

Capital gains falling under article 13 of India-Singapore DTAA not taxable though gains wasn't remitted to Singapore

Summary – The Mumbai ITAT in a recent case of D. B. International (Asia) Ltd., (the Assessee) held that Article 13(4) of DTAA between India and Singapore is not an exemption provision but it speaks of taxability of particular income in a particular State by virtue of residence of assessee and provisions of article 24 of India Singapore Tax Treaty does not have much relevance insofar as it relates to applicability of article 13(4) to income derived from capital gain

Facts

- The assessee, a tax resident of Singapore, was carrying on its business operation, including trading in Indian securities, from Singapore in course of such activity of trading in Indian Securities, and had derived short-term capital gain which had been claimed as not taxable in India under article 13(4).
- The Assessing Officer observed that since the income from capital gain was not repatriated to Singapore in terms of article 24, it had to be taxed in India under the Indian Income tax Act and exemption under article 13(4) could not be allowed.
- The DRP, after considering the submissions of the assessee *vis-à-vis* the provisions contained under India-Singapore Tax Treaty and other facts and material on record, held that the entire income received by the assessee from all sources was taxable in Singapore irrespective of the fact whether it was received in Singapore or not.
- On appeal :

Held

- The aforesaid conclusion of the Assessing Officer is under a misconception of the provisions of India Singapore Tax Treaty. Article 13 deals with the taxability of capital gain arising from immovable and movable assets situated in one of the contracting State. While article 13(1) deals with sale of immovable property, article 13(2) deals with sale of movable property forming part of the business property of a PE. Article 13(3) deals with alienation of ships and aircrafts operated in International traffic or movable property pertaining to the operation of such ships or aircrafts. Whereas, article 13(4) deals with gains derived from any other asset which are not mentioned in article 13(1), 13(2) and 13(3). Thus, on a careful reading of article 13 as a whole, it becomes clear that the capital gain derived by the assessee from sale of Indian Securities will fall under article 13(4) and the gain derived by the resident of a contracting State from sale of any property shall be taxable only in that State. In other words, it will be taxed in the Country where the assessee is a resident. In the present case there is no dispute that the assessee is a resident of Singapore. Therefore, as per article 13(4) the gain derived by the assessee from sale of Indian Securities can only be taxed in Singapore. The

Assessing Officer has attempted to deny the exemption claimed by the assessee under article 13(4) by invoking article 24. Applicability of article 24 will not arise in the present fact situation. On a careful reading of article 24 it becomes clear that if income derived from a contracting State is either exempt from tax or taxed at a reduced rate in that contracting State, whereas, the amount remitted or received out of such income in other contracting State is taxable in the other contracting State to the extent of such remittance or receipt, then the exemption or reduction of tax to be allowed under the Tax Treaty in respect of income derived in the contracting state shall be limited to the amount remitted or received in the other contracting State. Therefore, the first condition which article 24 imposes is, the income derived from a contracting State should either be exempt from tax or taxed at a reduced rate in that contracting State. Article 13(4) does not say that the capital gain derived in a contracting State is exempt from taxation in that contracting State. Capital gain derived by a resident of a contracting State shall be taxable only in that State. Thus, article 13(4) in clear and unambiguous terms expresses itself as not an exemption provision but it speaks of taxability of particular income in a particular State by virtue of residence of the assessee and the provisions of article 24 does not have much relevance insofar as it relates to applicability of article 13(4) to income derived from capital gain. The expression 'exempt' with reference to the capital gain derived by the assessee, has been loosely used. On the contrary, the overriding nature of article 13(4) makes the capital gain taxable only in the country of residence of the assessee.

- There is no infirmity in the directions of DRP.