

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/TAX APPEAL NO. 688 of 2024
With
R/TAX APPEAL NO. 707 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 6595 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 6539 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No

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M/S ATLANTIC SHIPPING PVT. LTD.
Versus
INCOME TAX OFFICER (INTERNATIONAL TAXATION)

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Appearance:
MR B S SOPARKAR(6851) for the Appellant(s) No. 1
MR.VARUN K.PATEL(3802) for the Opponent(s) No. 1
RULE SERVED for the Opponent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 15/10/2025
ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. B.S.Soparkar
for the appellants and learned Senior
Standing Counsel Mr. Varun Patel for
the respondent-Department.



2. Tax Appeals No. 688 of 2024 and 707 of 2024 are filed under section 260A of the Income Tax Act, 1961 [for short 'the Act'] arising out of the Common Judgement and Order dated 21.03.2024 passed by the Income Tax Appellate Tribunal, Rajkot Bench, Rajkot (for short 'the Tribunal'). Both the Tax Appeals are admitted on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal has erred in law and in facts in holding that the benefit of Article 8 of India-Singapore DTAA to the profits derived from operation of ships in international traffic is subject to the limitation in Article 24?"



3. The appellants are Indian Companies engaged in business of Shipping Agency Services. The appellants provide shipping agency services to its principals including M/s. ST Shipping and Transport Pte. LTD (for short 'the ST Shipping'). M/s. ST Shipping is incorporated in Singapore and is engaged in the business of operation of owned/chartered ships in international waters and is also a tax resident of Singapore.

3.1 During the Financial Year 2011-12, the ships owned/chartered by the ST Shipping performed various voyages from Indian Ports including Sikka Port and earned income from shippers/public exporters.



3.2 The ST Shipping through its agents- appellants herein filed vessel voyage return under section 172(3) of the Act for various vessels operating in Indian Territorial Waters and offered 'Nil' tax on the income by claiming tax benefit under Article 8 of India-Singapore Double Taxation Avoidance Agreement ['DTAA' for short].

3.3 The Assessing Officer called for certain details like copy of freight invoice and proof of remittance of freight to the bank account of beneficiary in Singapore. The Assessing Officer on perusal of such details was of the opinion that the amount had been



remitted to bank account in London, United Kingdom and was not received or remitted in Singapore, hence, the appellants-assesses were held liable for tax invoking Article 24 of DTAA by the Assessing Officer. The Assessing Officer disallowed claim of exemption made by the assessee under Article 8 of the DTAA. The Assessing Officer observed that as per Article 24 of DTAA between India and Singapore, funds have to be remitted to the country where the resident has claimed the benefit of DTAA whereas, in the facts of the case the freight beneficiary is ST Shipping and hence, the funds ought to have been remitted to Singapore and not to London, United Kingdom and hence, the



assesses were not entitled to claim the exemption as per Article 8 of the DTAA.

3.4 Being aggrieved, the appellants preferred appeal before the CIT(Appeals). During the appeal proceedings, additional evidence was sought to be filed in support of non-applicability of Article 24 of the DTAA being the certificate dated 09.01.2013 issued by Inland Revenue Authority of Singapore ['IRAS' for short] to ST Shipping confirming non-applicability of the provisions of Article 24 of the India and Singapore DTAA.

3.5 The CIT (A) therefore, sought comments from the Assessing Officer and



his views on the admissibility of the additional evidence filed by the appellants-assesses. After considering the remand report of the Assessing Officer and considering the submissions of the assessee, the CIT(A) refused to admit the additional evidence on the ground that though the time was granted to the assessee, no reply was filed and the assessee had failed to prove the circumstances which prevented them from furnishing information before the Assessing Officer.

3.6 On merits, the CIT(A) observed that Article 24 of the DTAA would be applicable in the facts of the case. It was also observed by the CIT(A) that



though the assesses were asked to bring on record whether funds have been received in Singapore or not, no details were furnished before the Assessing Officer. Accordingly, CIT (A) dismissed the appeal filed by the appellants-assessee holding that the exemption as per Article 8 of DTAA was not available in view of expressed language of Article 24 of the DTAA. The appellants, therefore, preferred an appeal before the Tribunal contending that the assessee had earned freight income by shipping goods to ports in India and therefore, the benefit of Article 8 of the DTAA is available vis-à-vis Article 24 which contains two conditions to be fulfilled so as to



apply the same. It was also contended that both the conditions of Article 24 have not been satisfied in the facts of the case and therefore, the said Article would not be applicable.

3.7 The Tribunal, after considering the submissions made by appellants-assesses and the departmental representative, held as under:

"9. We observe that some of the case laws on which reliance is sought to be placed are not related to shipping companies and hence does not involve applicability of Article 8 in relation to taxation of shipping companies. Accordingly, in our considered view, reliance cannot be placed on those decisions since the applicable treaty provisions (Article 8) is differently worded and have no application with respect to taxation of shipping companies.

