India

Singapore DTAA is applicable to income of the assessee from operation of ships in international traffic. The AO ignoring these facts has brought to tax, income of the assessee from shipping operations in India by invoking Article 24 of India Singapore DTAA on wrong interpretation of Section 13F of Singapore Income Tax Act, which provides for exemption from tax towards international shipping income of a shipping enterprises operating foreign ships plying in international waters. But, fact remains is that Section 13F of Singapore Income Tax Act was already in existence since 01.04.1991 and as such the agreement between India and Singapore on 27.05.1994 specifically including Article 8 is very much clear that the competent authorities of both the Contracting States is fully aware of such provision and hence, choose not to alter the taxing right of shipping income which is generally available only to the country of residence. The Ld.AR for the assessee further submitted that the Hon'ble Gujarat High Court has considered an identical issue in the case of M.T. Maersk Mikage v. DIT(IT), 72 taxamann.com 359, where it has explained interplay between Article 8 and 24 of India Singapore DTAA and held that in view of clear provisions contained in Article 8 of the India Singapore DTAA, shipping income earned by the assessee in India from shipping operations in international waters is always taxable in the country of residence but not in the country

of source. The Ld.AR for the assessee has also argued on the issue of provisions of Section 13F and Section 10(1) of Singapore Income Tax Act and with the help of certain judicial precedent including the decision of Hon'ble Supreme Court in the case of UOI vs. Azadi Bachao Andolan, 132 Taxman 373 submitted that although profits derived by an international shipping enterprises is exempted from taxation u/s.13F of Singapore Income Tax Act, but such income is always liable to tax in Singapore and exemption provided u/s.13F is only on case to case basis for a limited period of time and it is subject to certain conditions. Therefore, merely for the reason that shipping income is exempt u/s 13F of Singapore income tax, the DTAA benefit cannot be denied to the assessee. In this regard, he relied upon the following judicial precedents:-

Sl.No.	*Case Law*	*Citation Reference*
1	*Union of India vs. Azadi Bachao Andolan*	*(2003) 132 Taxman 373 (Supreme Court)*
2	*CIT vs. P.V.A.L.Kulandagan Chettiar*	*(2004) 137 Taxman 460 (Supreme Court)*
3	*Anand Transport (P.) Ltd. vs. ACIT*	*(2014) 49 taxmann.com 477 (Madras HC)*
4	*Bengal Tiger Line Ltd vs. DDIT*	*(2013) 33 taxmann.com 307 (Chennai Tribunal)*
5	*Bhagwan T. Shivlani vs. ITO*	*(2012) 20 taxmann.com 821 (Mumbai Tribunal)*
6	*ADIT (IT) vs Green Emirate Shipping & Travels*	*(2006) 100 ITD 203 (Mumbai Tribunal)*
7	*APL Co.Pte Ltd. vs. ADIT(IT)*	*(2017) 78 taxmann.com 240 (Mumbai Tribunal)*
8	*Far Shipping (Singapore) Pte Ltd vs. ITO*	*(2017) 84 taxmann.com 297 (Hyderabad Tribunal)*

9	*M.T. Maersk Mikage vs. DIT(IT)*	*(2016) 72 taxmann.com 359 (Gujarat HC)*
10	*Alabra Shipping Pte Ltd vs. ITO*	*(2015) 62 taxman.com 185 (Rajkot Tribunal)*
11	*Citicorp Investment Bank vs DCIT*	*(2017) 81 taxmann.com 368 (Mumbai Tribunal)*
12	*DCIT vs. D.B. International (Asia) Ltd*	*(2018) 96 taxmann.com 75 (Mumbai Tribunal)*
13	*Radhasoami Satsang vs. CIT*	*(1992) 60 Taxman 248 (Supreme Court)*
14	*Schawk India Pvt. Ltd. vs. DCIT*	*(2019) ITA Nos.100, 101 & 103/Chny/2018 (Chennai Tribunal)*
15	*Sanofi Pasteur Holding SA vs Department of Revenue*	*(2013) 30 taxmann.com 222 (Andhra Pradesh HC)*
16	*BP Singapore Pte Ltd vs. ITO*	*(2017) 88 taxmann.com 226 (Rajkot Tribunal)*

