

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
& SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 1353/MUM/2016 (AY : 2007-08)
ITA No. 143/MUM/2015 (AY : 2011-12)
ITA No. 1354/MUM/2016 (AY : 2012-13)
ITA No. 2051/MUM/2017 (AY : 2013-14)
(Physical hearing)

Delta Air Lines, Inc. Ground Floor, Podar House, Sitaram D Marg, Marine Drive, Mumbai-400020. [PAN No. AAACD4092N]	Vs	DCIT (International Taxation)- 2(1)(2), Mumbai Air India Building, 17 th Floor, Room No. 1713, Nariman Point, Mumbai.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Sriram Seshadri & Ms. Amulya K.
Revenue by	Shri Krishna Kumar, Sr. DR
Date of hearing	16.10.2025
Date of pronouncement	28.10.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This group of four appeals all by assessee is directed against the separate orders of NFAC/ Id. CIT(A) dated 04.06.2024 for A.Y. 2007-08, 2011-12, 2012-13 & 2013-14. In all the appeals the assessee has raised certain common grounds of appeal in all the years. Facts in all years are similar except variation of figures of addition. Thus, with the consent of both the parties all the appeals were clubbed, heard together and are decided by common order to avoid the conflicting decisions. For appreciation of fact, the appeal for A.Y. 2007-08 is treated as lead case. The grounds of appeal for A.Y. 2007-08 are as under:

"1. The reassessment proceedings are void-ab-initio

1.1 On the facts and in the circumstances of the case and in law, the Hon'ble DRP have erred in upholding the action of the Learned AO in reopening the assessment by invoking the provisions of Section 147 of the Act.

1.2 On the facts and in the circumstances of the case and in law, the Hon'ble DRP have erred in upholding the action of the Learned AO in reopening the assessment without appreciating/ignoring that the Appellant having disclosed all material facts and the erstwhile Assessing Officer having applied his mind to them, the reopening is invalid being based on change of opinion.

1.3 On the facts and in the circumstances of the case and in law, the Hon'ble DRP have erred in upholding the action of the Learned AO in reopening the assessment without appreciating/ignoring that four years having elapsed from the end of AY and the Appellant having disclosed all material facts and evidences necessary for assessment; invoking of provisions of Section 147 of the Act by the Learned AO is not valid in terms of first proviso to Section 147 of the Act.

1.4 On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in holding that the Appellant has failed to bring on record any evidence to substantiate its claim that the approval under Section 151 of the Act has not been placed on record by the Learned AO.

The Appellant humbly prays that the reassessment proceedings initiated by Learned AO and upheld by the Hon'ble DRP under Section 147 of the Act be quashed.

2. Denial of benefit of exemption under Article 8 of the India- USA Tax Treaty (Treaty')

2.1 On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in denying the benefit of exemption under Article 8 of the Treaty on income from transportation of cargo and passengers in international traffic through aircrafts owned by the third party airlines, and thereby holding that the income is taxable under the provisions of Article 7 of the Treaty.

2.2 On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in holding that the transportation of cargo and passengers through usage of third party carriers does not amount to 'charter' under Article 8(2) of India-USA Tax Treaty without considering the relevant facts and circumstances of the Appellant's case.

2.3 On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in holding that establishing linkage between the transportation from India to outside India to an interim destination on a third party carrier followed by onward transportation on aircrafts owned/leased / chartered by the Appellant is a pre-requisite for exemption under Article 8 of the Treaty and further holding that evidences filed by the Appellant does not establish linkage.

2.4 On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in holding that the income earned by the Appellant from the usage of third party aircrafts for transportation of cargo and passengers will not be exempt under Article 8(2)(a) of the India-USA Tax Treaty.

2.5 On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in holding that the income earned by the Appellant from the usage of third party aircrafts for transportation of cargo and passengers does not amount to participating in a pool or joint business under Article 8(4) of the India-USA Tax Treaty.

The Appellant humbly prays that the exemption be granted under Article 8 of the Treaty on the revenue attributable to transportation of passengers and cargo through aircrafts owned by third parties and the Learned AO be directed accordingly.