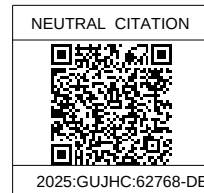
10. Secondly, in our considered view, we are unable to agree with the contention / arguments of the Counsel for the assessee on this point, because if the aforesaid interpretation were to be accepted, then this would imply that whenever a specific clause of tax treaty gives taxing rights to the country of residence, then by necessary implication Article 24 (Limitation of Relief clause) will have no applicability. This would effectively render Article 24 of the India Tax Treaty otiose / redundant. The limitation of relief clause has been introduced primarily with a view to ensure that the tax treaty benefits are not abused / misused and no benefit is derived which was not intended to be granted to a Contracting State under the Tax Treaty. Singapore has a territorial tax system so that only income sourced in Singapore is subject to tax. Taxation of on foreign sourced income (income earned off-shore) by a Singapore resident company is not subject to tax unless the income is received in Singapore or deemed remitted to Singapore. The term "received" in Singapore includes

remitted to, transmitted to or brought into Singapore, used to satisfy any debt incurred in respect of a trade or business carried on in Singapore or used to purchase any movable property (such as equipment, raw material etc.) that is then brought into Singapore. Therefore, the limitation of relief clause has been introduced with the objective that in case "exemption from taxation in source country" has been claimed by the resident Singapore Company under the relevant Article under the India-Singapore Treaty DTAA, then it should not happen that such income is not remitted by the Singapore resident company to Singapore (which follows a territorial tax system) and such income is remitted to another country levying no tax or reduced tax on such foreign sourced income. This would result in the resident Singapore company claiming the benefit of double non-taxation (neither taxed in India, nor taxed in Singapore), which is not the intention under the India-Singapore Treaty and specifically, it is this unintended benefit, which is

sought to be curtailed by Article 24 of the India-Singapore Tax Treaty.

11. Article 8 of the India-Singapore Tax Treaty (Shipping and Air Transport) provides that profit derived by enterprise of Singapore shall be taxable only in Singapore. Further, in our view, Article 24 (Limitation of Relief), while it states that "this agreement provides that income from sources in a Contracting State shall be exempted from tax". should be read in a manner that such income is exempted from "source taxation" or "exempted from tax in the source country" as this would be a harmonious interpretation of Article 8 read with Article 24 of the India-Singapore Tax Treaty. Notably, even OECD commentary speaks of exemption from "source taxation" especially when discussing about permanent establishment being "exempted from tax in the source DTAA speaks of those incomes, which are exempted from "source taxation", as well. This is for the reason that profits derived from operation of ships in international traffic, should be

normally subject to tax in the country of residence under Article 8. However, this is subject to the limitation in Article 24 that such profits are remitted to Singapore, which follows a territorial system of taxation wherein offshore income is taxed in Singapore on part that only which has been received or remitted in Singapore. Accordingly, in our considered view Article 8 of India-Singapore Tax Treaty exempts income earned by an enterprise from operation of ships in international traffic from "source taxation", subject to such profits being remitted / or received in Singapore which alone are taxable in Singapore. Therefore, in our considered view, looking into the instant facts, the argument of the Ld. Counsel for the assessee that condition "one" has not been satisfied in the instant facts cannot be accepted, for this would lead to Article 24 of the India-Singapore DTAA as being redundant / otiose and the non-resident taxpayer getting benefit of double non-taxation of India sourced income, which is clearly not intended under the India-Singapore Tax Treaty."



3.8 With regard to other contentions advanced on behalf of the appellants—assesses regarding non-applicability of the Article 24 of the DTAA, the Tribunal relied upon the decision of this Court in case of **M.T. Maersk Mikage vs. DIT (International Taxation)** reported in 390 ITR 427 and held as under:

"19. In the aforesaid decision, it may be observed that Gujarat High Court has stated that vide this letter, the Revenue Authority of Singapore went on to opine that Article 24.1 of DTAA would not be applicable, however, the High Court may not be fully guided by this because this falls within the realm of "interpretation" of relevant clauses of the DTAA. Secondly, the Gujarat High Court further noted that in absence of any rebuttal material produced by Revenue, the Court would be guided by the factual declaration made by

the Singapore Authority considering the income is an income accruing or derived from business carried on in Singapore. The High Court observed contents of the certificate have not been doubted by the Department / Revenue therefore, this would knock out the very basis of invoking Article 24(1) of the Treaty. Therefore, effectively, the Gujarat High Court has made the following observations:

Firstly, the certificate is in the form of an opinion, which is in the realm of interpretation of relevant clauses of DTAA, and the High Court cannot be guided by such interpretation.

Secondly, since the Revenue has not challenged or doubted the certificate issued by the Singapore Tax Authority, and had not produced any rebuttal material, the certificate has knocked out the very basis of applicability of Article 24(1) of the DTAA.

20. However, for the impugned assessment years, the factual situation is different from the

preceding assessment year which were before Hon'ble Gujarat High Court, since the Ld. D.R. has challenged the veracity of the very certificate which was produced by the assessee for the first time during the course of appellate proceedings before Ld. CIT(A). Therefore, in view of the observations made by Gujarat High Court, and the challenge by the Ld. D.R. as to contents of the certificate issued by Singapore Tax Authority, it would be pertinent to take a closer look at the certificate issued by the Singapore Tax Authorities and its applicability to the instant facts.

