

Director of Income Tax (IT)–I v. A.P. Moller Maersk A S

Civil Appeal No. 8040 of 2015 / Civil Appeal Nos. 2958–2964 of 2017

No separate citation stated in the source | 2017-02-17

Whether the Indian agents' proportionate Maersk Net cost contributions were fees for technical services or part of the integrated shipping-business arrangement.

9(1)(vii), Explanation 2

Two-judge bench | A.K. Sikri, J. | Abhay Manohar Sapre, J.

Assessment years: See the source-scope notes; no year inferred.

Fact-specific FTS holding; royalty issue not decided

The result concerns the proved Maersk Net cost-sharing and integrated shipping facts. It does not exempt every reimbursement or decide the new royalty theory on its merits. Original Article 9/19 and section 19/9 citation discrepancies are disclosed; applicable treaty text and subsequent law require separate verification.

01 FACTS OF THE CASE

The Danish tax-resident shipping company maintained Maersk Net, a global communications and information system used by its agents for cargo bookings, tracking, documentation and customer service. Its servers were in Denmark. Agents shared the system's costs proportionately rather than installing separate systems. The company supplied the total-cost calculation and allocation among agents (paragraphs 6-7 and 10-11).

Although the Assessing Officer accepted the shipping-income treaty benefit, the officer treated the Indian agents' contributions as fees for technical services under Article 13(4), taxed under section 115A. The Commissioner (Appeals) upheld that treatment; the Tribunal and Bombay High Court accepted the cost-sharing and shipping-business characterization. Revenue brought eight appeals presenting the FTS question (paragraphs 3-9).

Source: [official signed judgment / paragraphs 3-11 / PDF pages 2, 3, 4, 5, 6, 7, 8, 9 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court proceeded on the established factual findings: no technical services were supplied to the agents, the network was integral to the company's international shipping operations, and the payments reimbursed the agents' proportionate share of system expenditure. Neither the officer nor the Commissioner had identified an embedded profit element. The cost calculation and allocation were provided, and the reimbursement had been accepted at arm's length by the Transfer Pricing Officer. In that setting, the receipts could not be recharacterized as FTS (paragraphs 10-11).

Revenue had already accepted the company's shipping-income treaty treatment. The shared network enabled its own agents to perform their shipping functions, and the Court treated the associated facility and expenses as inseparable from that business. It applied the distinction, explained in the quoted Kotak Securities passage, between a common facility and services catering to a user's special needs. The reasoning is broader than a mechanical test of whether a process contains human intervention: the quoted passage itself cautions that technology may blur that feature (paragraphs 12-13).

The agency agreement permitted temporary placement of employees for training or other purposes, but no connection was shown between such purposes and the payments in dispute. The Court considered further treaty comparisons unnecessary on the established facts. A new royalty theory first raised in post-hearing written submissions was not entertained because it had not been advanced before the High Court or in these appeals; its substantive correctness was not decided (paragraphs 14-15).

Source: [official signed judgment / paragraphs 10-15; paragraphs 6-9 on pages 10-13 are quoted Kotak text / PDF pages 7, 8, 9, 10, 11, 12, 13, 14 / judicial text](#)

03 JUDICIAL DECISION

Revenue's appeals were dismissed as without merit. The Court rejected the FTS characterization of these Maersk Net cost-sharing receipts and left the favourable High Court result in place. It did not remit the dispute, determine a new tax rate or entertain the newly raised royalty contention (paragraph 15 and signed ending).

Source: [official signed judgment / paragraphs 15 and signed ending / PDF pages 14, 15 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee shipping company on the FTS issue

All eight Revenue appeals dismissed; no remand

Final rejection of the FTS characterization on the established facts; royalty theory not entertained

No universal exemption for every reimbursement, software platform or group-service charge. No merits holding that the receipts could never constitute royalty under any legal or factual setting. No specific assessment year or quantified refund is supplied.

Source: [official signed judgment / paragraphs 15 / PDF pages 14, 15 / judicial text](#)

05 AKHB REVIEW POINT

A reimbursement label alone is insufficient. Preserve the actual services or facility description, the allocation method, total costs, use by the business and agents, and evidence concerning any markup or embedded profit. Here those facts, together with the accepted shipping context, supported the result; arm's-length acceptance was supporting evidence rather than a universal exemption for all related-party payments.

Keep the procedural royalty reservation separate from the FTS holding. The Court's refusal to consider a new ground does not prove that the ground would fail on its merits. Treaty and statutory references must also be checked against the applicable instrument and year: the original contains the citation slips identified below.

Source: [official signed judgment / paragraphs 11-15; editorial application and limits / PDF pages 8, 9, 13, 14, 15 / judicial text](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Issue results

1.

Issue: Maersk Net contributions as FTS

Result: Rejected on the established common-facility, shipping-business and proportionate reimbursement facts

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 8; 9; 13; 14; 15

Paragraphs: 11-15

Source role: judicial text

2.

Issue: New royalty contention

Result: Not entertained because it was not previously raised; no substantive royalty ruling

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: 15

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

115A: assessment basis described in paragraph 6

OTHER GOVERNING STATUTES

India–Denmark DTAA: Article 13(4) FTS assessment and Article 9 shipping-income treatment discussed; source also prints Article 19 in paragraph 12, flagged below

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A.K. Sikri, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (official signed judgment)

Identified source rendition: 15 PDF pages; SHA-256

304d22a7113e98da6ef4bd129a791b16fa4d6134ba82fad38ab09695f4eac3ca. Original bytes preserved.

Common judgment: caption and connected appeal list on physical pages 1-2; unnumbered opening and paragraphs 2-15 on pages 2-15, including the quoted Kotak passage; signed closing date on page 15. No adjacent judgment.

Open cited source rendition

No neutral or reporter citation is printed on this official original; identified by date and appeal numbers.

No specific assessment years are identified in this original; dates of the lower appellate orders are not assessment years.

The seven connected 2017 appeals are each individually listed on physical pages 1-2; the contiguous range preserves all seven.

Paragraph 6 lists four named Indian entities, while later narrative repeatedly calls them three agents. The note does not silently choose a verified entity count; Paragraph 12 first identifies Indo-Danish Article 9 on physical page 9 but prints Article 19 on page 10. The same page prints section 19 before quoting Explanation 2 to section 9(1)(vii). These original-text slips are flagged; section 19 is not treated as the operative FTS provision.; Paragraph 14 describes counsel as appearing for the assessee while paragraph 15 identifies the same counsel's submissions as on behalf of Revenue. Paragraph 14 also contains awkward payment-direction/technical-service wording. The note relies on the unambiguous factual findings and operative FTS and royalty dispositions rather than reproducing those slips.; The 20% rate is the historical assessment recounted in paragraph 6, not a rate ruling or present withholding instruction.; No separately published law-report citation or independent complete treaty consolidation is claimed.

STATUTORY SCOPE

Historical source review only. Applicable treaty text, amendments and later decisions require separate verification; no automatic mapping to the Income-tax Act, 2025.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive subsequent-treatment audit. Kotak Securities is considered only through the passage actually quoted and applied in this judgment; its complete original has not been reviewed for this note.

IDENTIFIED SOURCE LINKS

official signed judgment - PDF pages: 15

SHA-256: 304d22a7113e98da6ef4bd129a791b16fa4d6134ba82fad38ab09695f4eac3ca

AI DISCLOSURE

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