9. The Ld.DR for the Revenue, on the other hand strongly supporting the order of the Ld.DRP as well as the AO submitted that first of all, the present Bench has no jurisdiction over the case for the reason that the entire batch of appeals involving the final assessment order passed in pursuant of the directions of DRP disposing the objections of the assessee against the draft assessment order are to be adjudicated on the issue of jurisdiction of the Tribunal over such orders by the Special Bench which is yet to be constituted by the Tribunal. This is in consequent to the order of the Hon'ble Jurisdictional High Court in the case of M/s. India Trimmings Pvt. Ltd. vs. DCIT (Tax case No.118 of 2018). Therefore, before going to the merits of the case, the primary issue raised by the Revenue needs to be addressed by the Bench.

10. As regards, merits of the issue involved in present appeal, the DRP as well as the AO has brought out clear facts that the entire income earned by the assessee in India is taxable in India as the said income has been sourced in India and hence accrued in India for income tax purpose. The LD.DR further submitted that the purpose of DTAA between two sovereign states is only to avoid double taxation of the same income and not facilitating the purpose of double non-taxation. Moreover, since the shipping income of the assessee is not subject to tax in Singapore, which is the source state, Article 8 read with Article 24 of the India Singapore DTAA, clearly mandates, that the assessee should not be allowed treaty benefits and granted exemption from tax in the Contracting State i.e. India. The DR further submitted that without prejudice to the above by virtue of provisions of Article 24 of the treaty, the limitation of benefits read with charging section of Singapore Income Tax Act, stipulates that the income from sources outside India is to be taxed only on remittance basis and by virtue of Article 8 of India Singapore DTAA, the shipping income is exempted from taxation in the source Country i.e. India, the benefits of Article 8 has to be limited to the extent of amounts actually remitted to Singapore. Since the assessee has remitted whole income earned from India and such

income was exempted by virtue of Section 13F of Singapore Income Tax Act, India has exclusive right to tax such income under domestic tax laws by virtue of Article 24 of the India Singapore DTAA. He further submitted that India Singapore DTAA is unique for the reason that the said DTAA has an Article 24 Limitation of Benefits which insists on subject to tax as against other DTAAs wherein the mandate is only on 'liable to tax' and therefore there is a clear distinction between liable to tax and subject to tax. Since the income of the assessee is not subject to tax in Singapore, the AO has rightly taxed said income in India under domestic tax laws by virtue of Article 24 of India Singapore DTAA. The Ld.DR further submitted that the assessee has heavily relied upon the letter issued by IRAS but the said letter is only an opinion expressed by the authority and it can no way supplant the provisions and intention of the legislation provided in the DTAA, between two sovereign countries nor can it be taken as a finality or a correct interpretation of the law which can only be exercised by courts of law of both the sovereign states.

11. The Ld.DR further referred to various case laws cited by the assessee submitted that all those cases are distinguishable and has no application and more particularly the case laws relied upon by the

assessee in the case of Bengal Tiger Line Ltd, Cyprus, the DTAA between Indo-Cyprus has no limitation of benefits clause as was available in India Singapore DTAA. Similarly, the case laws relied upon by the assessee in the case of M.T.Maersk Mikage vs. DCIT, the said decision is based solely on the basis of certificate issued by the Singapore Tax Authorities and for want of any counter filed by the Revenue. However on the issue of subject to tax and double non-taxation, the court has declined to comment as the said issue was raised for the first time before the Hon'ble court. Therefore, the case laws relied upon by the assessee has no benefit to the assessee. The Ld.DR further referring to the arguments advanced by the Ld.AR in the light of DIT Relief Certificate submitted that the same was issued for the purpose of tax deduction at source and it is only that once the certificate is issued, the Revenue cannot hold the deductor to be in default for whatsoever reason, but that does not serve as a bar on the income of the assessee being assessed in its hands. Therefore, we submit that there is no error in the findings recorded by the authorities below including DRP to come to the conclusion that shipping income of the assessee earned in India is liable to tax in India by virtue of Article 24 of India Singapore DTAA.

12. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below along with various case laws cited by both the sides. As regards preliminary issue raised by the revenue regarding jurisdiction of the bench to decide this appeal, on the issue of whether the Tribunal is having power to adjudicate directions of DRP disposing the objections of the assessee against the draft assessment order, we are of the considered view that the Revenue does not have any right to argue on any issue other than the issues raised by the assessee in their appeal. Since, the appeal before us is filed by the assessee and the issue raised by the revenue is not emanating from grounds of appeal filed as per Form no. 36 filed by the assessee, we ourselves refrain from commenting on the issue which is not before us. Further, if at all revenue wish to challenge the jurisdiction of Tribunal, it should have filed separate appeal or cross objection, raising specific grounds on the issue. Since, there is no appeal or cross objection from the revenue, we are not inclined to entertain arguments taken by the ld. DR on the jurisdictional issue and hence, rejected.

13. As regards the main issue before us, we have considered arguments of counsels for both sides and perused materials on record

along with relevant case laws cited before us. There is no dispute to the fact that the assessee is a tax resident of Singapore. Even the factual finding recorded by the Ld.DRP was that the assessee is a tax resident and does not have a PE in India. Undisputedly, the activities carried out by the assessee in India are covered under Article 8 of India Singapore DTAA. As per Article 8 of India Singapore DTAA, the profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State. Therefore, by virtue of Article 8 of India Singapore DTAA, the international shipping income of a resident of a Contracting State is taxable only in that State i.e., the shipping income of a Singaporean resident by the operations of ships in international waters is taxable only in Singapore on accrual basis. Similarly, Article 24 of India Singapore DTAA limits the relief on the basis of income from sources in a Contracting State is exempt from tax or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State, the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that

other Contracting State. From the combined reading of Articles 8 and 24 of India –Singapore DTAA, it is very clear that article 8 provides exclusive right of taxation to country of residence, i.e. Singapore on accrual basis. Similarly, article 24 limits the exemption, in case income is exempt or taxed at reduced rate in source country, i.e. in India and further such income is taxable in country of residence on receipt basis. The AO, referring to Article 24 of the tax treaty, was of the opinion that although global shipping income of a Singapore tax resident is taxable only at resident State, but by virtue of Article 24 exemption would apply only to the extent of the amount repatriated / remitted to Singapore. In our view, the above conclusion of the AO is under the misconception of the provisions of India Singapore tax treaty, because as per Article 8 of India Singapore tax treaty, it was clearly specified that only the resident country has the right of taxation of freight income earned from operation of ships in international traffic. As may be seen from the provisions of Article 8(1), we are of the considered view that it is not an exemption provision but an enabling provision which provides an exclusive right of taxation of income to the residence country. Further, by entering in to treaty with Singapore, India has given up its right to tax shipping income of a non-resident in India. Therefore, any income of a

non-resident shipping company which is a tax resident of Singapore is liable to tax only in Singapore but not in India.

14. The provision of Article 24 of India Singapore DTAA is applicable for income which is exempt from tax as per the tax treaty. As has been clarified above, it may be noted that Article 8 is unambiguously not an exemption provision but only a provision which provides a taxation right to the country of residence. Therefore, the international shipping income earned by the assessee is not exempted in India, whereas it is taxable only in the country of residence i.e., Singapore. From the above, it is very clear that exclusive right of taxation in one Contracting State is not the same as the specific exemption being available in other Contracting State. Further, shipping income dealt with in Article 8 states that profits derived by an enterprise of a Contracting State by operation of ships in international traffic shall be taxable only in the State of residence. The word 'only' debars the other Contracting State to tax the shipping income; i.e. India is precluded from taxing the shipping income even if it is sourced from India. When India does not have any taxation right on a shipping income of non-resident entity, exemption or reduced rate of taxation in the source state is of no relevance because once the taxing right has been given off, the other