21. As stated by us earlier, Singapore follows a territorial tax system so that only income sourced in Singapore is taxed. Taxation of foreign source income (income earned offshore) by a Singapore resident company is not subject to tax, unless the income is received in Singapore deemed remitted to Singapore. The Counsel for the assessee has submitted a certificate which firstly states that the charter income has been derived by the assessee "from a

business carried on in Singapore", and therefore, assessable to tax in Singapore on "accrual basis". However, in our view, there are certain factual inaccuracies in the aforesaid certificate issued by Singapore Tax Authorities. Admittedly, in the instant case, the assessee has been taken the benefit of Article 8 of India-Singapore Tax Treaty on the ground that it has been deriving profits from operation of ships in international waters. It is an admitted factual position that the assessee has been operating in international waters and earning income from transportation operations being carried out at ports in India. Therefore, the very basis of statement made in the certificate that income derived by the assessee is from "business carried on in Singapore" is questionable and it is not clear to us as to on what basis, this aforesaid statement has been made in the certificate, specifically when it is an admitted fact that the assessee has been earning foreign sourced income from plying in international waters. The certificate has not given any basis whatsoever as to how the assessee is deriving income from



"business carried on in Singapore", when admittedly, the assessee has been operating in international waters and taking benefit of Article 8 of the India Singapore Tax Treaty".

22. Secondly, as noted by Gujarat High Court, the certificate is in the form of our opinion, which has no binding effect on the Court since it relates to interpretation of tax treaty provision. In the instant facts, first after having concluded that the assessee is deriving income from business carried out in Singapore", the certificate goes on to state that the income is therefore assessable to tax in Singapore on "accrual basis". The certificate has not made reference to any specific taxing provision under the Singapore Tax Laws while coming to the conclusion that assessee is assessable to tax in Singapore on "accrual basis". Apparently, the assessee is deriving substantial income from carrying out substantial shipping activities within the territorial waters of India and is seeking to override the limitation of relief provided under the Treaty on the ground that as per certificate, the

assessee is carrying out operations in Singapore and hence is taxable in Singapore on "accrual basis". Therefore, since Article 24(1) limits the relief only with respect to income which is taxed in Singapore on remittance / receipt basis and has no applicability on income taxable in Singapore on "accrual basis", this certificate has the effect of ousting the applicability of the limitation of relief clause in the India-Singapore Tax Treaty. However, as noted above, the language of the certificate, as also observed by Hon'ble Gujarat High Court, is in the form of an opinion, specifically aimed at eclipsing the limitation of relief clause, by stating that the aforesaid income, which has been derived by the assessee from "business carried on in Singapore" is assessable to tax in Singapore on "accrual basis". However, the certificate does not specify the factual basis on which the Singapore tax authority has come to the conclusion that income from shipping business have been derived by the assessee from "business carried on in Singapore", when admittedly the aforesaid income has been earned by the assessee from

transportation activities carried out at India ports. Secondly, there is no specific statutory provisions which has been mentioned in the letter which would lead to the conclusion that such shipping company derived from carrying out operations in international waters (more particularly Indian ports), would be taxable in Singapore on "accrual basis", specifically in light of the fact that Singapore has a territorial tax system so that only income sourced in Singapore is subject to tax on accrual basis and taxation of a foreign source income (income earned offshore) by Singapore resident company is not subject to tax unless the income is received in Singapore or deemed remitted to Singapore. However, despite substantial attempts, due to paucity of time, the Department was unable to obtain the necessary clarification from the Singapore Tax Authority on this issue as how it can be stated that firstly, assessee is carrying on "business in Singapore" and on what basis has the Singapore Tax Authorities came to the conclusion that assessee is taxable on "accrual basis". Further, even the Gujarat High Court has observed that this



certificate is in the form of opinion and has sought to knock out the very basis of the Assessing Officer and CIT for invoking Clause (1) of Article 24 of the DTAA. Therefore, in view of the observations of the Hon'ble Gujarat High Court to the effect that in absence of any "doubt" as to contents of the certificate by the Indian Revenue Authorities, the Court is bound to accept the contents of the letter by IRAS as correct and the specific challenge to the contents of the certificate by the Revenue Authorities, both before passed Ld. CIT(A) as well as before us by Ld. D.R during the course of appellate proceedings, we are of the considered view that it is a fit case where the contents of the certificate required further verification, since effectively the entire revenue earned by shipping companies from operating in territorial waters of India is sought to be claimed as exempt from applicability of provisions of Clause (1) of Article 24 of India-Singapore DTAA, on the basis of the contents of this letter issued by the Singapore Tax Authorities. However, as noted above, from a reading of the letter issued by the Singapore Tax

