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The Tribunal in the case of [1]Pearl Logistics & Ex-IM Corporation has held that income of a foreign shipping company, whose place of effective management (POEM) and control is situated wholly outside India, is not taxable in India under the [2]India-Denmark tax treaty

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In this issue:

[1] Pearl Logistics & Ex-IM Corporation v. Income-tax Officer [2017] 80 taxmann.com 217 (Rajkot-Trib.)
[2] Article 9 of the Double taxation avoidance agreement between Government of the Republic of India and the Government of the Kingdom of Denmark

Background / Facts

- Pearl Logistics & Ex-IM Corporation (the taxpayer) is an agent of a Denmark-based ship broker, Faber Ship Brokers APS.
- Faber Ship Brokers APS is the owner and the M/s. CTI Group Inc., Jordan is the charterer of the ship which carried cement to ports in India for which freight was payable by CTI Group to Faber Ship Brokers APS (foreign company).
- A tax return was filed by the taxpayer under section 172 of the Income-tax Act, 1961 (the Act), for being freight beneficiary of the foreign company for two voyages. In the tax return, exemption was claimed under Article 9 of the India-Denmark tax treaty.
- The Assessing Officer (AO) denied the India-Denmark tax treaty benefit alleging invalid documentation against which the taxpayer filed an appeal before the first appellate authority [Commissioner of Income Tax (Appeals) (CIT(A)].
- CIT(A) dismissed the appeal of the taxpayer. Aggrieved by his order, the taxpayer approached the Tribunal for relief.

Ruling of the Tribunal

- Under section 172 of the Act, income from freight is chargeable to tax in India in the hands of the owner or the charter whoever receives the income. In this case, freight is received by the owner i.e., the foreign company. Hence, the income from freight earned from CTI Group Inc. Jordan for two voyages will be chargeable to tax in India.
- Under Article 9 of the India-Denmark tax treaty, profits derived from operation of ships in international traffic, shall be taxable only in the state where POEM of the enterprise is situated.
- The Tribunal took note of the following:
  - [3]Tax residency certificate
  - Residence of shareholder
  - Passport of the owner
  - Declaration by director of the company stating that the company is 100% owned by a non-resident
  - Copy of passport of the director to prove nationality of the director and that the company has been operating from Denmark.
- The Tribunal observed that the director resides in Denmark, is a resident of Denmark and has been operating business wholly from Denmark and all important decisions in the form of meetings, have taken place in Denmark.
- Thus, the Tribunal has concluded that the POEM of the foreign entity is situated in Denmark So, it was held that income on account of operation of ships in international traffic is taxable in the state, in which POEM is situated i.e., Denmark and not in India.

[3]Reliance was placed upon the Apex Court ruling in case of [1]'Union of India vs. Azadi Bachao Andolan' [2003] 132 Taxmann 373 (SC) wherein the Apex court upheld the grant of tax treaty benefits subject to there being a valid tax residency certificate.

Conclusion

The above ruling assumes importance in case of non-residents engaged in the shipping business. Section 172 of the Act is a special provision which provides for summary mode of assessment of the shipping business of non-residents. The Honorable Tribunal has upheld the principle that where there is a non-resident shipping company which can adduce a documentary evidence to support its claim for a tax treaty benefit, then liability to pay tax in India will be determined in accordance with the applicable tax treaty.

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