

## POEM of Foreign Shipping Co. wasn't in India as all important decisions were taken from Denmark

**Summary – The Rajkot ITAT in a recent case of Pearl Logistics & Ex-IM Corporation., (the Assessee) held that where shipping company was resident of Denmark and had been operating business wholly from Denmark, and all important decisions were taken from Denmark in form of meeting, place of effective management and control of shipping company was in Denmark only; and, thus, profit arising from operation of ships was not taxable in India**

### Facts

- The assessee was an agent of a Denmark based ship broker Faber. Faber was disponent owner and CTI-Jordan was charterer of ship which carried cement to ports in India. Freight was payable by CTI-Jordan to Faber.
- The assessee filed return of income under section 172(8) and claimed that it was not liable to pay tax because Faber was beneficiary of freight and, hence, it was entitled to benefit of DTAA.
- The Assessing Officer observed that assessee had not submitted complete details called for by the Assessing Officer except the copy of vessels registration certificate and that with help of incriminating and forged documents, the assessee had claimed that no TDS was to be deducted as per DTAA . Under the circumstances demand under section 172(4) was raised.
- The Commissioner (Appeals) had dismissed the appeal of the assessee.
- On appeal:

### Held

- Faber is owner and CTI is Jordan is charterer. As per Charter Party agreement, CTI Jordan is charterer and Faber Shipbroker, Denmark is the owner.
- According to section 172, income of owner or charter who receives freight is chargeable to tax. In this case, freight is received by Faber and has earned the freight, so, the income of Faber is chargeable to tax in India. Faber Shipbrokers is resident of Denmark and tax residency certificate of which is available on record. The benefit of DTAA between India and Denmark shall be available to the Denmark resident.
- Further, as per article 9, profits derived from the operation of ships in International Traffic shall be taxable only in the State where place of effective management of the enterprise is situated. In this case the 'POEM' of Denmark entity is situated in Denmark as:

registration certificate  
residence of shareholder  
passport of owner

- All shows that Faber is resident of Denmark and its 'POEM' is in Denmark. Therefore 'head and brain' of Faber is situated in Denmark.
- It is noteworthy that in the case of same assessee and on identical facts, the Commissioner (Appeals) has allowed the benefit of DTAA to the assessee.
- In the entirety of facts and circumstances of the case, assessee has proved the place of effective control and management of the assessee by furnishing several documents including declaration by director of company that it is completely 100 per cent owned by Faber Anderson, Copy of Passport of Director to prove that the nationality of director and company has been operating from Denmark. It can be concluded that the Director, is resident of Denmark and has been operating business wholly from Denmark, all the important decisions are taken from Denmark in the form of meeting and therefore, the place of effective management and control is Denmark only. The principal company is also engaged in international traffic and residence is Denmark.
- Therefore, on the basis of article 9 of the DTAA between India and Denmark, the income on account of operation of ship in International Traffic shall be taxable in the State in which the place of effective management is situated *i.e.* in this case Denmark.
- Therefore, in view of the above discussion and considering article-9 of the Treaty between India and Denmark and also the decision taken by the department in earlier cases of the assessee, the ships operated in International Traffic and therefore, the income from ship shall not be taxed in India as per article 9 of the Treaty.