Authorities, it is unclear to us as to how the income in question has been earned from a "business carried out in Singapore" and hence taxable on "accrual basis" in Singapore. This question has been raised by the Department both as part of the order of CIT(A) (in the remand report) and also before us by the Ld. D.R. We also observe that the letter issued by IRAS does not refer to any statutory provisions under the Singapore Tax Laws and is more in the form of a unilateral opinion/ declaration that since the income has been earned by the assessee on "accrual basis", Article 24 of the DTAA (Limitation of Relief Clause) will have no applicability to the assessee's set of facts. Since the entire case of the assessee for various assessment years under consideration hinges on the statement issued by the Singapore Tax Authority and as noted by the Gujarat High Court, the certificate is merely in the form of an opinion, in our considered view, it is a fit case where the basis of issuance of this certificate needs to be looked into in more detail, especially in the absence of any statutory provisions being cited in the aforesaid certificate of as to how

the assessee is taxable in Singapore on "accrual basis" (especially when Singapore follows a territorial tax system where offshore income is taxable on receipts / deemed remittance basis) and on what basis the Singapore Tax Authority has come to the unequivocal conclusion that income has been derived from "business carried on in Singapore" by the assessee.

23. In the result, the matter is restored to the file of Assessing Officer to verify the contents of the aforesaid certificate and in case, the Department is unable to obtain any specific material to rebut the contents of the certificate issued by Singapore Tax Authorities, then respectfully following the decision of Gujarat High Court in the assessee's own case referred to above, relief may be granted to the assessee, in accordance with law."

3.9 Being aggrieved by the aforesaid order of the Tribunal remanding the matter to the file of the Assessing



Officer to verify the contents of the certificate issued by the IRAS, the appellants-assessee have therefore, preferred these Tax Appeals.

3.10 The Assessing Officer, on remand of the matter by the Tribunal, passed an Assessment Order dated 27.03.2025 on merits ignoring the directions issued by the Tribunal in Para 8.1 rebuttal to point No. 5.

3.11 The appellants-assessee therefore, challenged the assessment order by preferring Special Civil Applications No. 6595/2025 and 6539/2025 respectively.



4. This Court passed the following order
on 09.05.2025:

"1. Heard Learned Advocate Mr. B.S. Soparkar for the Petitioner and Learned Senior Standing Counsel Mr. Varun Patel for the Respondent on advance copy and Mr. Kamlesh Makvana, CIT (IT&TP), Ahmedabad through video conference on behalf of the department.

2. Learned Advocate Mr. B.S. Soparkar submitted that after the Income Tax Appellate Tribunal remanded the matter by order dated 21.03.2024 to the Assessing Officer to verify the contents of the certificate issued by the Singapore Tax Authority and further directed that in case the department is unable to obtain any specific material to rebut the contents of the certificate issued by the said Authority, then in view of the decision of this court in the assessee's own case, relief may be granted to the assessee, in accordance with law.

3. It was submitted that in spite of such clear direction, the

Assessing Officer has passed the assessment order rejecting the contentions raised by the Petitioner which are similar to the case of the Petitioner in earlier years and has made the addition rejecting the claim of the Petitioner to get the tax relief as per article 8 of the India - Singapore Treaty by relying upon article 24 of the said Treaty under Section 172(4) of the Income Tax Act, 1961.

4. Learned Advocate Mr. B.S. Soparkar invited the attention of the Court to the observation made by the learned Assessing Officer in para 8.1 in Rebuttal to Poin No. 5, wherein, it is averred that

"Further, the Hon'ble ITAT has not accepted or guaranteed the TRC issued by the IRAS. The observation of the ITAT granting relief as per Assessee's own case decision of Hon'ble Gujarat High Court. Corresponding to this claim, the Hon'ble ITAT ought to have given the Vessel name and AY of such orders. As far as the Hon'ble High Court decision is applicable only for M.T. Mearsk, not for others. The



assessee/agent case has not yet been decided by the Hon'ble High Court. The ITAT had erred in making such comments, i.e., assessee's own case, nothing more."

It was submitted that the Assessing Officer could not have made such an observation as the order passed by the ITAT is binding upon the Respondent.

5. Learned Senior Standing Counsel Mr. Varun Patel for the Respondent Authority, under instructions, submitted that the contention raised by the Petitioner is true and the appropriate affidavit shall be filed on behalf of the Respondent if time is granted for the same.

6. With regard to the merits of the matter, it was submitted that the Respondent shall also make appropriate and suitable averments in the Affidavit which may be filed.

7. Considering the above submission, issue notice, returnable on 16.06.2025.

To be listed on top of the board."



5. As the issues involved in the Tax Appeals and the Special Civil Applications are common, the same were heard analogously and are being disposed of by this Common order.

6. Tax appeals are decided first as the assessment order is consequence of the order passed by the Tribunal on remand of matters to the Assessing Officer.

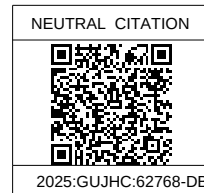
7. It would, therefore, be germane to refer to the relevant Articles of DTAA to decide the Tax Appeals which read as follows:

"ARTICLE 2- Taxes Covered

1. The taxes to which this Agreement shall apply are:

(a) In India:

Income Tax including any



surcharge thereon

(hereinafter referred to as
"Indian tax")

(b) In Singapore:
the Income-tax
(hereinafter referred to as
"Singapore tax")."