conditions like exemption or reduced rate of tax has no bearing on the taxability of particular income in other Contracting State. From the reading of Article 8, which clearly envisages derivable or jurisdictional rights for taxing the income and as per which India has no jurisdiction for taxing any income which are covered by Article 8. Therefore, we are of the considered view that international shipping income of a non-resident of a Contracting State is taxable only in that state and in this case, the assessee being tax resident of Singapore, shipping income earned from India on international waters is taxable only at Singapore on accrual basis.

15. Having said so, let us examine the applicability of Article 24 of India Singapore DTAA. Article 24 of India Singapore DTAA contemplates twin conditions for its applicability. The first condition is that income sourced in a Contracting State and such income should be exempt or taxed at a reduced rate by virtue of any article under the India Singapore DTAA. As we noted earlier Article 8 of India Singapore DTAA does not provide for exemption or reduced rate of taxation of such income. It is crucial to note that Article 8 of India Singapore DTAA contemplates the taxation rights of a particular income in particular State. As per said article, the country of residence is having exclusive right over taxation of shipping income and

that being the case, the assessee being resident of Singapore vest with right to tax such income under the Singapore Income Tax laws. Accordingly, the shipping income earned in India is neither exempt nor taxed at reduced rate as per Article 8 of DTAA which is a condition precedent for applicability of Article 24. This fact has been clarified by the IRAS vide its letter dated 17.09.2018, where it was specifically sated that provisions of Article 24 of India Singapore DTAA would not be applicable to the shipping income. The second condition that is required to be looked in to before applying Article 24 of DTAA is income of the non-resident should be taxable on “receipt” basis in Singapore. As we have already noted in earlier para of this order, under Article 8 of India Singapore DTAA, global shipping income of a tax resident of Singapore is only taxable in the country of residence. Once the income is taxable in the country of residence on “accrual” basis, the second condition prescribed under Article 24 of India Singapore DTAA is not satisfied. This fact is further strengthened by the letter of the Inland Revenue Authority Singapore (IRAS) letter 17.09.2018, where it was clarified that the income of a Singaporean company from the operation of ships in international traffic is taxable in Singapore on “accrual” basis. Thus, both the conditions of Article 24 is not satisfied in the present case. We, therefore are of the

considered view that the AO was erred in invoking Article 24 of India Singapore DTAA to tax the income earned by the assessee from shipping operations in India.

16. The interplay between Article 8 and 24 of India Singapore DTAA has been considered by various Tribunals and Courts. As per the settled position of law, the Article 24 Limitation of Benefit is not applicable once shipping income of a non-resident is taxable on “accrual” basis in the country of residence. This principle is well settled by the decision of the Hon’ble Gujarat High Court in the case of M.T. Maersk Mikage vs. DIT(International Taxation) *supra*, where the Hon’ble court clearly held that where income earned by Singapore based shipping company through shipping business carried out at Indian Ports, was not taxable at Singapore on basis of remittance but on basis of accrual, clause (1) of Article 24 of Indo-Singapore DTAA would not apply to deny benefit of Article 8 of Indo-Singapore DTAA to said company. The Hon’ble High Court while considering the issue has analyzed the provisions of Article 8 *vis-a-vis* Article 24 of DTAA and after considering relevant facts, the court held that in case certain income is taxed by a Contracting State not on the basis of accrual but on the basis of remittance, applicability of Article 8 would be

