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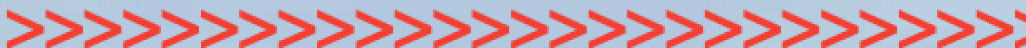

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India

Mumbai Tribunal Interprets the Limitation of Relief Clause in the India–Singapore Tax Treaty

Article 24 of the India–Singapore tax treaty ("tax treaty") provides Limitation of Relief ("LoR") clause which stipulates that India (source State) can provide a tax treaty benefit if the sourced income is subject to tax in Singapore (resident State) with reference to the amounts remitted to or received in Singapore. In other words, if India sourced income is not subject to tax in Singapore (resident State) on a receipt basis, then India may not grant tax treaty benefit to the Singaporean residents.

Invoking the LoR clause by revenue authorities to deny benefits claimed under this treaty by taxpayers is not uncommon and is generally debated or litigated in the recent past. In a recent development, the Mumbai Income Tax Appellate Tribunal ("Tribunal") in the case of *Citicorp Investment Bank (Singapore) Ltd (Citicorp investment Bank (Singapore) Ltd v. DCIT (International Tax. Mumbai) [ITA No.793 of 2015]*) held that, LoR cannot be applied on the capital gains that is exempt from tax in India applying the Article 13(4) of the India–Singapore tax treaty.

Facts

Citicorp Investment Bank (Singapore) Ltd ("the taxpayer") is a resident of Singapore and registered as a Foreign Institutional Investor ("FII") with the Securities and Exchange Board of India investing in debt instruments. The taxpayer filed its return of income in India wherein, capital gains arising on sale of debt instruments was claimed as exempt under Article 13(4) of the India–Singapore tax treaty.

The revenue authorities denied the exemption claimed by the taxpayer under Article 13(4) on the capital gains earned in India, by invoking the provisions of Article 24 of the tax treaty restricting the treaty exemption to the extent of the amount of income repatriated to Singapore, based on the premise that, taxpayer did not produce repatriation evidence as mandated by Article 24 of the tax treaty.

Issue for Consideration

The issue before the Tribunal was whether capital gains was exempt from tax in India under Article 13(4) or could it be restricted to the extent of income repatriated to Singapore as specified in Article 24 of the India–Singapore tax treaty?

Tribunal Ruling

Article 24 limits the benefit of tax exemption to a taxpayer on a remittance basis envisaging two conditions to be satisfied:

- income earned from the source state (India in this case) is either tax-exempt or is taxed at a reduced rate in the source state (India) under the tax treaty; and
- under the laws in force of the resident state (Singapore), such income is subject to tax by reference to the amount thereof that is remitted to or received in the resident state.

Singapore follows taxation of income on receipt basis on its worldwide income and the taxpayer being a resident of Singapore is liable to tax in Singapore. Where both the conditions are satisfied, then the exemption is allowed or the reduced rate of tax is levied on the amount so remitted. Singapore revenue authorities issued a certificate to the taxpayer certifying that income accrued or derived from sale of India debt securities from foreign exchange transactions in India are taxable in Singapore.

The limitation provided under Article 24 operates in conjunction with the other provisions of the tax treaty only if the income is either "exempt" from tax in India or "taxed at a reduced" rate in India. As held by the Coordinate Bench of Mumbai Tribunal in the case of *Set Satellite (Singapore) Pte Ltd (SET Satellite (Singapore) Pte Ltd. v. ADIT in [M.A. No. 520 (Mum.) of 2010, dated February 11, 2010])* and *ALP Company Pte Ltd (ALP Company Pte Ltd v. ADIT [2017] 78 taxmann.com 240 (Mum.-Trib))* the Tribunal observed clear distinction between income "exempt from tax" and income which is "not taxable." The LoR clause under Article 24 operates where income is exempt from tax and not in situation of income not taxable.

The Tribunal observed that Article 13(4) of the tax treaty clearly states that capital gains derived by a Singapore resident from alienation of any property (other than those mentioned in paragraphs 1 and 2 of this Article) shall be taxable only in Singapore. Article 13(4) of India-Singapore tax treaty envisages territorial and jurisdictional rights for taxing the income and India has no jurisdiction or any taxing right of income governed by this Article. This implies that India does not have any taxation rights under Article 13(4), i.e. the income is "not taxable" in India. In the instant case there is no doubt, of the income enjoying any exemption or reduced rate of taxation in the source state, i.e. India.

The LoR clause specified under Article 24 is applicable when income sourced in a contracting state is exempt from tax in the source state or is subject to tax at a reduced rate in that source state. In this case, since income earned by the taxpayer on sale of debt instrument is not taxable in India under Article 13(4) of the tax treaty, LoR Article 24 does not apply. Hence, the argument of revenue authorities that the taxpayer did not furnish evidence of remittance of capital gains earned in India to Singapore was inappropriate.

Key Takeaways

The ruling interprets the provisions of the Limitation on Benefit ("LoB") clause especially in light of the amended India–Singapore tax treaty and introduction of the principal purpose test ("PPT") rules under the OECD BEPS Project—Action Plan 6 Prevention of Treaty Abuse. It may be pertinent to understand the implementation of restricting the tax treaty claim in situations of double non-taxation and treaty shopping applying comprehensive LoB clause with the PPT

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rules on ratification of the multilateral instruments as per the OECD BEPS project.

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