"ARTICLE 3- General Definitions

(c) the terms " a Contracting State" and "the other Contracting State" mean India or Singapore as the context requires;"

"ARTICLE 8- Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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 engaged in the operation of ships or aircraft.

3. Interest on funds connected with the operation of ships or aircraft



in international traffic shall be regarded as profits derived from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest.

4. For the purposes of this article, profits from the operation of ships or aircraft in international traffic shall mean profits derived from the transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charters of the ships or aircraft, including profits from:

(a) the sale of tickets for such transportation on behalf of other enterprises;

(b) the incidental lease of ships or aircraft used in such transportation;

(c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with such transportation; and



(d) any other activity directly connected with such transportation."

"ARTICLE 24- Limitation of Relief

1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State.

2. However, this limitation does not apply to income derived by the Government of a Contracting State or any person approved by the competent authority of that State for the purpose of this paragraph.



The term "Government" includes its agencies and statutory bodies."

8. Learned advocate Mr. B.S.Soparkar for the appellants submitted that on perusal of Articles 8 and 24 of the DTAA, only Article 8 would be applicable in the facts of the case in light of Clause (1) thereof which provides that profit derived by the appellant shall be taxable only in Singapore.

8.1 It was submitted that Article 24 of the DTAA cannot be applied as neither of the two conditions prescribed therein are fulfilled. It was pointed out that Condition No.1 of Article 24 of DTAA stipulates that where DTAA provides with or without other conditions that



income from sources in a Contracting State shall be exempt from tax or taxed at a reduced rate in that Contracting State and Condition No. 2 provides that under the laws in force in the other Contracting State the said income is subject to tax by reference to amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then exemption or reduction of tax to be allowed under DTAA in the first-mentioned Contracting State shall apply to so much of income as is remitted to or received in that other Contracting State. It was submitted that both the conditions are required to be fulfilled whereas Condition No.2 is not fulfilled



because under the laws in force in Singapore i.e. other Contracting State, the said income is subject to tax on accrual basis and not by reference to the amount thereof which is remitted to or received in other Contracting State and not by reference to the full amount thereof. In support of his submissions, reliance was placed on the decision of this Court in case of M.T.Maersk Mikage (supra).

8.2 It was further submitted reliance placed by the Revenue on section 10 of the Singapore Income Tax Act which provides that income tax is payable at the rate upon the income specified for each assessment year upon



the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore, cannot be relied as income is liable to be taxed in India as per the provisions of DTAA read with provisions of the Act.

8.3 It was therefore, submitted that the shipping income of ST Shipping is accruing in Singapore and therefore, the same cannot be taxed in the hands of the appellant under section 172 of the Act.

8.4 Learned advocate Mr. Soparkar referred to the letter dated 09.01.2013 addressed to ST Shipping issued by the IRAS wherein it is stated that charter income derived by the ST Shipping to be income accruing in or derived from



business carried on in Singapore. It was submitted that this Court after taking into consideration such certificate/letter issued by the IRAS in case of M.T. Maersk Mikage (supra) held that Article 8 of DTAA would be applicable in the facts of the said case. It was submitted that facts of the appellants are similar and therefore, the Tribunal could not have restored the matter to the Assessing Officer to verify the veracity of the certificate as the Department failed to bring on record any other document to dislodge the veracity of the certificate issued by IRAS.



8.5 It was therefore, submitted that the Tribunal ought to have followed the decision of this Court instead of remanding the matter to the Assessing Officer.

8.6 Learned advocate Mr. Soparkar also referred to and relied upon the decision of the Hon'ble Bombay High Court in case of **Commissioner of Income Tax IT-(2) vs. Citicorp Investment Bank (Singapore) Ltd** reported in [2023] 151 taxmann.com 501 (Bombay) to submit that the Hon'ble Bombay High Court in the said case while considering the applicability of Article 13(4) vis-à-vis Article 24 has relied upon certificate issued by Singapore authority certifying



that the capital gain income would be brought to tax without reference to the amount remitted or received in Singapore. Reliance was also placed on the decision of the Bombay High Court in case of **Commissioner of Income Tax vs. APL Co. Pte Ltd** reported in [2023] 156 taxmann.com 530 [Bombay] wherein, similar question of applicability of Article 8 vis-à-vis Article 24 is considered and the decision of this Court in case of M.T. Maersk Mikage (supra) is followed by the Bombay High Court by answering the questions of law in favour of the assesses.

9. Per contra, learned Senior standing counsel Mr. Varun Patel submitted that



by impugned order, the Tribunal has only remanded the matter to the Assessing Officer to verify the veracity of the certificate issued by IRAS with a specific direction that if the Assessing Officer is unable to obtain any specific material to rebut the contents of the said certificate, the decision of this Court would be applicable and relief is to be granted to the appellants-assesses.

