

XIX ALL INDIA MOOT COURT COMPETITION, 2015
UNIVERSITY LAW COLLEGE, BANGALORE

AMERSIA ASSOCIATION V. UNION OF BRITUSSIA

FACTS:

1. Amersia and Britussia are two neighbouring developing countries. All their laws including Constitution are in *pari materia* with that of India. They have very good trade and political relationship. The citizens of the two countries have significant business interests in each other since many decades. Two countries export and import significant quantities of goods and services from each other.
2. As the two countries maintain a friendly relationship, the citizens of one country visit the other frequently, set up their business entities with ease and also take up residence in or citizenship of the other country without hassles.
3. Both the countries were, however, plagued with the problem of high taxes, leakages in tax collections and in generation of unaccounted monies by a few, leading to low standard of living of majority of its citizens.
4. In the General Elections held for the Parliament of Britussia in May 2013, the Britussia National Party (BNP) won the majority of seats and formed the government based on its manifesto to locate and bring back unaccounted money and to punish the offenders who had moved the unaccounted money to foreign countries.
5. For this purpose, within 6 months of his taking office, the Government of Britussia negotiated and entered into Tax Avoidance Conventions/Agreements (popularly referred to double taxation avoidance agreements) containing, inter alia, specific clauses for Exchange of information with many Countries including Amersia. The Government of Britussia notified the Double Taxation Avoidance Agreements with many countries bringing them into immediate effect.
6. The Amersia- Britussia Double Taxation Avoidance Agreement (DTAA in short) was also notified in January 2014. Amersia also notified the DTAA around the same time.
7. Government of Britussia made general request with Government of Amersia for information of all Bank Accounts in Amersia held by Citizens of Britussia. As a result, Britussa was successful in continuously getting highly incriminating information regarding Bank Accounts held by its Citizens and Persons of Britussian Origin from Government of Amersia and started investigating the information obtained. BNP was confident that it could make

considerable progress in meeting its electoral promise based on the information it was getting from Amersia.

8. Similar requests were made by Government of Amersia with the Government of Britussia seeking information regarding Bank Accounts held by Citizens of Amersia or by Persons of Amersian origin (PAOs in short) in Britussia. The Government of Amersia also made request for financial or other information regarding persons who were suspected of violations under Income tax, Foreign exchange Managements, Customs and other tax laws etc and also under non-tax related laws.
9. The Government of Amersia, received many Dossiers containing information under the DTAA from the Government of Britussia. It started selectively leaking information of bank accounts held by its citizens/PAOs and their business entities in Britussia to the Press. Some ministers in the Government of Amersia publicly announced the names of their political and personal opponents whose names were listed in the Dossier. No investigation or other proceedings have been initiated against such persons till date.
10. Television Channels in Amersia ran continuous media trials of the persons whose names were selectively or vindictively disclosed and created negative publicity for such individuals and their businesses. There was hue and cry against such persons. Some political groups, NGOs and social groups held violent protests in front of residences and business establishments of persons whose names were leaked and caused substantial damage to their property. Certain fringe elements of the society even attacked such persons, their family members and their business associates leading to several casualties.
11. Mr. Ashra Banbani, a Citizen of Amersia but a Resident of Britussia, whose name was also disclosed, lost all his family members in an attack on his house in the capital of Amersia. All his export businesses were closed and all his business and personal assets were either looted or destroyed. To make matters worse, the media in Britussia also harassed him and ran negative propaganda regarding his Import businesses in Britussia.
12. Government of Amersia also leaked information regarding Mr. Saber Bechrival, a PAO having business interest in Britussia. Mr Saber Bechrival was a Resident of a Third Country since a decade and was not having any taxable income in Amersia over the last several decades. He also met the same fate as that of Mr. Ashra Banbani.
13. The members of Amersia Association (Association in Short), an association formed for protecting the social, cultural, financial and other interests of Citizens of Amersia and PAOs in Britussia were alarmed by the turn of events in respect of the two non-members. Some of the leading Amersian Citizens and PAOs either residing in Britussia or doing business in Britussia were members of this association. Based on the unanimous resolution passed at

the General Meeting of the Association, the office bearers of the Association approached the Prime Minister of Britussia in September 2014, requesting him to direct the Government machinery not to give any further information to Government of Amersia under the DTAA. The Prime Minister of Britussia, refused to help them for the reason that any such move will result in it losing information sources in its mission to recover unaccounted money.

14. Having left with no choice, the Amersia Association filed a Public Interest Litigation under Article 32 of the Constitution before the Supreme Court of Britussia seeking various reliefs, contending, inter alia, the following:
 - a. Government of Britussia was violating Fundamental Rights guaranteed under the Constitution of Britussia to Citizens of Amersia and PAOs by sharing their information with Government of Amersia, inter alia, on account of:
 - i. Not providing opportunity of being heard before sharing the information
 - ii. Loss of privacy on disclosure of Bank accounts with properly accounted funds
 - iii. Loss of personal liberty
 - iv. Loss of business
 - b. Article 26 of the DTAA was liable to be struck down as it was beyond the power of the Government under Section 90 of the Income Tax Act of Britussia.
 - c. Government of Britussia was wrong in sharing information beyond the scope of Article 26 of the DTAA.
 - d. Government of Britussia was wrong in sharing further requests from Government of Amersia consequent to the violation of secrecy clause under Article 26 of the DTAA.
 - e. DTAA was not applicable to persons who were neither Residents of Britussia nor Amersia during the relevant period when information is sought or given, hence Government of Britussia was bound not to share their information with Amersia.
15. The Union of Britussia opposed the writ petition contending, inter alia:
 - a. Association did not have any locus standi.
 - b. Writ Petition was premature.
 - c. There were no violations of Fundamental rights of any persons by its actions under the DTAA nor were such violations imminent.
 - d. Treaty making and treaty complying powers were within the domain of Executive, and is outside the scope of judicial review.
16. The matter is posted for final hearing before the Supreme Court of Britussia on 1st March, 2015.

Annexure: Notification issued by Government of Britussia (To be read as part of the facts)

Disclaimer: The facts and circumstances of this moot proposition are purely fictitious. Any resemblance to real life events are purely co-incidental and unintended.

Annexure to the Moot Proposition

NOTIFICATION ISSUED BY BRITUSSIA GIVING EFFECT TO AMERSIA-BRITUSSIA DTAA WITH EXTRACTS OF THE DTAA

Notification No: ABC. 123(Z), dated 31st January 2014

Whereas the annexed Convention between the Government of the Britussia and the Government of Amersia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has come into force on 1st January, 2014, thirty days after the exchange of Instrument of Ratification as required by Article 28 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in Britussia.

ANNEXURE

Convention between Britussia and Amersia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income.

Amersia and Britussia desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries have agreed as follows:

Article 2 – Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
 - a) In Amersia:
 - (i) the Income-tax, including any surcharge and cess thereon (hereinafter referred to as “Amersian Tax”)
 - b) In Britussia:
 - (i) the Income-tax, including any surcharge and cess thereon (hereinafter referred to as “Britussian Tax”)

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3 – General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - h) the term Competent Authority means:
 - (i) in the case of Amersia, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in the case of Britussia, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;

Article 26 – Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes.
2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that state. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals relation to, the taxes which are the subject, of the Convention.
3. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.
4. In no case shall the provisions of paragraphs 1 to 3 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;
 - (b) to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process or information the disclosure of which would be contrary to public policy.

Article 28 – Entry into Force

1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention.
2. The Convention shall enter into force thirty days after the receipt by both Contracting State from the other Contracting State, the Notification referred to paragraph 1 of this Article.

Note:

- 1) Equivalent provisions in the Indo-Hungary DTAA shall be adopted verbatim for provisions not specifically provided above. The term “India” therein may be replaced with term “Britussia” and the term “Hungary” with “Amersia”.
- 2) Full text of Indo-Hungary DTAA Notification No: GSR 197(E), dated 31/03/2005

This Moot proposition was drafted by **Mr. Badrinath Simha**, Partner, BSKN & Co. and was verified by **Dr. M Sunil Shastry**, Partner, Shastry & Co. Any attempt by participants to contact them with regard to the moot problem will result in immediate disqualification from this Moot Court Competition.