IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 256 OF 2018

Commissioner Of Income Tax (IT) - 2)
17th floor, AIR India Building,)
Nariman Point, Mumbai 400 021) ..Appellant

Versus

M/s Citicorp Investment Bank)
(singapore) Ltd.) C/o. Citibank NA,)
Securities and Fund Services, Citibank NA)
FIFC, 11th Floor, C-54 & C-55, G-Block,)
BKC, Bandra (E), Mumbai 400 051) ..Respondent

Mr. Devvrat Singh for Appellant.
Mr. P. J. Pardiwalla, Sr. Advocate a/w Mr. B. D. Damobar i/b Kanga & Co. for Respondent.

CORAM : K.R. SHRIRAM &
FIRDOSH P POONIWALLA, JJ
DATED : 21st JUNE 2023

(ORAL JUDGMENT PER K .R. SHRIRAM J.) :

1 Appeal is impugning an order dated 24th March 2017 passed by the Income Tax Appellate Tribunal (ITAT) while disposing an appeal filed under Section 254(1) of the Income Tax Act 1961 (the Act). The assessee, i.e., respondent is a tax resident of Singapore. The assessee is registered as a Foreign Institutional Investor (FII) in debt segment with Securities and Exchange Board of India (SEBI). The assessee has been investing in debt securities in India during the year in consideration, which is A.Y.-2010-2011. The assessee filed its return of income on 30th September 2009 declaring total income of Rs.33,99,75,350/-. In its return, the assessee declared a

capital gain of Rs.86,62,63,158/- on the sale of debt instruments and claimed exemption under Article 13(4) of India-Singapore Double Taxation Avoidance Agreement (DTAA). During the assessment, the assessee was asked to explain as to how the provisions of Article 24 of DTAA stood complied in order to claim capital gain as exemption in India.

2 The assessee in its submission to the Assessing Officer (AO) contended that being a FII, assessee was liable to tax in Singapore of its worldwide income. The assessee submitted that even Singapore Revenue Authority has confirmed the taxation on the assessee in Singapore vide their certificate dated 4th April 2012. The assessee further submitted that Article 13 (4) of DTAA provides for taxation of capital gain in Singapore and if, the assessee is offering its worldwide income for taxation in Singapore then remittance of such income to Singapore has no relevance for the purpose of claiming benefit under the DTAA. AO rejected this contention of the assessee on the ground that for the assessee to get any benefit under the DTAA, the assessee has to fall within the provisions of DTAA. According to AO, though the provisions of Article 13(4) allows exemption of capital gains in source country, i.e., India, provisions of Article 24 of DTAA provides for restriction of exemption of such capital gains to the extent of repatriation of such income to other country, i.e., Singapore. According to AO, even Singapore law under Section 10(1) relating to charge of income tax under the Singapore Income Tax Act, reveals that it taxes income on receipt basis of such income in Singapore from outside Singapore. In other words, AO

rejected the certificate issued by the tax authority in Singapore and proceeded by interpreting the laws of Singapore on his own. AO held that the assessee did not show that repatriation of the capital gains was made to Singapore and in view of Article 24 of DTAA, the assessee is not entitled to the exemption claimed.

3 Aggrieved by this treatment of capital gain as taxable in India in the draft assessment order, the assessee filed objections before the Dispute Resolution Panel (DRP). DRP by an order dated 14th November 2014 passed under Section 114C(5) of Act upheld the action of AO. Relying on the said order of DRP, AO passed the assessment order on 30th December 2014 under Section 143(3) read with Section 144C(13) of the Act.

The assessment order dated 30th December 2014 was impugned by the assessee in an appeal filed before the ITAT-Mumbai. The ITAT by an order dated 24th March 2017, which is impugned in this appeal, allowed the appeal of the assessee. The ITAT held that the assessee was entitled to the benefit of Article 13(4) of DTAA between India and Singapore.

4 Following substantial questions of law are proposed in this appeal:

> "(a) Whether on the facts and circumstances of the case and in law, the ITAT is correct in holding that the assessee is entitled to the benefit of Article 13(4) of the Double Taxation Avoidance Agreement (DTAA) between India and Singapore without appreciating the provisions of Article 24 of treaty which asks for restriction of exemption of such capital gains to the extent of repatriation of such income to the other country i.e. Singapore ?
>
> (b) "Whether on the facts and circumstances of the case and in law, Hon'ble ITAT has erred in holding that Article 24 of the DTAA between India and Sinagapore has no application to the assessee's case ?"