9.1 It was submitted that the Tribunal has followed the decision of this Court in case of M.T. Maersk Mikage (supra) and only limited remand was made to the Assessing Officer to verify the contents of the certificate issued by



IRAS. It was therefore, submitted that no question of law can be said to have arisen from the impugned order of the Tribunal.

9.2 On merits, learned counsel for the Revenue submitted that the Assessing Officer as well as CIT (A) have rightly invoked Article 24 of the DTAA as the appellants have diverted the funds to London, United Kingdom instead of Singapore and therefore, Condition No.2 of Article 24 of DTAA is not fulfilled. It was submitted that the certificate issued by the Singapore Tax Authority is inconsistent with the provision of section 10 of the Singapore Tax Act which provides for taxing of income on



accrual or received basis if it is not accrued within Singapore.

9.3 It was submitted that the reliance placed by the petitioner on the decision of M.T.Maersk Mikage (*supra*) is not applicable in the facts of the case because in the said case this Court, after referring to the certificate dated 09.01.2013 issued by IRAS, has observed in Para 18 that in the facts of the case, Revenue did not question the genuineness of the certificate and therefore, it cannot dispute the contention on the ground the same are opposed to the statutory provision.

9.4 It was pointed out that before the Tribunal, the departmental



representative questioned the genuineness of the certificate and therefore, Tribunal has restored the matter to the file of the Assessing Officer for verification of the certificate issued by the IRAS.

9.5 It was therefore, submitted that the distinguishing feature in the facts of the present case and the case before this Court that correctness of the certificate issued by IRAS is questioned before the Tribunal by the Revenue whereas, the same was not questioned before this Court. It was therefore, submitted that certificate issued by IRAS was required to be verified and therefore, the Tribunal was justified in

remanding the matter to the Assessing Officer. Reference was also made to the observation of the Tribunal in Para 22 in regard to the certificate that the letter issued by IRAS does not refer to any statutory provision under the Singapore Tax Laws and is more in the form of unilateral opinion/declaration that since the income has been earned by the ST Shipping on "accrual basis", Article 24 of the DTAA will have no applicability.

9.6 It was also pointed out that this Court has also observed in the decision of M.T. Maersk Mikage (supra) that the certificate issued by the Singapore Tax Authority is merely in form of an

opinion and therefore, the Tribunal has rightly come to the conclusion that it is a fit case where the basis of issuance of this certificate needs to be looked into in more detail in the absence of any statutory provision being cited in the certificate as to how the ST Shipping is taxable in Singapore on accrual basis more particularly, when Singapore follows a territorial tax system where offshore income is taxable on receipts/deemed remittance basis and on what basis, the Singapore Tax Authority has come to the conclusion that income has been derived from business carried on in Singapore by ST Shipping.



9.7 It was therefore, submitted that in order to consider the veracity of the certificate dated 09.01.2013, the Tribunal has rightly restored the matter to the Assessing Officer and no substantial question of law would arise in a matter being remanded for verification of the certificate relied upon by the assessee.

10. Having heard learned advocates for the respective parties, the facts are not in dispute. The appellants are the Indian Companies engaged in the business of Shipping Agency Services and provided services to its principal M/s. ST Shipping which is incorporated in Singapore. M/s. ST Shipping is



engaged in the business of operation of its own ships or chartered ships in international waters. As per provision of section 172 of the Act, the appellants-assessee are liable to tax for charter income of the ships belonging to the M/s. ST Shipping which is a non-resident Indian company as such ships are used for operation at the ports in India. As per sub-section (2) of section 172 of the Act, where such ships carry passengers, livestock, mail or goods, shipped at a port in India, seven and a half percent of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, shall be deemed to be income



accruing in India to the owner or charterer on account of such carriage.

11. As per sub-section (3) of section 172 of the Act, a return is required to be filed before the departure from any port in India of any such ship, by the master of such ship regarding the amount paid or payable to the owner, a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of operation of such ships at that port since the last arrival of such ship thereat. Sub-section (4) of section 172 of the Act stipulates the processing of such return by the Assessing Officer to 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 any company.

12. Accordingly, the appellants filed return of income being agents of the ST Shipping showing 'Nil' income in view of the provision of Article 8 of DTAA. The appellants relied upon the certificate issued by the IRAS dated 09.01.2013 which reads as under:

"3. You have raised the concern that the benefits accorded under Article 8 of the Singapore-India DTA to the profits of your company were limited by the provisions of Article 24.1 of the said DTA which state that any reliefs provided by the DTA would only apply to the amount of income remitted into Singapore. As such, the Indian tax

authorities were likely to impose a tax on your company's charter income.

4. Based on the information provided in your letter, we would consider the charter income derived by your company to be income accruing in or derived from a business carried on in Singapore and the income is therefore assessable to tax in Singapore on an accrual basis. This means the full amount of the charter income is assessable to tax in Singapore, and not by reference to the amount remitted to or received in Singapore. Consequently, we are of the view that Article 24.1 of the Singapore-India DTA is not applicable in this case and the provisions of Article 8 would prevail. This being the case, Article 24.2 would not be applicable in the first instance. For clarity, we should add that Article 24.2 seeks to make clear that Article 24.1 does not apply to Government income. Accordingly, Article 24.2 is not relevant to income derived by a taxpayer where the income is assessable to tax in



Singapore by reference to the amount remitted to or received in Singapore."