3. Disregarding alternative methodology submitted by the Appellant

3.1. On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in determining the profits taxable in India without appreciating the provision of Article 7 of the Treaty whereby only income that is attributable to the activities of the India Branch Office of the Appellant could be taxed in India.

3.2. On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in not considering the alternative methodology submitted by the Appellant to compute income attributable to India Branch Office of the Appellant as per Article 7 of the Treaty, based on the order of the Hon'ble ITAT in Appellant's own case for AY 2010-11.

The Appellant humbly prays Learned AO be directed that the alternative method submitted by the Appellant be considered for computing income attributable to the Indian Branch Office of the Appellant.

4. Enhancing the Global Profitability Rate on a pro-rata basis

On the facts and in the circumstances of the case and in law, the Learned AO, and the Hon'ble DRP have erred in enhancing the global profitability rate determined on a pro-rata basis, from a loss of 24.32 percent to a profit of 1.59 percent, without considering the facts and circumstances of the Appellant's case.

The Appellant humbly prays that the Learned AO be directed to consider the global profitability rate of (24.32) percent which has been determined on a prorata basis.

5. Levy of interest under Section 234B of the Act

On the facts and in the circumstances of the case and in law, the Learned AO, and t Hon'ble DRP have erred in proposing to levy interest under Section 234B

of the amounting to Rs 34,42,298, without considering the facts and circumstances of Appellant's case.

The Appellant humbly prays that the Learned AO be directed to delete the levy of inter under Section 234B of the Act.

6. Initiation of penalty proceedings

On the facts and in the circumstances of the case and in law, the Learned AO, and. Hon'ble DRP have erred in initiating penalty proceedings in respect of the above mentioned addition.

The appellant humbly prays that the Learned AO be directed to drop initiation of penalty proceedings under section 271(1)(c) of the Act."

2. Rival submissions of both the parties have been heard and record perused.

The Id. AR of the assessee submits that on merits, the grounds of appeal raised by assessee are squarely covered in favour of assessee and against the revenue by the series of decision of Mumbai Tribunal in A.Y. 2014-15 to 2016-17 and 2018-19. Copies of such decisions are already placed on record. The Id. AR of the assessee submits that he is not pressing various sub grounds of ground no. 1 of appeal which may be dismissed as not pressed. While explaining the background of the case submits that assessee is a tax resident of USA and was engaged in the air line business. The assessee obtained approval of Director General of Civil Aviation (DGCA) Govt. Of India, for air travel services in India on the routes specified under India US Transport Agreement. During the year under consideration, the assessee earned income from operation of air craft in international traffic through its own air craft as well as combination of third party air craft. As per Article 8 of USA India double tax avoidance agreement (DTAA) the income from transportation cannot be taxed in India. Similar issue was arosed in earlier years wherein the assessee was allowed relief by Id. CIT(A) in A.Y. 2014-15 to 2016-17 and appeal of revenue before tribunal was dismissed vide ITA No. 4182, 4283 &

4195 of 2015 by following the decision of assessee's own case in A.Y. 2018-19 in ITA No. 235/M 2022 dated 07.11.2024. The Id. AR submits that there is no variation of fact in the year under consideration.

3. On the other hand, the Id. AR of the assessee relied upon the decision of lower authorities.
4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various decisions of co-ordinate bench of Mumbai Tribunal relied by Id. AR of the assessee in assessee's own case for earlier or subsequent years. We find that in assessee's own case for A.Y. 2014-15 to 2016-17 in ITA No. 4182, 4183 & 4195 dated 19.09.2025, by following the order of Tribunal in assessee's own case for A.Y. 2018-19 dated 07.11.2024, the co-ordinate bench passed the following order:

"6. We have perused the order of Coordinate Bench for Assessment Year 2018-19 in detail as well as the order of Id. CIT(A) who has elaborately dealt with the same, on every aspect of the merits of the case. Decision of the Coordinate Bench in assessee's own case for Assessment Year 2018-19 is squarely applicable to the year under consideration, there being no material change in factual matrix and the applicable law, as nothing cogent was brought on record by the revenue to demonstrate any variation to this effect. The observations and findings of the Coordinate Bench for appeal for Assessment Year 2018-19 are reproduced below for ready reference:

"16. We notice that though there are no other judgements on the issue of codesharing arrangement in the case of Airlines at the Tribunal or High Court level, there are many decisions by the Tribunal / High Court on the applicability of Article 8 under various DTAA's to the slot sharing arrangement by shipping companies including the decision of Hon'ble Bombay High Court in the case of Balaji Shipping. Before proceeding further it is relevant to mention that slot chartering by Shipping Companies is an arrangement where agreements are entered into with third party operators of the ship to rent one or more container slots on the said ship. The Hon'ble Bombay High Court in the case of Balaji Shipping (supra) while considering the applicability of Article 9 of India-UK DTAA to the receipts from slot chartering arrangement has held that the slot chartering arrangement would fall within the ambit of Article 9 for the reason

that by availing the facility of slot hire agreements, the enterprise engaged in shipping business does not arrange the shipment on behalf of the owner of the said vessel, but does so, on its own account on a principal to principal basis with its clients and that they have a nexus to the main business of the enterprise of the operation of ships. While holding so, the Hon'ble High Court has included both the scenarios

where the goods are transported by an enterprise by availing of the slot hire facility obtained by it on the ship of another from a port in India upto a hub port abroad and from there transporting the goods further to their final destination upon a ship owned or chartered or otherwise controlled by it and

(ii) where the goods are transported by the assessee from a port in India directly to their final destination to a port abroad by availing a slot hire facility obtained by it on the ship of another.

17. It is also relevant to mention here that Article 9 of India-UK DTAA does not define the "profits from operation of Ship or Aircrafts in international traffic" whereas Article 8 of India-US DTAA defines the same as "profits derived from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft". Therefore the revenue in assessee's case contended that the decision of the Bombay High Court in Balaji Shipping's case is not applicable to assessee. However the Hon'ble Bombay High Court in the case DIT(IT) vs APL Co. Pte. Ltd [2016] 75 taxmann.com 32 (Bombay) while considering similar issue under India-Singapore DTAA has followed its own decision in the case of Balaji Shipping (supra) and held no substantial question of law arose. The Article 8 of India-Singapore DTAA is similarly worded as India-US DTAA with respect to the definition of profits from operation of Ship or Aircrafts in international traffic and that the decision is rendered post the decision of the coordinate bench in assessee's own case. Therefore in our view, the decision of the jurisdictional High Court in the case of APL Co. Pte. Ltd (supra) will have a binding precedence while considering assessee's case. Further it is noticed that the coordinate bench in various other cases including those rendered in the context of DTAAs which are similarly worded as India-US DTAA have followed the ratio laid down by the Hon'ble Bombay High Court in the decision of Balaji Shipping (supra).

18. In view of the legal position with regard to slot-chartering arrangement in shipping business it becomes necessary for us to analyse the applicability of the ratio laid down in the above decisions to the code-sharing arrangement in airline business which is similar to slot chartering. Though, the decision of the coordinate bench in assessee's own case has a binding precedence, given evolution in the juridical status post the decision in assessee's case for AY 2010-11 and given that in the decision for AY 2010-11, the coordinate bench has considered only the decision of MISC Bernard (supra), we are inclined to analyse assessee's case afresh for the year under consideration. While doing so we are conscious that there is no change to the assessee's facts pertaining to the impugned issue between AY 2010- 11 and the year under consideration.

19. We notice that the ratio laid down by the jurisdictional High Courts in the case of APL Co. Pte. Ltd (supra) and Balaji Shipping (supra) with regard to interpreting "chartering" is that the receipts under slot chartering agreements has a direct nexus/inextricably linked to the main business of the enterprise of the operation of ships and therefore eligible for benefit under Article 9. The assessee under code sharing arrangements, books tickets in other airlines under a designated code specific to the assessee, so that the assessee holds itself out as providing service to destinations where it does not otherwise operate or in segments where it operates infrequently. The typical way in which the tickets are booked under code sharing arrangement is explained as below –

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20. From the above it is clear that though the passengers are transported through airlines not operated by the assessee, the tickets until the final destination are issued by the assessee (bearing specific codes). The journey can happen entirely in the third party airline or a part of the journey by third party airline and the rest by the assessee. The code sharing arrangements allow airlines to offer service to the segments where they do not operate their own flights thereby without additional equipment, resources, and costs the airlines can increase their revenue. Under code sharing arrangements, the passengers are provided with wide range of choices though the tickets are booked through single airline therefore the customer base of the airline increases. Therefore in our considered view, the revenue earned through transporting passengers using third party airlines either entirely or part of the journey under the code sharing arrangement, has a direct nexus / inextricably linked to the main business of the assessee of operation of aircrafts. When we consider these facts and apply the ratio laid down by the jurisdictional High Court there is merit in the submission that the receipts of the assessee through code sharing arrangements are eligible for the benefit under Article 8 of India US DTAA.