ousted to the extent such income is not remitted. The court further held that this clause does not provide that in every case of non-remittance of income to the Contracting State, Article 8 would not apply irrespective of tax treatment such income is given. The Hon'ble court while arriving at the above conclusion has taken support from the letter issued by Singapore Revenue Authority clarifying the taxation position of global shipping income of tax resident of Singapore and held that when shipping income of a tax resident of Singapore was taxable at Singapore on the basis of accrual, the very basis of applying Article 24 would not survive. This issue was further considered by the Mumbai Bench of ITAT in the case of APL Co. Pte Ltd vs. ADIT, 78 taxmann.com 240, where it was held that in order to invoke provisions of Article 24, two conditions need to be fulfilled. Firstly, income earned from source State (India) is exempt from tax or is taxed at a reduced rate in source State (India) as per DTAA; and secondly as per the laws in force of resident state (Singapore), such income is subject to tax by reference to amount thereof which is remitted to or received in resident State and not by reference to full amount thereof. The Tribunal further noted that *the key phrases which need to be borne in mind while understanding Article 24 is "under the laws in force in other contracting state" (Singapore). Here, in this case, the income of assessee company*

from shipping operations is not taxable on remittance basis under the laws of Singapore, albeit is liable to be taxed in principle on accrual basis by virtue of the fact that this income under the income tax laws of Singapore is regarded as "accruing in or derived from Singapore". A similar view has been expressed by the Hyderabad Bench of the Tribunal in the case of Far Shipping (Singapore) Pte Ltd vs. ITO, 84 taxmann.com 297. Further, the Mumbai Bench of the Tribunal in the case of DCIT vs. D.B. International (Asia) Ltd., 96 taxmann.com 75 has dealt with the interplay between the Article 13 and 24 and after considering relevant clauses categorically held that income derived by a resident of a Contracting State shall be taxable only in that state in view of the clear and unambiguous terms of DTAA. Therefore, we are of the considered view that in terms of Article 8 of India Singapore DTAA, global income of a tax resident of Singapore from shipping operations, even though which is earned outside Singapore is taxable only in Singapore on accrual basis and consequently Article 24 of India Singapore DTAA cannot be invoked to deny the benefit of exemption merely for the simple reason that the said income was not taxed in Singapore by virtue of separate exemptions provided under Singapore Income Tax Act.

17. In this case, the Assessing Officer has attempted to deny the exemption claimed by the assessee under Article 8 by invoking Article 24 of India Singapore tax treaty on a misconception of two clauses of India Singapore DTAA by referring to the provisions of Section 13F of the Singapore Income Tax Act, ignoring the fact that Section 13F of the Singapore Income Tax Act was already in existence since 01.04.1991 and as such the articles provided in India Singapore DTAA which was came in to existence from 27.05.1994 was inserted by the Competent Authorities of both the Contracting States after thoroughly considering the provisions of Section 13F of Singapore Income Tax Act and further choose not to alter the taxation right of shipping income which is generally available to the country of residence. We further noted that two sovereign nations have entered into a bilateral agreement and specifically agreed on the taxing rights of particular streams of income, the provisions of such agreement should be merely given effect to and as such the action of the AO to claim taxing right over the said income which is not provided in the treaty is ultra-vires the power of the AO and will amount to dishonoring the bilateral agreement between two sovereign nations. We further noted that the AO has taken support from 10(1) of Singapore Income Tax Act to argue that any income of a Singaporean resident that is accrued or received in

Singapore is chargeable to tax in Singapore at the specified income tax rates. But, fact remains is that although profits derived by an international shipping enterprise is exempted from taxation as per Section 13F of Singapore Income Tax Act, but such income is always liable to tax in Singapore. The exemption provided u/s.13F of the Singapore Income Tax Act is only on a case to case basis for a limited period of time and it is subject to certain conditions. Therefore, we are of the considered view that the liability to taxation is not dependent on whether taxes are actually paid in the said jurisdiction. This fact is strengthened by the decision of the Hon'ble Supreme Court in the case of Union of India vs. Azadi Bachao Andolan, 132 Taxman 37 where the Hon'ble Supreme Court in para 79 of the order has states that *"merely because exemption has been granted in respect of taxability of a particular source of income, it cannot be postulated that the entity is not 'liable to tax' as contended by the respondents."* The ITAT, Mumbai Bench in the case of Bhagwan T. Shivlani vs. ITO, 20 taxdmann.com 821 has considered an identical issue and by following the decision of Hon'ble Supreme Court in the case of Union of India vs. Azadi Bachao Andolan *supra* has held that the expression 'liable to tax' in Contracting State as used in Article 4(1) of Indo-UAE DTAA does not necessarily imply that person should actually be liable to tax in that