13. It is pertinent to note that the aforesaid certificate is considered by this Court while deciding similar issue of applicability of Article 8 vis-a-vis Article 24 in case of M.T.Maersk Mikage (supra) and after considering the submissions of both sides, it was held as under:

"15. This brings us to the core issue strenuously debated by both sides viz. that of applicability of Article 8 visavis Article 24 of DTAA. We may quickly refresh the facts. ST Shipping is a company based in Singapore. Through the shipping business carried out at Indian ports, ST Shipping earned income, on which, it claims immunity from Indian income tax. The Revenue contends that the remittance of such accrued income not having taken place at

Singapore, Article 24 will apply and consequently Article 8 providing for avoidance of table taxation would not apply.

16. The fact, that the income in question which arises out of shipping operations by virtue of Clause 1 of Article 8 of the DTAA would be taxable only in Singapore, is not in serious dispute. The moot question therefore is whether operation of Article 8 is ousted by virtue of Clause 1 of Article 24. As noted, Article 24 of DTAA pertains to limitation of relief. Under clause 1 thereof where the agreement provides that the income from sources in contracting states (in the present case, India) shall be exempt from tax or tax at a reduced rate and under the laws in force in other contracting states (i.e. Singapore), such income is subject to tax by reference to the amount thereof which is remitted or received in that State and not by reference to the full amount thereof then the exemption or reduction of tax under the agreement would be limited to so much of the income as is remitted to or received in

that contracting State. In plain terms therefore, if the income in question was taxable in Singapore on the basis of receipt or remission and not by reference to the full amount of income accruing, clause 1 of Article 24 would apply and dependent on the facts of the case, exemption as per Article 8 either in whole or in part would be excluded.

17. It is, in this context, that the certificate dated 09.01.2013 issued by the Inland Revenue Authority of Singapore assumes significance. In the said certificate, as noted, it was certified that the income in question derived by ST Shipping would be considered as income accruing in or derived from the business carried on in Singapore and such income therefore, would be assessable in Singapore on accrual basis. It was elaborated that the full amount of income would be assessable to tax in Singapore not by reference to the amount remitted to or received in Singapore. In fact, the certifying authority went on to opine that in view of such facts, Article 24.1 of the DTAA



would not be applicable and consequently, Article 8 would apply.

18. To this later opinion of the Revenue authority of Singapore, we may not be fully guided since it falls within the realm of interpretation of the relevant clauses of DTAA. However, in absence of any rebuttal material produced by the Revenue, we would certainly be guided by the factual declaration made by the said authority in the said certificate and this declaration is that the income would be charged at Singapore considering it as an income accruing or derived from business carried on in Singapore. In other words, the full income would be assessable to tax on the basis of accrual and not on the basis of remittance. This certificate was before the Commissioner while he passed the impugned order. The contents of this certificate were not doubted. If that be so, what emerges from the record is that the income in question would be assessable to tax at Singapore on the basis of accrual and not remittance. This would knock out the very basis

of the Assessing Officer and Commissioner for invoking clause 1 of Article 24 of DTAA. Both the authorities considered the question of remittance of income as the sole requirement for invoking Article 24.1 of DTAA an interpretation which according to us does not flow from the language used. As noted the essence of Article 24.1 is that in case certain income is taxed by a contracting State not on the basis of accrual, but on the basis of remittance, applicability of Article 8 would be ousted to the extent such income is not remitted. This clause does not provide that in every case of nonremittance of income to the contracting state, Article 8 would not apply irrespective of tax treatment such income is given. When in the present case, we hold that the income in question was not taxable at Singapore on the basis of remittance but on the basis of accrual, the very basis for applying clause 1 of Article 24 would not survive. The contention of Shri Mehta for revenue that the certificate of the Singapore revenue authorities is opposed to provisions of section 10 of the



Singapore Income Tax Act also cannot be accepted. The Revenue does not question genuineness of the certificate. It cannot dispute the contention on the ground that the same are opposed to the statutory provision."

14. The Tribunal has referred to and relied upon the above findings of this Court in relation to applicability of Article 8 of the DTAA. However, the Tribunal has ventured to distinguish the decision of this Court on the question of the veracity of the certificate dated 09.01.2013 on the ground that the genuineness of the said certificate was not questioned by the Revenue before this Court and hence, the Tribunal has thought is fit to restore the matter to the Assessing Officer to verify the contents of the said certificate with a



rider that in case the Assessing Officer is not able to obtain any specific material to rebut the contents of the certificate issued by the Singapore Tax Authority, then respectfully following the decision of this Court, relief was to be granted to the appellants.

