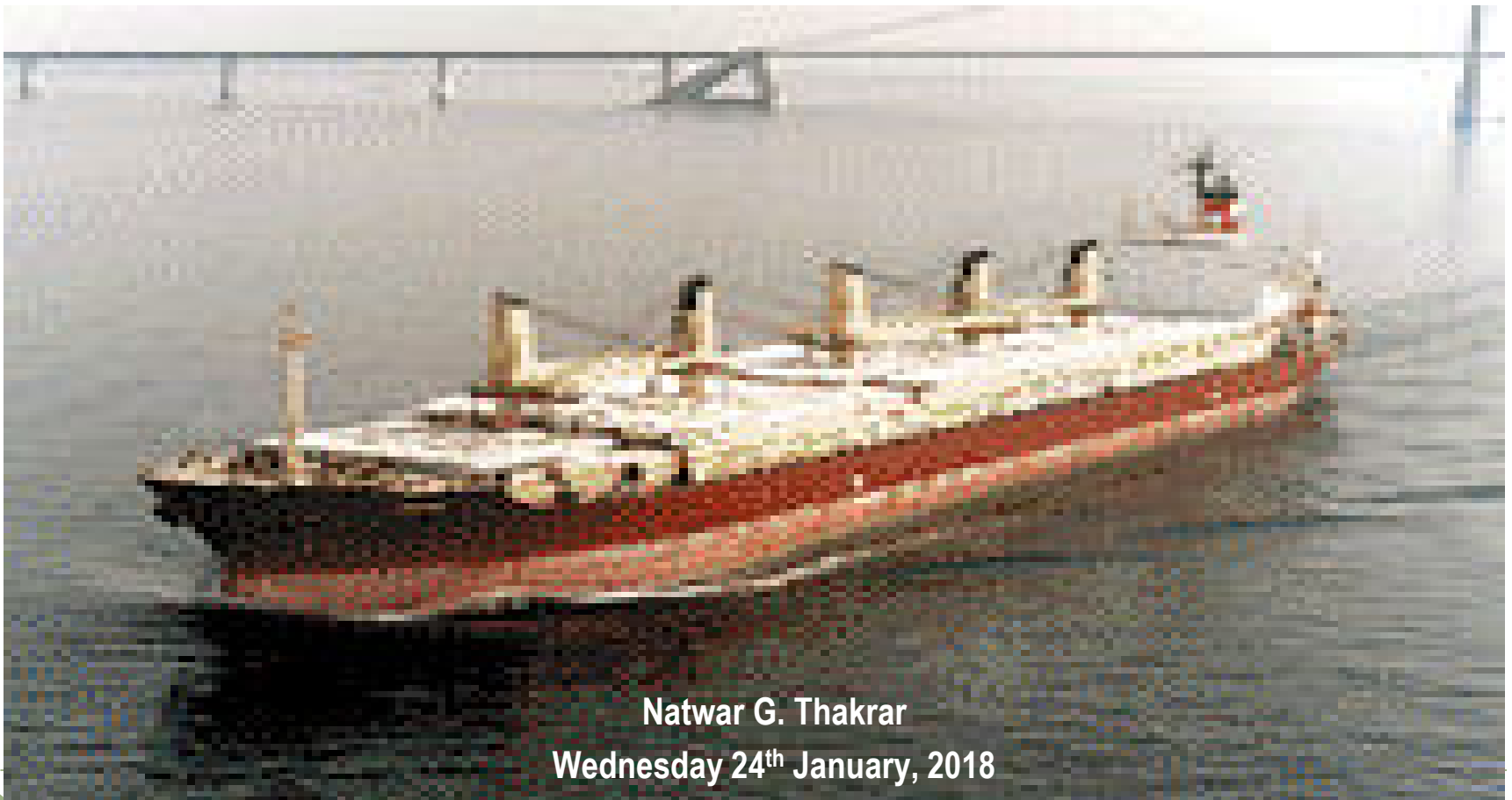




THE CHAMBER OF TAX CONSULTANTS

WEBINAR - TAXATION OF FOREIGN SHIPPING COMPANIES IN INDIA



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Wednesday 24th January, 2018

Presentation Outline



- ❑ **Brief Overview of FSC Presence in India & type of activities**
- ❑ **Taxability of FSCs under Income-tax Act**
- ❑ **Taxability of FSCs under DTAA**
- ❑ **Issues**
- ❑ **Q & A**

FSCs - Presence in India

- ▶ Foreign shipping companies typically do business in India through –
- ▶ **Independent Set-up in India**
 - ▶ Liaison / Branch office
 - ▶ a joint venture; or
 - ▶ wholly owned subsidiary
- ▶ **Third party agents**
 - ▶ Solicit customers, assists in cargo handling, deal with customs and port authorities on behalf FSCs
 - ▶ Earn commission from FSCs for services rendered
 - ▶ May or may not be PE of FSCs in India

