

BENEFIT OF DTAA IN CASE POEM IS IN A THIRD STATE [MUMBAI IT TRIBUNAL - BAY LINES (MAURITIUS) CASE]

The Mumbai bench of the Income-tax Appellate Tribunal in the case of Bay Lines (Mauritius) held that if the Place of Effective Management of an enterprise is not situated in one of the contracting states but is situated in the third state, benefit of Article 8 (Shipping and air transport) of the India-Mauritius tax treaty cannot be granted to the taxpayer.

The argument of the taxpayer that the effective management can only be in-between two contracting states was not accepted. Since the major policy decisions were taken in UAE, the effective management of the taxpayer is neither in Mauritius nor in India, and it is situated in UAE.

The Tribunal also held that the taxpayer's agent in India is an independent agent who acts in the ordinary course of its business and whose activities are not devoted exclusively or almost exclusively on behalf of the taxpayer. Therefore, the taxpayer does not have an Agency Permanent Establishment (PE) in India. Even if the taxpayer's case is not covered by Article 8, business profits would not be chargeable to tax in the absence of PE in India.

Take Away: If the POEM of an enterprise is not situated in one of the contracting states but is situated in the third state, the benefit of the shipping and air transport article of the India-Mauritius tax treaty cannot be granted.