15. When this Court has already considered the certificate dated 09.01.2013 and during the pendency of the appeal before the Tribunal for the year under consideration, the Revenue has not been able to bring any material on record or has challenged or doubted the certificate issued by the Singapore Tax Authority, as observed by the Tribunal



in Para 20 of the impugned order, it has noted that the Departmental Representative has challenged the veracity of the certificate issued by the IRAS during the course of the appellate proceedings before the CIT (A) and thereafter, the Tribunal has referred to the territorial tax system of the Singapore Income Tax Act to hold that the certificate has not given any basis whatsoever as to how the assessee is deriving income from "business carried on in Singapore", when admittedly, the appellants-assessee have been operating in international waters. The Tribunal has also considered the fact that the certificate does not specify the



factual basis on which the Singapore Tax Authority has concluded that the income from shipping business have been derived by the assessee from "business carried on in Singapore". Thus, in effect, the Tribunal has overreached the findings arrived at by this Court in case of M.T.Maersk Mikage (supra) in absence of any material brought on record by the Revenue before the Tribunal to show that the certificate issued by the IRAS is not reliable or cannot be considered for the income of ST Shipping to be taxed in Singapore on accrual basis.

16. It is also pertinent to note that from the documents placed in form of paper-



book filed before the Tribunal, in fact, the ST Shipping has shown the income arising from the operations as per letter dated 09.10.2012 issued by the Deloitte and Touche LLP, Certified Public Accountants, Singapore stating that the ST Shipping has confirmed that the position adopted in the Year of Assessment 2010 to treat charter income derived by the overseas branches as Singapore sourced income and part of qualifying income under Approved International Shipping Enterprise Incentive remains unchanged in the Year of Assessment 2012.

17. The impugned order of the Tribunal is, therefore, contrary to the decision of



this Court as the Tribunal could not have restored the matter back to the Assessing Officer only on mere suspicion and the doubts contrary to the findings arrived at by this Court regarding the same certificate dated 09.01.2013 issued by IRAS. The Tribunal ought not to have analysed the certificate in its order more particularly in Para 22 of the order in absence of any material on record. On perusal of Para 22 of the impugned order it is clear that the Tribunal has made the observation with regard to the language of the certificate more particularly, when this Court has accepted the part of the certificate which certified that the income earned

by the ST Shipping from the operations carried out in ports at India was liable to be taxed at Singapore on accrual basis and as per Article 8 of DTAA, when the income accrues in Singapore and was taxed as such, the same would be exempt from tax in India. This Court has further clarified that reference to Article 24 of DTAA in the certificate is nothing but an opinion of the IRAS.

18. Hence, the Tribunal ought not to have further deliberated upon contents of the certificate which is already held to be applicable in the facts of the case in absence of any other material on record to demonstrate that the



veracity of the certificate issued by IRAS is doubtful and merely because the Tribunal is of the opinion that the language of the certificate is not conducive to the opinion of the Tribunal, the matter could not have been restored to the Assessing Officer in face of the observation made by this Court regarding the same certificate dated 09.01.2013 issued by the IRAS.

19. Therefore, in view of the decision of this Court in case of M.T. Maersk Mikage (supra) and in view of the certificate dated 09.01.2013 issued by IRAS, the benefit of Article 8 of DTAA to the profits derived from the operation of ships in international



traffic at Indian Port would be governed by Article 8 and not Article 24 and the matter could not have been restored to the Assessing Officer to give a second inning to the Revenue to verify the certificate issued way back in 2013.

20. We are also fortified in our view because even after remand, the Assessing Officer has not been able to bring anything on record to show that the certificate dated 09.01.2013 referred to and relied upon by this Court in case of M.T.Maersk Mikage (supra) for the applicability of Article 8 is doubtful or not a genuine certificate. On the contrary, the



Assessing Officer, after remand, has even questioned the decision of the Tribunal as observed in our order dated 09.05.2025.

21. Hence, we are of the opinion that the Tribunal ought not to have restored the matter to the Assessing Officer to verify the veracity of the certificate dated 09.01.2013 and in view of the decision of M.T.Maersk Mikage (supra) Article 8 would be applicable in the facts of the case. The Tax Appeals are accordingly allowed. The question of law is answered in favour of the assessee and against the Revenue.

22. The order of the Tribunal so far as it relates to restoring the matter to the



file of the Assessing Officer is hereby quashed and set aside and it is held that the appellants-assessee are entitled to the benefit of Articles 8 of the DTAA and Article 24 of the DTAA would not be applicable in the facts of the case.

23. We are not again analyzing Articles 8 and 24 of the DTAA as the same is already considered by this Court in case M.T.Maersk Mikage (supra) and we adopt the same reasoning for applicability of Article 8 of the DTAA in similar facts of this case.

24. With regard to Special Civil Applications which are filed challenging the assessment order passed



by the Assessing Officer after remand, such assessment order would not survive in view of our decision in Tax Appeals as we have already quashed the order of remand passed by the Tribunal and hence, the assessment orders passed as consequence of such remand would therefore be rendered infructuous.

25. Special Civil Applications are therefore, allowed. Assessment orders are hereby quashed and set aside in view of the decision rendered in Tax Appeals No. 688 of 2024 and 707 of 2024.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

JYOTI V. JANI