contracting State. It is enough if other contracting State has right to tax such person, whether or not such a right is exercised. This fact is further strengthened by Article 31(1) of Vienna Convention where it was stated that as per the general rule of interpretation, ordinary meaning is to be given to the terms of the treaty in the context and in the light of its object and purpose. The object and purpose of having Article 8 in the India Singapore DTAA is to clearly allocate the taxing rights of international shipping income to the residence country i.e., Singapore in the present assessee case. Therefore, as per sub-clause (2) of Article 31 of the Vienna Convention, the 'context' for the purpose of interpretation of a treaty would primarily include the text, preamble and annexure to the treaty. Therefore, in order to give the ordinary meanings to the terms in their 'context' the whole treaty should be read as it is without giving any meaning which is not the purpose intended by the Articles. In this case, the AO has stated that the preamble should be read to understand the object and purpose. However it may be noted that Article 31(2) of Vienna Convention does not cover object and purpose. Therefore, we are of the considered view that AO has misunderstood the general rules of interpretation in the Vienna Convention. Even assuming without conceding that the preamble should be referred to understand the object and purpose, the stated

objective of the treaty is “avoidance of double taxation”. This object can be achieved in two ways, which one way by credit mechanism when both the countries tax the same income and the second way is providing ‘exclusive right of taxation’ to one country and thereby double taxation can be avoided. In the present case, Article 8 provides exclusive right of taxation of shipping income to Singapore in order to avoid double taxation method where India has given up its right of taxation of international shipping income of a Singaporean resident and as such Singapore has reserved its exclusive right to tax the same. Once the country of resident is having exclusive rights to tax a particular income by way of separate Article, then limiting or denying such benefit by interpreting the other Articles which are provided for limiting the benefit in case such income is exempt or taxed at reduced rate of tax in other Contracting State is contrary to the purpose and object of DTAA.

18. In this case, the Assessing Officer has denied the benefit only on the simple ground that the income of the assessee received in India is exempt by virtue of separate provisions of Singapore Income Tax Act and on the misconception of law to come to the conclusion that once a country of residence has exempts particular income from tax, the other Contracting

State (source country) can levy tax on such income without understanding the true meaning of Article 8 of India Singapore DTAA. The AO has also ignored the arguments taken by the assessee in the light of DIT relief certificate issued by the Department for the subject assessment year, where the AO after considering the TRC and supporting documents issued DIT Relief Certificate dated 25.06.2014 and 14.08.2014 by holding that Article 8 of India Singapore DTAA is applicable to the assessee and income from operation in international traffic will not be taxable in India. No doubt, the certificate is issued for the purpose of non-deduction of tax at source as argued by the Ld.DR, but fact remains is that unless the AO has bring on record any change in fact or law which was prevalent at the time of issuing DIT Relief Certificate and at the time of framing assessment, no contrary view can be taken in violation of Doctrine of Promissory Estoppel. No doubt, the fundamental principles of *res-judicata* will not be applicable to income tax proceedings, but the rule of consistency needs to be followed unless there is change in fact or law while taking a different view. This view is supported by the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT, 193 ITR 321.