21. The Id DR during the course hearing vehemently argued that receipts under code sharing arrangement does not fall within the definition of "profits from operation of Ship or Aircrafts in international traffic" since under the said agreement the assessee neither owns / leases / charters the aircrafts. In this regard we notice from the relevant observations of the coordinate bench in the case of MISC Bernard (supra) as extracted in the earlier part of this order that the coordinate bench has given a categorical finding that the operation of ship can be done as a charterer, which includes part of a ship or particular space in a ship and that even a part of a space in the vessels for a particular journey is also considered as "charter of ship" or "charterer". The coordinate bench further observed that in the decision of Balaji Shipping U.K. Ltd. (supra), while referring to the judgment of Tychy (supra), the High Court have noted that a "slot charter" and a "voyage charter" of a part of a ship are in a sense charterers of a space in a ship. This findings of the coordinate bench and the Hon'ble High Court, leads to the interpretation that when an assessee books a space in a third party airline in a particular journey, by booking tickets under a code sharing arrangement then the same would amount to the assessee chartering

the third party aircraft i.e. assessee is the charterer of the space in the aircraft. In other words, for the assessee to be a charterer of an aircraft there is no requirement that the entire aircraft should be chartered and that the assessee would become a charterer even if a space is booked in the aircraft. One more contention of the revenue in this regard is that there is no specific number of tickets or seats blocked for the assessee in the third party aircrafts under code sharing arrangement and therefore it cannot be considered as chartering. However it is relevant to note that under code sharing arrangement when tickets are booked, the third party airlines takes the responsibility of ensuring that the passengers of the assessee are transported to the destination which would mean that those number of tickets / passengers are blocked by the assessee in the third party airlines. Accordingly we are unable to agree with this contention of the revenue.

22. One more contention of the revenue is that under code sharing arrangement, the aircrafts are operated by third parties and therefore it would not fall under Article 8(1) where the assessee is required to be in the operation of aircraft in international traffic. In this regard we notice that the Hon'ble Bombay High Court in the case of Balaji Shipping (supra) has held that slot chartering agreement would amount to operation of ship. When we apply the said ratio to the similar arrangement of code sharing it would amount to operations of aircraft in international traffic by the assessee and accordingly would be covered under Article 8(1) of India-US DTAA. Further the Hon'ble Bombay High Court in the case of Balaji Shipping (supra) also held that under slot chartering the arrangement is on a principle to principle basis i.e. the transportation of goods by third party vessels is done on behalf of operator of the ship. In assessee's case under the code sharing arrangements, the tickets are issued by the assessee for the entire journey including journey through third party airlines and accordingly the passengers are carried in third party aircrafts on behalf of the assessee. Therefore on this count also it is to be held that the operation of aircrafts in international traffic by the assessee would include code sharing arrangements.

23. We notice that the coordinate bench for AY 2010-11 has rejected the reliance placed by the assessee in the case of MISC Bernard mainly for the reason that the link is not established between the transportation by third party aircrafts and assessee's own aircraft (though the assessee through MA contended that the AO did not call for the same). However for the year under consideration the assessee submitted paper books containing the details (page 198 to 443) submitted before the lower authorities where in the entire journey whether by own or third party aircrafts is linked through using specific codes for the entire journey. From the perusal of the details submitted we notice that the codes used by the assessee are unique to the assessee which is used even in the tickets issued for the airlines operated by third party which establishes the link. We further notice that this unique code is used for the entire journey whether fully or partly carried out using third party airlines. We also notice that the coordinate bench in the case of APL Co. & Pte Ltd [2017] 185 TTJ 305 (Mumbai) has given that finding that once it is held that chartering includes slot

charter/ space charter and it falls within the ambit of 'operation of ships', then the benefit of Article 8 cannot be denied simply on the ground that the transportation has been done either partly or fully through slot charter arrangement or joint charter arrangement. In other words it is held that that 'linkage is not a pre-requisite' for availing benefit of Article 8 of the IndiaSingapore DTAA (which is similarly worded as India-US DTAA). Therefore in our considered view, rejecting the plea of the assessee on the ground that the link is not established between the transportation by third party aircrafts and assessee's own aircraft is not tenable.

