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### Technical handling services provided to non-IATP pool members covered under Article 8 of India-France tax treaty

The Delhi Bench of the Income-tax Appellate Tribunal has held that profit from technical handling services provided to non-members of International Airlines Technical Pool (IATP) are covered under Article 8 of the India-France tax treaty and hence, not taxable in India.

#### Facts of the case:

- Air France (the taxpayer)<sup>1</sup> is a foreign company, engaged in the operation of aircraft in international traffic and is a tax resident of France. The taxpayer derived income in India from the following sources:
  - Carriage of passengers;
  - Carriage of cargo;
  - Interest income from funds directly connected with the operation of aircraft in international traffic;
  - Income from technical handling services to other International Airlines Technical Pool (IATP) members.
- The taxpayer filed its income-tax return for financial year (FY) 2005-06, corresponding to the assessment year (AY) 2006-07, on the basis that its income was not taxable in India.
- During the course of the audit proceedings, the Assessing Officer (AO) issued notice to furnish details amongst others, relating to technical handling services rendered to other carriers. The taxpayer in its reply submitted the following with respect to technical handling services:
  - It was in the nature of a pooling activity not liable to tax in India as per Article 8 of the India-France tax treaty;
  - During AY 2006-07, such services were rendered only to Iberworld, which was not an International Airlines Technical Pool (IATP) member, but was a guest airline covered under the IATP pool;
  - Reliance was placed on the case of Lufthansa German Airlines v. DCIT<sup>2</sup> wherein profits from services rendered and availed due to participation in a pool were held to be covered under Article 8 of the India-Germany tax treaty.

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<sup>1</sup> Air France v. ACIT, International Taxation [2020] 116 taxmann.com 882 (Delhi ITAT)

<sup>2</sup> Lufthansa German Airlines v. DCIT [2004] 90 ITD 310 (Delhi ITAT)

- The AO did not agree with the taxpayer's contention and held that technical handling services were not covered under Article 8 of the India-France tax treaty. Further, the AO held that the services were in the nature of fees for technical services covered under section 115A, read with section 44D of the Income-tax Act, 1961 (ITA) and taxable in India at 20%.
- Aggrieved by the AO's order, the taxpayer filed an appeal before the Commissioner of Income tax– Appeals [CIT(A)]. The CIT(A) partly upheld the AO's order and held that, while technical handling services were covered under Article 8 of the India-France tax treaty, income from services rendered to a non-IATP member were taxable under Article 7 of the India-France tax treaty.
- Aggrieved by the CIT (A)'s order both the taxpayer as well as the Revenue filed an appeal before the Delhi Bench of the Income tax appellate Tribunal (ITAT).

#### **Provisions, which are relevant in brief:**

- As per article 8(1) of the India-France tax treaty, profits derived by a French enterprise from the operation of aircraft in international traffic is taxable only in France.
- As per article 8(2) of the India-France tax treaty, Article 8(1) of the tax treaty is also applicable to profits from participation in a pool, a joint business or an international operating agency.

#### **Decision of the ITAT:**

- The ITAT observed that:
  - The Indian branch office is merely a branch office of the taxpayer, which is engaged in the operation of aircraft in international traffic;
  - There were no specific services referred between the head office and the branch office;
  - The receipts of the branch office were from the public at large and not obtained by rendering any services to the head office;
  - Entire receipts collected by the branch were remitted to the head office, after meeting local expenditure.

In view of the above, the ITAT held that the taxpayer did not have a permanent establishment (PE) in India. Accordingly, the ITAT dismissed the Revenue's observation that the taxpayer's income was taxable in India, as it had a PE in India.

- The ITAT held that technical handling services were covered under Article 8 of the India-France tax treaty on the following basis:
  - As per Article 8(2) of the India-France tax treaty, profits derived by an enterprise of a Contracting State from the operation of an aircraft in international traffic from the participation in a pool, joint business or an international operating agency, were taxable only in that Contracting State.
  - The taxpayer's services / activities and profits thereof were derived from pool participation and hence, covered under Article 8(2) of the tax treaty.

- The Delhi High Court in the case of DIT v. KLM Royal Dutch Airlines and Lufthansa German Airlines<sup>3</sup> had clearly set-out how the facts of the British Airways<sup>4</sup> case was distinguishable. Further, the ratio of the British Airways<sup>4</sup> case was not applicable in the present case as well, as the taxpayer was a member of the IATP and as per the India-France tax treaty, members of pool were exempted from tax in India.
- The ITAT held that, the services rendered to Iberworld (a non-IATP member), were covered under the provisions of Article 8(2) of the India-France tax treaty on the following basis:
  - As per Annexure A of the IATP manual, there was no restriction on a member airline to provide service to non-IATP pool member and the services to non-IATP pool member were to be considered as a pool service.
- In view of the above, the ITAT held that technical handling services rendered by the taxpayer (being an IATP pool member) to both IATP pool members as well as non-IATP members, were covered under Article 8(2) of the India-France tax treaty. Thus, the income therefrom was not taxable in India.

#### Comments:

- This ruling lays down the principle that technical handling services rendered in the course of participation in a pool are covered under Article 8(2) of the India-France tax treaty. Further, services to both IATP members as well as non-IATP members would be covered under Article 8(2) of the India-France tax treaty.

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<sup>3</sup> DIT v. KLM Royal Dutch Airlines & Lufthansa German Airlines [2017] 392 ITR 218 (Del)

<sup>4</sup> British Airways Plc v. DCIT [2009] ITA 3098 (Delhi-ITAT)



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