19. We further noted that this issue is considered by the Tribunal in the assessee own group company case in Bengal Tiger Line Ltd vs. DDIT(International Taxation), [2013] 33 taxmann.com 307, where the Tribunal has considered the India Cyprus DTAA and has clearly held that where assessee, a non-resident company registered in Cyprus, was in shipping business and it had effective management of enterprise in Cyprus, income earned by assessee from shipping business was not taxable in India. The Tribunal while arriving at above conclusion has taken support from the decision of Hon'ble Gujarat High Court in the case of Arabian Express Line Ltd of United Kingdom and also considered Circular No.333 issued by CBDT and held that in the DTAA between India and Cyprus and India and U.K the provisions relating to taxation of shipping business are *pari materia*. Therefore, the income earned by the assessee from shipping operations in India is taxable only at Contracting State (country of residence). The relevant findings of the Tribunal are as under:-

> *"7. We have heard the submissions made by both the parties. We have perused the order of the Assessing Officer and the directions of the DRP and also the judgements relied on by the AR. In the present case it is not in dispute that the assessee/appellant is a foreign company and has its effective management in Cyprus. The AR has placed on record a copy of DTAA between India and Cyprus. A perusal of Article 7 of the DTAA shows that Article 7 relates to business profits of an enterprise having permanent establishment in India. Article 7 specifically states that such profits shall be taxable only in that State unless the enterprise carries on business in other contracting State through a permanent establishment situated therein. The Article 8*

of DTAA deals with shipping and air-transport business. Article 8 provides that profits derived by enterprise registered and having headquarters (i.e. effective management) in a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State i.e. profits from operation of ships or aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated, which in the present case is Cyprus.

8. In view of specific clause in DTAA dealing with shipping business, we are of considered opinion that income of the assessee in the present case is not taxable in India. The Hon'ble Gujarat High Court in the case of Arabian Express Line Ltd of United Kingdom (supra) after taking into consideration the DTAA between India and UK has held that the ITO had no authority or jurisdiction to levy tax on the petitioner company. The DTAA between India and UK have similar provisions i.e. Article regarding taxation of enterprise having shipping business. The Hon'ble Gujarat High Court in the case of Venkatesh Karrier Ltd. (supra) has reiterated the same view and held that the agreement between two countries has ousted the jurisdiction of the taxing officer in India to tax the profits derived by the enterprise once it is found that the ship belongs to a resident of the other contracting country and such position has also been clarified by the circulars issued by the Board. The Honble Gujarat High Court referred to Circular Nos.333 dated 2.2.1982 and 732 dated 20th December, 1995. Circular No.333 states that the provisions made in DTAA would prevail over the general provisions of the Act and Circular no.732 clarifies that if ships are owned by an enterprise belonging to a country with which India has entered into an agreement of avoidance of double taxation and the agreement provides for taxation of shipping profits only in the country of which the enterprise is a resident, no tax is payable by such ships at the Indian ports. In the DTAA between India and Cyprus and India and U.K. the provisions relating to taxation of shipping business are pari materia. Therefore, the income earned by the assessee is not taxable in India. Rather the Assessing Officer had no jurisdiction to levy tax on the appellant/assessee.

20. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that Article 8 of India Singapore DTAA is applicable and as per which shipping income of a resident of Singapore is taxable only in Singapore but not in India. The AO has made an attempt to deny the benefit of exemption claimed by the assessee by

invoking Article 24 of India Singapore DTAA, even though, the conditions stipulated under Article 24 are not satisfied. We, therefore are of the considered view that the AO as well as the Ld.DRP were erred in coming to the conclusion that income earned by the assessee from shipping operations in India is taxable in India by virtue of Article 24 of India Singapore DTAA. Hence, we direct the Assessing Officer to delete the additions made towards shipping income of assessee earned in India.

21. In the result, the appeal of the assessee is allowed.

Order pronounced on 6th November, 2020 at Chennai.

Sd/-	Sd/-
(ध्रुव्वुरु आर एल रेड्डी)	(जी. मंजुनाथ)
(Duvvuru R.L Reddy)	(G. Manjunatha)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 6th November, 2020
RSR
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant **2.** प्रत्यर्थी/Respondent **3.** आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/**CIT** **5.** विभागीय प्रतिनिधि/**DR** **6.** गार्ड फाईल/**GF**