5 Mr. Singh reiterated the views and findings of AO.

6 Mr. Pardiwalla for the assessee submitted that the limitations of relief under Article 24 of DTAA would only arise when the entire capital gain is taxed in Singapore on the remitted amount and not the entire amount whether remitted or otherwise. Since in this case, the Singapore authorities have also certified that under the Singapore Laws the income derived by the assessee from buying or selling of Indian Debt Securities and from Foreign Exchange transactions in India would be considered under Singapore tax law as accruing in or derived from Singapore, such income would be brought to tax in Singapore without reference to the amounts remitted or received in Singapore, the limitation as prescribed in Article 24 would not apply to the case at hand.

7 Mr. Pardiwalla also submitted relying on Direct Taxes Circular no.789 dated 13th April 2000 and a judgment of Hon'ble Madras High Court in ***Commissioner of Income Tax Vs. Lakshmi Textile Exporters Ltd***.[1] that the certificate issued by the Singapore authorities should constitute sufficient evidence for accepting the position of the law in Singapore and the AO should not try to interpret the laws of Singapore and in this regard a certificate, admittedly, is issued. The revenue cannot dispute the fact that the entire amount of capital gain whether remitted or not remitted, is taxed in Singapore on the face of the certificate issued by the tax authorities.

8 In our view, the appeal does not raise any substantial question of law and we find no infirmity in the order passed by the ITAT.

1. 245 ITR 522

9 Article 13 of DTAA as then applicable reads as under:

ARTICLE 13

"1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned In paragraphs 1, 2 and 3 of this Article shall be taxable only in that State."

Since in this case, the property alienated are debt instruments, the assessee would come under Article 13(4) of DTAA, which says gains from alienation of any property (debt instrument in this case) shall be taxable only in Singapore, of which the alineator (the assessee) is a resident. Therefore, the entire capital gain of Rs.82,58,83,330/- shall be taxed in Singapore.

10 Article 24 of DTAA reads as under:

ARTICLE 24

LIMITATION OF RELIEF

"1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting India State shall be exempt from tax, or taxed at a reduced rate III 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.

2. However, this limitation does not apply to income derived by the Government of a Contracting State or any person approached by the competent authority of that -State for the purpose of this paragraph. The term "Government" includes its agencies and statutory bodies."

Applying Article 24 to the facts of this case, where the income from sources in India shall be exempted from tax or taxed at a reduced rate in India and under the laws in force in Singapore the capital gain is subject to tax by reference to the amount thereof which is remitted to or received in Singapore and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this agreement in India shall apply to so much of the income as is remitted to or received in Singapore. Clause 2 of Article 24 is not relevant to the case at hand.

11 Therefore, the exemption or reduction of tax to be allowed under the DTAA in India shall only apply to so much of the income as is remitted to or received in Singapore where the laws in force in Singapore provides that the said income is subject to tax by reference to the amount which is remitted or received in Singapore. When under the laws in force in Singapore the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case Article 24(1) would not apply.

12 The AO while framing the draft assessment order has disallowed the

benefit of Article 13(4) of DTAA on capital gain earned in India holding that provisions of Article 24 of DTAA speaks about the restriction of exemption of such capital gain to the extent of repatriation of such income to Singapore. The AO has held that the assessee has not produced any evidence to show such required repatriation as mandated by Article 24 of DTAA for entitlement of exempted income. This is an incorrect statement as rightly held by the ITAT. The assessee placed on record even before the AO a certificate dated 16th April 2012 from Singapore Tax Authorities certifying that the income derived by the assessee from buying and selling of Indian Debt Securities and from Foreign Exchange transactions in India would be considered under Singapore Taxes Law as accruing in or derived from Singapore and such income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore.

13 Therefore, Singapore authorities have themselves certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore. The AO could not have come to a conclusion otherwise. As stated in the circular No.789 dated 13th April 2000, though it applied to Indo-Mauritius Double Tax Avoidance Convention with reference to certificate of residence, the purport and principle is clear. Such certificates issued by the Singapore Tax Authorities will constitute sufficient evidence for accepting the legal position. We also find support for this view in *Lakshmi Textile Exporters Ltd.* (Supra).

14 Mr. Singh also submitted that reliance placed by ITAT in the impugned

order while arriving at its conclusion on decisions of Mumbai Tribunal in ***Set Satellite (Singapore) Pte. Ltd. Vs. ADIT in M.A. No.520/M/2010*** and ***APL Company Pte. Ltd. Vs. ADIT (ITA No.4435/Mum/13***), was not proper because SLP has been filed before the Apex Court by the department and that petition has been admitted and converted into an appeal. Since SLP has been admitted by the Apex Court against the judgment in the case of *SET Satellite* (supra), this court should also admit this appeal.

We see no reason to admit this appeal on this ground. We say this because even if, the ITAT had not relied upon these two decisions, still the position in law would not change.

15 In the circumstances, no substantial questions of law arise. Appeal dismissed.

(FIRDOSH P POONIWALLA, J.) **(K.R. SHRIRAM, J.)**

Meera Jadhav