24. We notice that the facts pertaining to AY 2008-09 in assessee's own case the coordinate bench held that the benefit under Article 8(2)(b) of India US DTAA cannot be claimed unless the ancillary services have a direct nexus to the operation of aircraft in international traffic. The said decision was rendered in the context of receipts towards services rendered by the assessee such as screening, security, charter handling etc., to other airline operators. Therefore the same is distinguishable from the issue under consideration here i.e. receipts from code sharing arrangement whether can be considered to be part of the operation of aircraft in international traffic. Accordingly with due respect we are unable to agree with the reliance placed by the coordinate bench in assessee's case for AY 2010-11 in this regard.

25. During the course of hearing the Id AR argued that the OECD Model Convention specifically mentions that the receipts from slot chartering and code sharing would be covered under Article 8 and drew our attention to the relevant clauses of the said model. It is relevant to mention here that the DTAA between US and other countries follow the US Model of DTA conventions. Therefore in our considered view it is essential to examine if what is stated in the OECD Model Convention commentaries can be applied to assessee's case. In this regard we notice that the India-US Treaty is not entirely following the US Model of DTA conventions but also has incorporated certain specific items (refer Para 6, & 8 of the OECD model commentary) in to Article 8(2) of India US DTAA. In other words definition of profits from the operation of ships or aircraft in international traffic is an inclusive definition as per US Model whereas it is not so in Article 8(2) of India US DTAA. For reference Article 8 under US Model is extracted below

Article 8

SHIPPING AND AIR TRANSPORT

- 1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.*
- 2. For purposes of this Article, profits from the operation of ships or aircraft include, but are not limited to: a) profits from the rental of ships or aircraft on a full (time or voyage) basis; b) profits from the rental on a bareboat basis of ships or aircraft if the rental income is incidental to profits from the operation of ships or aircraft in international traffic; and c) profits from the rental on a bareboat basis of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State shall*

be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international traffic.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) shall be taxable only in that Contracting State, except to the extent that those containers are used for transport solely between places within the other Contracting State.

4. The provisions of paragraphs 1 and 3 of this Article shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

26. In this regard we notice that the OECD commentaries specifically mention slot chartering / code sharing arrangement as an activity directly connected with international traffic wherein it is stated that –

6. Profits derived by an enterprise from the transportation of passengers or cargo otherwise than by ships or aircraft that it operates in international traffic are covered by the paragraph to the extent that such transportation is directly connected with the operation, by that enterprise, of ships or aircraft in international traffic or is an ancillary activity. One example would be that of an enterprise engaged in international transport that would have some of its passengers or cargo transported internationally by ships or aircraft operated by other enterprises, e.g. under code-sharing or slot-chartering arrangements or to take advantage of an earlier sailing. Another example would be that of an airline company that operates a bus service connecting a town with its airport primarily to provide access to and from that airport to the passengers of its international flights.

27. We also notice that Model Technical Explanation Accompanying the US Model mentions that when negotiations happen between other countries and US while entering into Treaty, the Model Tax Convention on Income and on Capital, published by the Organisation for Economic Cooperation and Development (the "OECD Model"), and recent tax treaties concluded by both countries would be taken into account. Since the terms of Treaty are negotiated between the two countries it is clear that the terms agreed between India and US while entering into the agreement, that India-US DTAA, generally follows the pattern of the US model tax convention but is different in a number of respects to reflect India's status as a developing country. This is supported by the fact that a combined reading of the above Article 8 as per US Model and Article 8 of India US DTAA, and accordingly leads to us to see the merit in the argument that the OECD commentaries have to be read into Article 8 while considering the applicability of the same to code-sharing arrangement.

