1. **Benefit under article 8 of DTAA between India and USA is not available in respect of income derived by the assessee by booking of seat/space under code sharing agreement with other third party airlines for carriage of cargo and passengers from India.** It is clear from the provisions of Article 8 (1) that it is the substantive provisions granting the exemption to an enterprise of a contracting state from the operation by that enterprise of ships or aircraft in international traffic. Article 8(2) clarifies that the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise 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. Thus the meaning of "profit derived from operation of ship or aircraft in international traffic" as owner/lessor/charterer is a condition precedent for claim of exemption under Article 8. Hence the first and crucial test for eligibility under Article 8(1) is that such profit should be derived from operation of aircraft in international traffic by the ship or aircraft owned/leased/chartered by the assessee. There is no dispute in respect of profit derived by assessee by transportation by its owned/leased/chartered aircrafts. It is only the receipts under code sharing agreements with the third parties where the assessee has only booked the tickets and the actual transportation is done by third parties ship or aircraft that such receipts cannot be said to be the profits "derived" from international voyage carried by the assessee by entering into code sharing agreements. The receipts for activities under Article 8(2)(a)(b)(c) are only for enlarging the scope of profits from other related activities but the qualifying condition of such transportation through ship or aircraft owned/leased or chartered by assessee have to be still independently fulfilled under Article 8(1) & (2) to claim the benefit of receipts falling under Article 8. In assessee's own case the Tribunal held that the receipts from other activities connected to such transport falling under Article 8(2)(b) without having any receipts which qualify under Article 8(1) & 8(2) are not eligible for benefit of Article 8. The Tribunal in assessee's own case in *Delta Airlines Inc. (supra)* observed at para 13 that Article 8(2)(b) makes it clear that the activity carried on by the assessee must be directly connected with such transportation. The words "such transportation" refers to the transportation prescribed in the main body of para 2 *i.e.* transportation by sea or air of passengers, mail, livestock or goods carried by the owner or lessee or the charter of the aircraft. It was also observed that only that activity which is directly related to the transportation of passengers by the assessee as owner/lessee/charterer of the aircraft would fall within the ambit of para 2(b) of Article 8 and consequently the activity relatable to the transportation of passengers by other airlines would be outside the scope of such provisions. It was further held that the activity of third party charter handling and maintenance would also be outside the ambit of para 2(b) of Article 8. Similar view has been taken by the co-ordinate Bench in the case of *British Airways Plc.* wherein expression under Article 8 of Indo-UK Treaty (which is similarly worded) was denied in respect of the various services provided through other airlines. The contention of the ld.

AR was that since the assessee is an airline, admittedly operating in international traffic, therefore income from cargo/passengers through third airlines is also covered under Article 8 of DTAA. Heavy reliance was placed by the ld. AR on the decision of Tribunal in the case of *MISC Berhard* (*supra*) wherein the assessee used the services of feeder vessels operated by third parties by using space charter/slot charter from Indian Port to Hub Port only and from where the cargo were transferred to the mother vessels *i.e.* the ships owned by the assessee for being transported to final destination port. The Revenue's case was that since the feeder vessel is not owned/leased/chartered by the assessee, therefore, the benefit of Article 8 cannot be given. After considering the entire facts, the Tribunal had recorded its finding to the effect that since the entire voyage from Indian Port to Hub Port and from there to final destination port was inextricably linked and could not be segregated and hence the carriage of goods from the feeder vessel was nothing but a charter only and therefore the receipts in respect of voyage from Indian Port to Hub port were also held to be exempt under Article 8. However, in the instant case there is no situation like transportation to Hub Port and from there to final destination port nor there is any inextricable link between such transportation, therefore, the principle laid down in the case of *MISC Berhad* (*supra*) cannot be applied to the facts of the instant case. **Delta Air Lines, Inc. *v. ACIT,* [2015] 69 SOT 45 (Mumbai - Trib.)**

2. **Whether Assessing Officer of one ward can himself transfer jurisdiction of case to Assessing Officer at other ward, without having any transfer order passed by Chief Commissioner or Commissioner – held No -** It is not denied in the case of the assessee that the Assessing Officer at ward 4 Agra and the Assessing Officer at ward 5 New Delhi were under the jurisdiction of different CCIT as well as different Commissioners. Therefore, the Assessing Officer, ward 4 Agra does not have any jurisdiction to transfer the file to the Assessing Officer at ward 5 New Delhi. The filed could have been transferred only by the Chief Commissioner or the Commissioner of the Assessing Officer, ward 4 Agra after giving hearing to the assessee. In this case, the Assessing Officer, ward 4 Agra has not complied with the mandatory requirement of section 127 bu*t suo moto* transferred the file from Agra to Assessing Officer, New Delhi as if he has entered into the shoes of the Chief Commissioner or Commissioner. A transfer can be made by the Commissioner from one officer to another under section 127. But it should be for good reason after a show-cause notice to the assessee, where transfer is from one station to another. In the impugned case there is a violation of the provisions of Section 127 and in view of there being no transfer order being passed by the Chief Commissioner or Commissioner, it is held that the order passed by the Assessing Officer, New Delhi for the impugned assessment year is invalid an*d void ab initio*. Accordingly the same is quashed. **KIE Infrastructures & Projects (P.) Ltd.** V. ITO **[2015] 68 SOT 285 (Delhi - Trib.)**