

Benefit of Article 8 of the Cyprus-India tax treaty is available as long as the enterprise is registered and has headquarters in Cyprus

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In brief

Recently, in the case of **Shaan Marine Services Private Limited**, the Pune Bench of the Income-tax Appellate Tribunal (Tribunal) held that ‘effective management’ was clearly defined in Article 8 of the Double Tax Avoidance Agreement between India and Cyprus (India–Cyprus tax treaty) to mean that if the enterprise was registered and had headquarters in a certain country, the effective management would be situated in that country.

In detail

The facts

The taxpayer¹ was an agent of Glendive Enterprises Limited (Glendive), a company registered in Cyprus. Glendive was a tax resident of Cyprus and had obtained a tax residency certificate from the Cyprus tax authorities to this effect.

Glendive had entered into an agreement with Arabian Resources FZC, Sharjah UAE (Arabian) for making available a ship for transport of Bauxite ore from India to Sharjah. For this purpose, Glendive entered into an agreement with Aquavita for chartering a ship.

Furthermore, Glendive appointed the taxpayer as its agent for handling the loading at the Indian port and obtaining clearances from various departments like customs, income-tax and immigration.

The taxpayer filed a return of income in India under section 172 of the Income-tax Act, 1961 (the Act) as an agent of Glendive. In the return, the taxpayer declared nil income by virtue of Article 8 of the India–Cyprus tax treaty.

The Tax Officer (TO) observed the following:

- Glendive had paid the amount payable to Aquavita on the same day on which it received the amount from Arabian;

- The tax residency certificate alone would not be sufficient to conclude that Glendive’s place of effective management was in Cyprus;
- Glendive had only one shareholder;
- Only one person had signed as the chairman and secretary on the minutes;

The TO held that Glendive was a one-person company with no office and no staff, and that it was interposed as a charterer to take advantage of the India–Cyprus tax treaty. The TO further held that the effective management of Glendive was not in Cyprus and that the benefit of Article 8 of the India–Cyprus tax treaty could not be given in this case.

¹ Shaan Marine Services Private Limited v. DDIT [TS-327-ITAT-2014(Pune)]

Thus, the TO held that Glendive was taxable in India under section 172(4) of the Act and he taxed the taxpayer as an agent of Glendive.

The Commissioner of Income-tax (Appeals) [CIT(A)] confirmed the TO's order. He relied on paragraph 24 of the OECD commentary on Article 4 of the OECD Model Convention to determine the place of effective management (the place from where the actual services rendered by the company had to be seen). Accordingly, the CIT(A) held that the effective management of Glendive was not in Cyprus, and hence Article 8 of the India–Cyprus tax treaty does not apply in this case.

Aggrieved by this order, the taxpayer filed an appeal before the Tribunal

Issue before the Tribunal

Whether the place of effective management of Glendive was situated in Cyprus and hence it was eligible for benefit of Article 8 of the India–Cyprus tax treaty?

Taxpayer's contentions

The taxpayer was only an agent for Glendive, and not of any other party. Hence the income was not assessable in the taxpayer's hands at all.

The place of effective management of Glendive was situated in Cyprus.

Revenue's contention

The departmental representative re-iterated the contentions of the TO and the CIT(A).

Tribunal ruling

On the facts of the case, the Tribunal observed that Glendive was a one-person company with

no branches anywhere, with only an office establishment in Cyprus.

The Tribunal observed that Glendive had played a definite role in transporting the ore by ship from India to Sharjah, which was evident from the fact that all contracts and the bill of lading were in Glendive's name. The Tribunal held that the authorities had tried to re-write these contracts, which was not permissible.

The Tribunal further held that if the authorities were of the opinion that it was the income of Glendive, then it was to be noted that Glendive did not have any establishment outside Cyprus. Accordingly, such income arose to Glendive in Cyprus only.

If the authorities were of the view that Glendive was only a paper company and was interposed only to claim India–Cyprus tax treaty benefit, then the income should accrue to Aquavita.

With regard to the place of effective management, the Tribunal held that 'effective management' was clearly defined in Article 8 of the India–Cyprus tax treaty to mean that if the enterprise was registered and had headquarters in a certain country, the effective management would be situated in that country. Reliance on the OECD commentary could be placed to interpret tax treaties where 'effective management' was not defined.

In view of the above, the Tribunal concluded that the CIT(A) erred in holding that Glendive's income was taxable under section 172(4) of the Act in the taxpayer's hands and the India–Cyprus tax treaty

benefits were not available to Glendive.

The takeaway

This decision reaffirms the settled principle that legally binding agreements between unrelated parties cannot be disregarded.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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