Types of Operators in Shipping Business

Main Line Operators (MLO)

- **Own / Charter vessels which carry cargo from port of origin to destination-port**
- **Issue B/L to shippers / NVOCC for entire voyage**
- **Earn freight income from shippers**

Feeder Vessel Operators (FVO)

- **Serve MLO whose vessels do not call origin / destination ports**
- **Own / charter vessels which carry cargo between origin / destination ports and hub ports i.e. “Relay” Cargo**
- **Issue Service B/L to MLO for voyage between origin / destination ports and hub ports**
- **Earn freight from MLO**

MLO and FVO are generally regarded as ‘Operators in Shipping Business’

Types of Operators in Shipping Business

Non Vessel Owner Common Carrier (NVOCC)

- **Do not own, charter or operate any carrying ship**
 - **Undertake transport of goods using container slots on vessels of other operators**
 - **Consolidate small packets / cargo of various shippers into container loads i.e. consolidators**
 - **May own or hire containers**
 - **Issue house B/L to shippers**
 - **Earn freight from shippers**
-

Tramp Ship

- **A ship which operates without a Schedule**
- **Used mainly for carrying bulk commodities or homogeneous cargoes in shiploads**
- **Each voyage separately negotiated between the ship owner and the shipper, usually through a broker.**

Types of Charter in Shipping Business

Bareboat Charter

- **‘Bare’ ship is given on hire (i.e. without crew, equipment, etc.)**
-

Bareboat Charter cum demise

- **Bareboat charter where ownership is intended to be transferred to the charterer after a specified period – Sale transaction as per AS -19 – “Leases”**
-

Time Charter

- **Hire of a fully equipped ship usually along with crew**
 - **Agreement is for a definite period**
-

Voyage Charter

- **Hire of a fully equipped ship usually along with crew**
 - **Agreement is for a particular voyage**
-



Taxability of Foreign Shipping Companies under the Act

Taxability of a non-resident in India

- ▶ **Non – resident is taxable in India on following income:**
 - ▶ Income received in India
 - ▶ Income deemed to be received in India
 - ▶ Income accruing/ arising in India
 - ▶ Income deemed to accrue or arise in India

Export Freight - Income accrues in India
Taxable in India due to overriding effect of S. 44B

Import Cargo – Freight income accrues outside India.
Taxable only if received in India - S. 5 (2) read with S. 44B

Summary Assessment of Ship/Voyage u/s 172

- ▶ **Starts with a non-obstante clause**
 - ▶ Overrides all other provisions of the Act
 - ▶ *ITO v CMA CGM Agencies (India) Pvt. Ltd. - 26 taxmann.com 121 (Rajkot ITAT) (2012)*
- ▶ **Applicability**
 - ▶ For levy and recovery of tax in case of ships belonging to or chartered by a non-resident
- ▶ **Purpose**
 - ▶ To make summary assessment of a ship or voyage and ensure tax recovery tax before ship leaves Indian territory
- ▶ **Procedure**
 - ▶ Master of the ship to submit Voyage return to the AO having jurisdiction over the port of departure before departure of the ship or make satisfactory arrangement for filing voyage return within 30 days of the departure of the ship along with DIT Exemption certificate, if any
 - ▶ Port AO to complete assessment within 9 months from the end of the financial year

Summary Assessment of Ship/Voyage u/s 172

- ▶ **Income deemed at 7.5% of**
 - ▶ Freight for outbound carriage* of passengers, livestock, mail or goods shipped at a port in India (Export freight)
 - ▶ Demurrage charges , Handling charges & Other charges similar to demurrage or handling charges

- ▶ **Assessee has option to be governed by S. 44B of the Act and file regular return**

- ▶ **Issues**
 - ▶ Whether filing of Voyage Return / Obtaining Voyage NOC mandatory for the FSCs holding DIT exemption?
 - ▶ Refer Circular 30/2016 dated 26.08.2016

Taxation u/s 44B

- ▶ Starts with a non-obstante clause
 - Overrides section 28 to 43A .All other provisions of the Act to apply
- ▶ Purpose
 - ▶ Regular assessment of the non-resident assessee under the Act
- ▶ Applicability
 - ▶ At the option of non-resident who is engaged in the business of operation of ships
- ▶ Income deemed at 7.5% of
 - ▶ Export freight (wherever received); Import freight (only if received in India); Handling charges, demurrage charges; and any other charges of similar nature
- ▶ Issues
 - ▶ Whether filing of Voyage Return/ NOC mandatory for an assessee filing of regular return of Income?
 - ▶ Memorandum to Finance Bill 1975 provides that procedures prescribed u/s. 172 for clearance of ships will continue to apply u/s. 44B.