28. One of the reasons for the coordinate bench to decide the issue against the assessee in AY 2010-11, is that there is no agreement to substantiate the terms under which code-sharing arrangement have been entered into by the assessee. For the year under consideration the assessee during the course of hearing provided a sample copy of the agreement entered into with Air France and submitted that similar agreements are available for all code-sharing arrangements with third party airlines. Therefore, the contention of the revenue

that the receipts from code sharing agreement are not substantiated by any underlying agreements is not tenable for the year under consideration.

29. On perusal of records we notice that the assessee had filed an application with the Competent Authority ("CA") under Art.27 of the India-US DTAA requesting that the authorities invoke Mutual Agreement Procedures("MAP") for resolving the impugned issue for the year under consideration along with the earlier years. We further notice that the US authorities have responded stating that despite prolonged efforts, a consensus could not be reached with the Indian authorities and that the US authorities are in agreement with the view that all of assessee's profits including revenue associated with interline and code sharing arrangement are to be exempt from Indian Taxation.

30. In view of the above discussion and placing reliance on the ratio laid down by the Hon'ble Bombay High Court and the coordinate bench of the Tribunal, we hold that the profits derived from the transportation of passengers under code sharing arrangement by the assessee is to be treated as profits from operation of aircrafts for the reason that –

- i. the transportation of passengers either fully or party in third party aircrafts in a specific journey by way of a code sharing arrangement, would fall within the ambit of the word "charterer" and, accordingly would be within the scope of "operation of aircrafts " as defined in Article-8(2) of the India US DTAA.*
- ii. The passengers under code sharing arrangements are transported on behalf of the assessee by the third party airlines under the code sharing arrangement on a principal to principal basis where the ticket for the entire journey is issued by the assessee bearing specific code. Hence the same would fall within the scope of "operation of aircrafts"*
- iii. The transportation of passengers by the assessee under code sharing arrangement either fully or partly in a third party aircrafts is inextricably linked which is established in assessee's case here*

Accordingly the receipts of the assessee under code sharing arrangement are covered under Article-8, of India US DTAA and cannot be taxed in India. The grounds including the additional ground raised by the assessee in this regard are allowed.

31. During the course of hearing the Id AR presented arguments with regard to applicability of Article 8(2)(a) in assessee's case. The Id. AR also presented arguments on the method adopted by the AO while computing the taxable income of the assessee. In view of our decision with regard to applicability of benefit under Article 8 of India US DTAA to the receipts under code sharing arrangements, the above arguments of the Id AR have become academic not warranting any adjudication."

6.1. Accordingly, considering the above decision and identical fact patter, we do not find any reason to interfere with the findings arrived at by Id. CIT(A), whereby the entire receipts including those in relation to transportation undertaken entirely using third party carriers is held to be covered under Article 8 for exemption. Since entire receipts of the assessee are held to be exempt under Article 8, the grounds relating to benefit of exemption under Article 8(2)(a) and under Article 8(4) of the India-USA DTAA are rendered academic

and do not warrant separate adjudication. Similar view on these two aspects was taken by the Coordinate Bench in appeal for Assessment Year 2018-19 in paragraph 31. Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

8. Appeal for the other two assessment years, i.e., Assessment Year 2015-16 and 2016-17 are also dismissed, as our observations and findings in the above paragraphs apply mutatis mutandis.

9. In the result, all the three appeals of the Revenue are dismissed."

5. Considering the consistent decision of co-ordinate bench of Tribunal and respectfully following the same, the grounds of appeal raised by assessee are allowed.

6. In the result, the appeal of assessee of assessee for A.Y. 2007-08 is allowed.

7. Considering the fact that assessee has raised similar ground in A.Y. 2011-12, as has been raised in appeal for A.Y. 2007-08, thus, appeal for A.Y. 2011-12, 2012-13 & 2013-14 in ITA No. 143/M/2015, 1354/M/216 & 2051/M/2017 respectively are also allowed with similar direction.

Order pronounced in the open Court on 28/10/2025.

Sd/-

GIRISH AGRAWAL
ACCOUNTANT MEMBER

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 28/10/2025

Biswajit

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai