Tax alert: SC upholds presumptive taxation benefit for cruise shipping company

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The Supreme Court (SC) of India has held that income from the sale of cruise packages and shore excursions in India would be covered under the presumptive taxation regime under section 44B of the Income-tax Act, 1961 (ITA) [corresponding to section 61 of Income-tax Act, 2025].

In a nutshell

The issue for consideration before the SC was, *inter alia*, whether the taxpayer was engaged in the business of operation of ships and entitled to be assessed under section 44B of the ITA. The Court observed that the possibility of passengers de-boarding at intermediate ports, was not taken into account by the Assessing Officer.

On a voyage, providing of ancillary services does not take away from the meaning of ‘carriage’ as per Section 44B of the ITA.

The ancillary hospitality and entertainment services provided during the voyage do not fall outside the scope of the expression "carriage" under Section 44B of the ITA.

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Background:

- A non-resident company (say F Co) operated a cruise in India. The taxpayer[1], as an agent, was responsible for conducting the cruise and collecting revenue from the sale of cruise packages and shore excursions in India.
- The tax years under consideration were Financial Years (FYs) 2006-07 to 2008-09, corresponding to Assessment Years (AYs) 2007-08 to 2009-10.
- The taxpayer applied provisions of section 44B of the Income-tax Act 1961 (ITA) [corresponding to section 61 of the Income-tax Act, 2025 and being a special provision for computing profits and gains of shipping business in the case of non-residents] for the purpose of withholding tax at the time of payment to F Co under section 195 of the ITA [corresponding to section 393 of Income-tax Act 2025] and claimed the following:
  - Income accruing in favour of F Co was computed by applying section 44B of the ITA [being a special provision for computing profits and gains of shipping business in the case of non-residents] and the estimated income was 7.5% of the cruise fare collected by the taxpayer;
  - Consideration for granting a certificate for TDS under section 195 of the ITA [relating to withholding tax certificate from Revenue authorities on payment to non-residents], at the rate of 7.5% of the estimated income;
  - As an agent, the taxpayer received receipts for providing carriage of passengers operated by F Co, and that the estimated income was 7.5% of the cruise fare collected by the taxpayer.
- The Assessing Officer (AO) in his order held that:
  - Section 44B of the ITA was applicable in cases of '**carriage'** of goods, passengers, etc., and the term 'carrying' meant taking or transporting from one place to another or from one port to another.
  - F Co conducted cruise services originating from and terminating at Mumbai Port, i.e., a round trip. During the round trip, F Co extended hospitality and provided entertainment. Therefore, the activity of F Co was under entertainment and hospitality and did not include carriage of passengers/goods within the meaning of section 44B of the ITA.
  - Hence, the AO estimated deemed income at 25% of the cruise fare collected for and on behalf of F Co, and not at 7.5% as claimed by the taxpayer.
- Aggrieved, the taxpayer filed an appeal before the Commissioner of Income-tax (Appeals) [CIT(A)]. The CIT(A) allowed the taxpayer's appeal after appreciating all the circumstances of the case under section 44B of the ITA and held that the deemed income of F Co was estimated at 7.5% of the receipts received from the cruise fare.
- The Revenue authorities filed an appeal before the Income-tax Appellate Tribunal (ITAT) against the CIT(A)'s order. The ITAT while rejecting Revenue's appeal held that:
  - A round-trip voyage constitutes two separate acts of carriage, i.e., from station A to station B and back to station A. Further, the taxpayer also offered one-way cruises, and passengers booking round-trip cruises were entitled to disembark at intermediate ports without being compelled to return to Mumbai.
  - Booking slips established that the primary fees collected from passengers were for cabin and transport fares. Any on-board entertainment, whether included or paid separately, **was incidental to the main business of operating ships**.
  - Earlier CBDT[2] Circulars No. 763 and 169 dated 18 February 1996 and 23 June 1975, respectively,

[1] DIT (International Taxation) vs. Star Cruises (India) (P.) Ltd. [2026] 188 taxmann.com 1068 (SC)

[2] Central Board of Direct Taxes

clarified that carriage payments included handling charges and that section 44B of the ITA was designed to simplify the computation of taxable profits for foreign shipping enterprises.

  – Since F Co was a non-resident entity engaged in the business of operating ships, it fulfilled the essential conditions under the said section. The ITAT directed that F Co's income be assessed at the statutory presumptive rate of 7.5% of gross cruise fare receipts for tax deduction under section 195 of the ITA and not 25% of income as estimated by the AO.

- Aggrieved the Revenue filed an appeal and in the course of the appellate proceedings, the matter reached before the Supreme Court (SC) of India.

Relevant provisions of Section 44B of the ITA

*"(1) Notwithstanding anything to the contrary contained in sections 28 to 43A, **in the case of an assessee, being a non-resident, engaged in the business of operation of ships,** [other than cruise ships referred to in section 44BBC,] a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".*

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

*(i) **the amount paid or payable (**whether in or out of India) **to the assessee** or to any person on his behalf **on account of the carriage of passengers,** livestock, mail or goods shipped **at any port in India**; and*
*(ii) **the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers,** livestock, mail or goods shipped at any port outside India."*

Decision of the SC:

The issue for consideration before the SC was, *inter alia*, whether the taxpayer was engaged in the business of operation of ships and entitled to be assessed under section 44B of the ITA.

- The Court clarified that it was not defining the meaning of 'carriage' but was examining it application to the facts of the case under consideration.

- The CIT(A) and the ITAT, being competent authorities to examine facts, had held that the activity established by F Co did not fall outside the expression of 'carriage' under section 44B of the ITA.

  In the case under consideration, F Co being a foreign entity, was providing cruise services in India through the taxpayer. The possibility of passengers de-boarding at intermediate ports was not taken into account by the AO. On a voyage, providing of ancillary services, did not take away from the meaning of 'carriage' under section 44B of the ITA. The meaning adopted by the AO was restrictive in the facts and circumstances of the case.

In view of the above, the SC held that it was difficult to confine the meaning of the word 'carriage' as attributed by the AO. Hence, the taxpayer was entitled to be assessed on presumptive basis under section 44B of the ITA.

Comments:

The ruling reinforces key principles governing the taxation of non-resident cruise shipping enterprises under section 44B of the ITA (now section 61 of the Income-tax Act, 2025), emphasizing that the applicability of a presumptive taxation regime must be evaluated based on operations undertaken.

The SC, in this ruling has held the following:

- The issue for consideration before the SC was, *inter alia*, whether the taxpayer was engaged in the business of operation of ships and entitled to be assessed under section 44B of the ITA. The Court observed that the possibility of passengers de-boarding at intermediate ports, was not taken into account by the Assessing Officer.

- On a voyage, providing of ancillary services does not take away from the meaning of ‘carriage’ as per section 44B of the ITA.
- The ancillary hospitality and entertainment services provided during the voyage do not fall outside the scope of the expression "carriage" under Section 44B of the ITA.

The ruling may serve as an important reference point in disputes involving companies involved in transportation business, interaction between operational and ancillary services, and the application of presumptive taxation provisions to cross-border business arrangements.

Further, it may be noted that the Finance (No.2) Act, 2024 introduced a new provision section 44BBC of the ITA [corresponding to now section 61 of the Income-tax Act 2025], prescribing a specific presumptive taxation regime for computing the profits and gains from the business of **operating cruise ships by non-residents**. As per the same, 20% of the aggregate amounts on account of carriage of passengers, is deemed to be the profits and gains chargeable to tax. This ruling pertains to the period prior to the introduction of section 44BBC and, therefore, the newly inserted provision was not applicable.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.