Section 44B Vs. Section 172

Section 44B

Deeming provisions

Section 172

- Deals with 'Regular' shipping business
- Starts with a non-obstante clause
 - Overrides sections 28 to 43A
- Income deemed at 7.5% of
 - Export freight (wherever received)
 - Import freight (received in India)
 - Freight to include demurrage, handling charges or any other similar charges
- No procedure prescribed for levy and collection of tax, voyage return, NOC for obtaining PCC, etc. - but practically followed!
- Time limit for completion of assessment is governed by S. 153A

- Deals with 'Occasional' shipping business
- Starts with a non-obstante clause
 - Overrides all other provisions of IT Act
- Income deemed at 7.5% of
 - Export freight (wherever received).
Includes demurrage, handling charges or any other similar charges – S 172(4)
- Procedure for levy and collection of tax, Voyage return, NOC for obtaining PCC, etc. prescribed.
- AO to complete assessment within 9 months from the end of the relevant financial year - S. 172(4A)

Taxability of NVOCCs under the Act

- S. 44B applies to FSCs engaged in the business of operation of ships
- S. 172 applies to income of a ship belonging to or chartered by FSCs who carry passengers, live stock, mail or goods shipped at a port in India
- Therefore, both S. 44B & S. 172 would apply to shipping income belonging to FSCs who are owners or charterers of ships carrying passengers, live stock, mail or goods.
- NVOCCs operate their shipping business through slot hiring arrangements and are not owners, charterers or operators of ships.
- Therefore, income of NVOCCs is not be covered by special provisions contained under S. 44B/S.172
- Taxability of NVOCCs will be governed by general provisions under the Act, subject to relief, if any under DTAA through bilateral arrangements.

CBDT Circulars under S. 172

Circular No. 723

(dated September 19, 1995)

- **Withholding tax on freight charges paid to FSC / Indian shipping agents**
 - **Section 172 overrides all other provisions of IT Act**
 - **Overrides sections 195 and 194C**

Circular No. 723

(dated September 19, 1995)

- **In the matter of Freight Systems (India) the Delhi Tribunal observed that payment of ocean freight and IHC are not subjected to TDS by virtue of the provisions of Section 172. The issue is clarified by CBDT vide Circular no. 723 dated 19/09/1995.**

(2006) 103 TTJ (Del) 103/

(2006) 6 SOT 473 (Del)

CBDT Circulars under S. 172

Circular No. 730
(dated July 14, 1995)

- **ACIT v. Norasia Lines [109 TTJ 152 (Cochin Tbl- SB)] - Chargeability of interest determined by statutory provisions and not by CBDT Circulars**
 - **Circular 730 struck down and withdrawn vide Circular No. 9/ 2001**
-

Circular No. 732
(dated December 20, 1995)

- **‘No objection certificate’ on annual basis**
 - **No requirement to obtain Voyage- wise NOC**
 - **AO competent to issue Annual NOC valid for one year in respect of taxation of shipping profits after satisfaction about the applicability of DTAA benefits**
-

CBDT Circulars under S. 172

Circular No. 9 (dated July 9, 2001)

- **Payment u/s. 172(4) cannot be considered as payment of advance tax.**
 - **Assessee who exercises option u/s. 172(7) is not liable to pay interest u/s 234B / 234C or entitled to receive interest u/s 244A**
-

Circular No. 30 (dated August 26, 2016)

- **Customs authorities to accept Annual NOC for issuance of PCC for FSCs enjoying full DIT Relief. Voyage NOC from port AO is not required.**
- **In other cases, voyage NOC from the AO having jurisdiction over port is necessary.**

Port Clearance Procedure

Step 1

- **Obtain DIT Exemption Certificate, wherever FSC is entitled to DTAA benefits, along with Annual NOC from the jurisdictional AO**

Step 2

- **File undertaking with AO at the concerned port (guaranteeing to file voyage return and make arrangement for payment of taxes) before arrival of the ship and obtain Voyage- wise NOC, if annual NOC is not available**

Step 3

- **Obtain PCC from Customs Authorities on the basis of Annual NOC / Voyage - wise NOC**

Step 4

- **Ship is allowed to leave India on the basis of PCC from Customs Authorities**

Port Clearance Procedure



Step 5

- **File Voyage Return u/s 172(3) within 30 days of the departure of the ship along with challans for the taxes paid, or file DIT Relief Certificate, if no tax is payable**



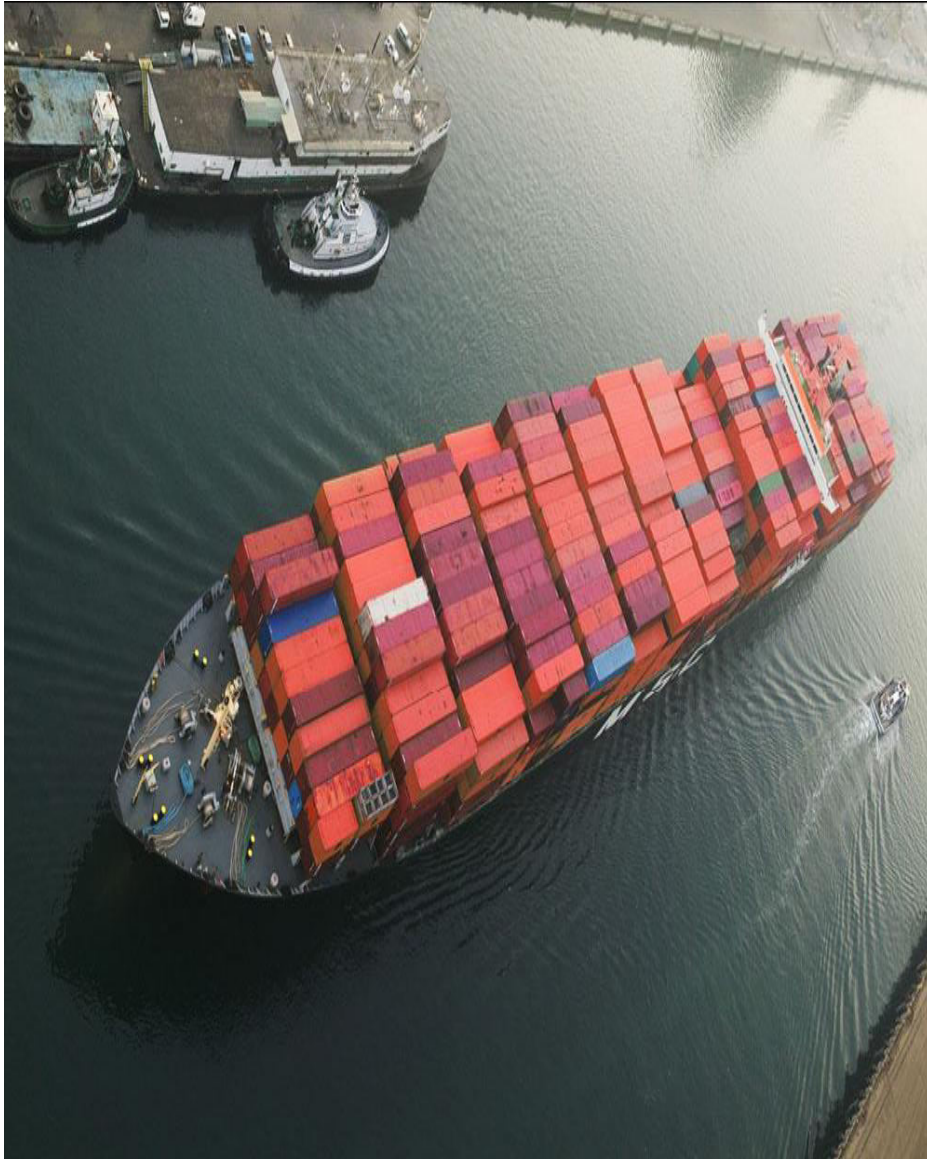
Step 6

- **Time-limit for passing voyage assessment order u/s 172(4A) – 9 (nine) months from end of the financial year in which Voyage Return filed – Inserted vide Finance Act 2007 w.e.f. April 1, 2007**

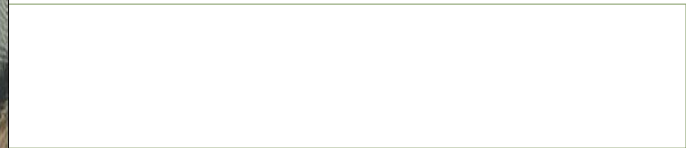
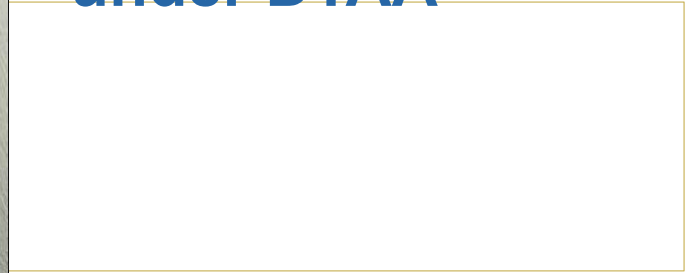


Step 7

- **Option u/s 172(7) to be taxed under other provisions of the Act to be exercised before end of the assessment year.**



Taxability of Foreign Shipping Companies under DTAA



Article 8 - Model Convention

- ▶ ~~1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting that State in which the place of effective management of the enterprise is situated.~~
- ▶ ~~2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.~~
- ▶ ~~3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no~~
- ▶ ~~4. 2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.~~

Overview

- ▶ Article -8 is a special provisions under the Model for taxability of Income of operating companies in Shipping & Airline business
- ▶ Under OECD Model 2017, taxing rights restricted to country of incorporation- subject to variations under bilateral agreements
- ▶ Prevails over Article 7
 - ▶ Mitigates burden of profit attribution to PE
- ▶ Applies to Profits of an enterprise engaged in the operation of ships or aircraft in international traffic
 - ▶ Hence , benefit of Article 8 available to owners or charterers of the ships
 - ▶ Ships could be owned or leased
- ▶ Deals with operations in International Traffic
 - ▶ Covers actual operation, activities directly connected with operations or activities incidental or ancillary to operations
- ▶ Profits from participation in a pool; a joint business or an international operating agency also covered.

Operation of Ships

OECD commentary

Profits - obtained from operation of ships

- **Profits directly obtained by an enterprise from transportation of passengers or cargo by ships or aircraft operated in international traffic**

Profits - directly connected with operation

- **Transportation of passengers or cargo on ships operated by other enterprises under code-sharing, slot-chartering arrangements or to take advantage of earlier sailing**
- **Profits from inland transportation (inland haulage charges)**
- **Lease of fully equipped & crewed ship**
- **Lease of containers and short term storage of containers**
- **Detention Charges for the late return of Containers.**

Operation of Ships

OECD commentary

**Profits - ancillary
to operation**

- **Make minor contribution relative to operation of ships**
- **Cannot be regarded as separate business or source of income. Eg. Sale of tickets, Advertisement in magazines, etc.**

**Profits - from
pooling arrangements**

- **Profits from pool, joint business or international operating agency**
 - **Lufthansa German Airlines (83 TTJ 113)(ITAT, Del) - Reciprocal arrangement entitled to benefit**
 - **British Airways Plc. v. DCIT (73 TTJ 519)(ITAT, Del) - No reciprocal arrangement - not entitled to benefit**

Operation of Ships

▶ **Business or sources to which the Article would not apply**

- ▶ Shipbuilding yard operated in a Country by a shipping enterprises having its PEM in another country.
- ▶ Interest Income or other treasury activities derived in the course of the handling of surplus cash flow. However incomes on Bonds or Deposits posted as security required by law in order to carry on the business would fall in shipping profits.

▶ **Reservations on the Article**

- ▶ Canada, Hungary, Mexico and New Zealand reserve the rights to tax profits from internal traffic.
- ▶ Belgium, Canada, Greece, Mexico, Turkey, U. K. and USA reserve the right not to extend the scope of the Article to cover inland transportation.



Issues

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Issues

- ▶ Operation of Ships
- ▶ International traffic
- ▶ Place of effective Management (POEM)
- ▶ Profit from participation in Pool, Joint business, International Operating Agency
- ▶ Income from feeder vessels
- ▶ Inland haulage charges (IHC)
- ▶ Slot Charter
- ▶ Leasing Activities

Operation of Ships

- There is considerable controversy regarding meaning of the expression “*the operation of Ships*”
- Leasing a ship on a full charter (alongwith crew) is considered to be a form of operating of ships- Para 5 of OECD Commentary on Article-8
- Bareboat charters have been held not to be in the nature of “*operation of ships*” - Para 5 of OECD Commentary on Article-8
- Ships may be treated as “*commercial equipment*” and consideration may be taxed as Royalties under Section 9(1)(vi) / Article 12 of the relevant Treaty
 - *West Asia Maritime Ltd. v. ITO*, 297 ITR 292
 - *Poompuhar Shipping v. ITO*, 297 ITR 219
- An agent between the cargo owner and the ship owner cannot be said to be engaged in the *operation of ship in international traffic*
 - *DDIT v. Thoresen Chartering Singapore (Pte.) Ltd. (2008) 119 TTJ 621*

International Traffic

- International Traffic means the transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, *except* when the ship or aircraft is operated solely between places in the other Contracting State” – Article 3.1(e), OECD MC
- The expression “*international traffic*” is broader than is normally understood
 - Merely because there are stoppage points in one state do not exclude the voyage from the scope of “*international traffic*”
 - Definition applies to journey of a ship or aircraft in the same Contracting State, if part of a longer voyage involving a foreign destination, unless specifically excluded
 - The OECD has clarified that activities incidental to the operation of ships and aircraft in international traffic would fall under Article 8

International Traffic

- Inland transportation and haulage charges covered within the definition of “*international traffic*” – *DDIT v. Safmarine Container Lines*, (2009) 121 TTJ 50
- The transportation of cargo in the international traffic by feeder vessel would fall within the ambit of such expression if such transportation is incidental or auxiliary to the main transportation – *DDIT v. Balaji Shipping*, (2008) 117 TTJ 865
- Benefit of Article 9* would be available to transportation of the cargo by feeder vessels only if the assessee is able to establish link between transportation of cargo by feeder vessels with the transportation by mother vessels owned, leased or chartered by the assessee – *DDIT v. Delmas France*, (2009) 121 TTJ 501

*Article 9 of the India France treaty corresponds to Article 8 of the OECD MC

Place of Effective Management

- Not generally defined in treaties
- Generally understood
 - A place where the top level management is located.
 - The place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.
 - All relevant facts and circumstances must be examined to determine the place of effective management.
- POEM Guidelines – CBDT Circular 8 of 2017
 - Company engaged in active business outside India
 - Other than company engaged in active business outside India

Place of Effective Management

- ▶ **Norasia Container Lines Ltd, In re 267 ITR 722**
 - ▶ Control and Management of affairs of the Company - The Assesee is registered company in Malta and has no office or staff in India. POEM not in India
 - ▶ Held- entitled to benefit under DTAA between Malta and India

- ▶ **Integrated Container Feeder Service Vs CIT ,278 ITR 182**
 - Assesee a tax resident of Mauritius but its POEM in Dubai as all its staff, operation and correspondence held in Dubai.
 - Benefit under DTAA between Mauritius and India denied

- **To be determined vis-à-vis only two contracting states ?**
 - Natwest Ruling (220 ITR 377)(AAR) and DLJMB Ruling (228 ITR 268) (AAR) - Yes

Profits from joint business, pool, etc.

- Provisions of Article 8(1) also apply to profits from participation in pool, joint business or international operating agency
- Terms “pool”, “joint business” or “international operating agency” are not defined
- Typically, a pooling arrangement involves
 - Pooling of resources by various shipping/ airline companies
 - Provision of services to each other
 - Dividing resultant profits amongst each other

Profits from joint business, pool, etc.

- ***Lufthansa German Airlines v. DCIT, (2004) 90 ITD 310:***
 - The taxpayer was in the business of operation of aircraft in the international traffic
 - The taxpayer was a member of the ‘International Airlines Technical Pool’ (‘IATP’) rendered/availed certain services in India to/from other members
 - ITAT held that the amount received from various IATP members airlines for above services rendered in India was not taxable in India under Article 8

- ***British Airways v. DCIT, (2001) 73 TTJ 519***
 - The taxpayer, not a member of the IATP, unilaterally rendered services to various airlines, without availing of any services in reciprocation
 - ITAT held that the amount for services rendered could not be treated as having rendered under pooling arrangement and hence cannot be brought under Article 8 of the India-UK Treaty

No definition is provided under the any MC for the terms “pool”, “joint business” or “international operating agency”

Income from feeder vessels

- ▶ Due to inadequate berth facilities, port conditions, etc, at times, FSCs are required to deploy ‘feeder vessels’ (typically small vessels owned by local shipping companies) to ship cargo from India to the international hub ports to ‘mother vessels’ owned/ chartered/ pooled by FSCs on account of inadequate berthing facilities, etc
- ▶ Issue arises on taxability of freight income charged by FSCs by engaging “feeder vessels” not owned / chartered/ pooled by FSCs
- ▶ Tax authorities deny relief under Article 8 on the ground that cargo is not shipped from India on the vessels owned/ chartered/ pooled by FSCs
- ▶ OECD Commentary on Article 8 provides that transportation of cargo from origin port to hub port is an incidental and ancillary activity eligible for benefit under Article 8

Income from feeder vessels

- ▶ The issue debated before Mumbai ITAT in the case of Balaji Shipping, Delmas France, ANL Container Line Pty Limited and M/s Cia de Navegacao Norsul
- ▶ The ITAT held that relief under Article 8 would be available where feeder vessels are used, provided two conditions are satisfied viz:
 - ▶ The treaty does not restrict the term 'operation of ships' in international traffic to mean income from ships owned, chartered or leased by the tax payer and
 - ▶ The tax payer is able to demonstrate that the cargo shipped on 'feeder vessels' was loaded on 'mother vessels' owned/ chartered/ pooled by FSCs for shipment to final destination
- ▶ Assessee to establish the link between transportation of cargo by feeder vessel
- ▶ with the transportation by mother vessels
 - ▶ *DDIT vs. Delmas France (27 SOT 441)*
 - ▶ *Hapag-Lloyd Container Line GMBH vs. ADIT (146 TTJ 279)*
 - ▶ *DDIT v. Cia de Navegacao Norsul (121 ITD 113 (Mum.))*

Income from feeder vessels

▶ **DDITVs CIA DE Navegacao Norsul 317 ITR 386**

- Assesee should be owner/ lessee or charter of the feeder vessel to claim benefit of Article 8 of the India and Brazil Treaty
- International Sources as external Aid - If the DTAA is non – ambiguous, the International commentaries like Klaus Vogel or OECD cannot be referred to.

Inland Haulage Charges ('IHC')

- ▶ Inland haulage charges are charges collected from customers mainly towards recovery of cost incurred in movement of cargo from customer location to port and vice versa
- ▶ Tax authorities argue that said income not eligible for benefit under Article 8 since it is not shipping income
- ▶ Assessee typically argues that the activity is an incidental and ancillary activity eligible for benefit under Article 8 of the treaty
- ▶ Inland haulage charges are based on incidental and ancillary activity covered within the scope income derived from 'operation of ships'
 - ▶ DDIT v. Safmarine Container Lines NV (24 SOT 211)(ITAT, Mum)
 - ▶ ACIT vs. Federal Express Corporation (2010-35-DTR-425-ITAT-Mum)
- ▶ Benefit of Article 8 denied on income from equipment for security screening, maintenance and charter handling
 - ACIT v. Delta Airlines Inc. (2008-TIOL-646-ITAT-Mum)

Taxability of Slot Charter incidental to Shipping Operations

- **2 different scenarios contemplated by Bombay HC in Balaji Shipping (315 ITR 62) (Mum) (2012)**

Scenarios	Ruling
Slot hire facilities availed for carriage of goods from India to final destination	Article 8 benefit granted by relying on Model Commentary since it is ancillary to operation of ships
Slot hire facilities obtained on feeder vessels for delivery to international hub port from where it was further shipped on vessels chartered by taxpayer	Article 8 benefit granted. Bombay HC stated that the slot hire agreements are inextricably interlinked with the operation of ships by the taxpayer

Payment for Use/ Hire of Ship

- **Payment for use or hire of ship is not on account of ‘carriage’ of goods - Sections 44B and 172 not attracted**
 - **UOI V. Gosalia Shipping 113 ITR 307 (SC)**
- **Section 9(1)(vi) of the Act defines royalty as:**
 - **“(iva) the use or right to use any industrial, commercial or scientific equipment.....;”**
- **Most of Indian treaties (except Greece, Netherlands, Belgium, Israel and Sweden) cover clause for use of equipment within the definition of royalty.**
- **CBDT letter dated July 29, 2003 to Ministry of Shipping clarifies:**
 - **Ships are industrial equipments.**
 - **Payments for bareboat charter in the nature of royalty.**

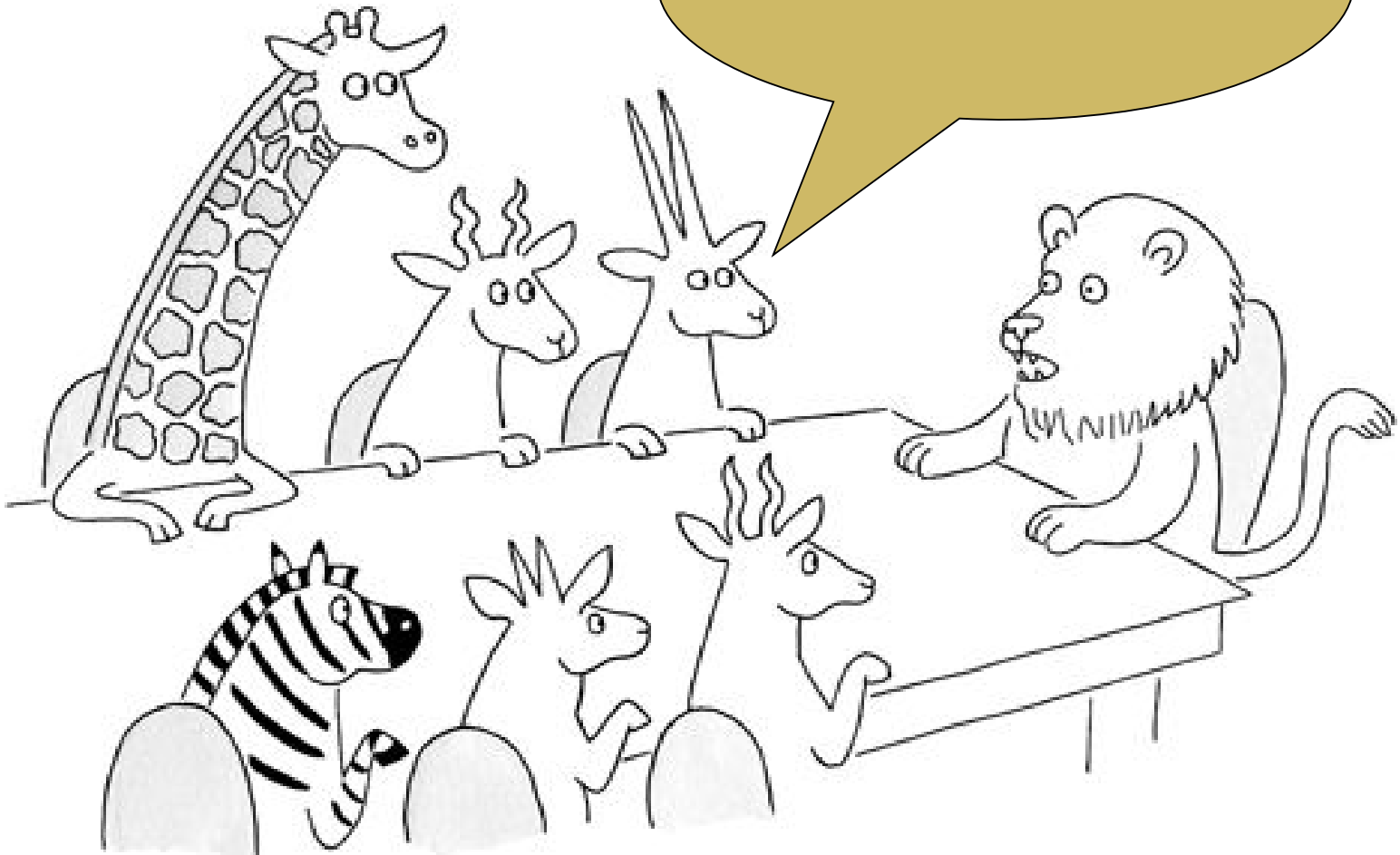
Payment for Use/ Hire of Ship

- **West Asia Maritime Ltd. : 111 ITD 155 (ITAT, Chennai)**
 - Ship is an Industrial equipment
 - hire charges paid for the ship taken on BBCD basis in the nature of royalty for use of equipment
- **ITAT analyzed BBCD agreement between charter parties:**
 - No down payment for the acquisition of the vessel on BBCD basis
 - Back ended payment required at the end of the charter period for acquisition of ship on BBCD basis
 - In substance arrangements were BBC
- **ITAT treated the arrangement as BBC i.e. 'for use of Ship' and held the same as royalty.**

Payment for Use/ Hire of Ship

- **Poompuhar Shipping Corporation Ltd. (ITAT, Chennai) 108 TTJ 970**
 - **Time Charter not a contract for hire or use of ship**
 - **Contract for provision of standard services provided by owner of ship through its officers, crew and ship**
 - **However, agreement indicated that charterer to pay for use and hire of vessel,**
 - **ITAT treated the arrangement as BBC and held that consideration payable to owner of ship is in the nature of royalty**

Questions??



Section 172

- ▶ 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**
- ▶ Where such a ship carries passengers, livestock, mail or 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.
- ▶ Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the [Assessing] Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of all passengers, livestock, mail or goods shipped at that port since the last arrival of the ship thereat:

Section 172

- ▶ **Provided** that where the [Assessing] Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the [Assessing] Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.
- ▶ On receipt of the return, the [Assessing] Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates [in force] applicable to the total income of a company which has not made the arrangements referred to in section 194 and such sum shall be payable by the master of the ship.
- ▶ No order assessing the income and determining the sum of tax payable thereon shall be made under sub-section (4) after the expiry of nine months from the end of the financial year in which the return under sub-section (3) is furnished

Section 172

- ▶ **Provided** that where the return under sub-section (3) has been furnished before the 1st day of April, 2007, such order shall be made on or before the 31st day of December, 2008.]
- ▶ For the purpose of determining the tax payable under sub-section (4), the [Assessing] Officer may call for such accounts or documents as he may require.
- ▶ A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

Section 172

- ▶ Nothing in this section shall be deemed to prevent the owner or charterer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment be made of his total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and if he so claims, any payment made under this section in respect of the passengers, livestock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax⁴⁹ leviable for that assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.
- ▶ For the purposes of this section, the amount referred to in sub-section (2) shall include the amount paid or payable by way of demurrage charge or handling charge or any other amount of similar nature.]

Section 44B

- ▶ Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head “Profits and gains of business or profession”.
- ▶ The amounts referred to in sub-section (1) shall be the following, namely :—
 - (i) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and
 - (ii) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.]
- ▶ [*Explanation.*—For the purposes of this sub-section, the amount referred to in clause (i) or clause (ii) shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges or handling charges or any other amount of similar nature.]

Thank You

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