

ITALY

21. Italy - Convention for avoidance for double taxation and prevention of fiscal evasion with Italy

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Italy for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income has entered into force on 25-11-1995 after the exchange of instruments of ratification by the Contracting States in accordance with paragraph 1 of Article 30 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 the Union of India

Notification : No. GSR 189(E), dated 25-4-1996.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Italy

Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

Have agreed as follows :

CHAPTER I - SCOPE OF THE CONVENTION

ARTICLE 1 : *Personal scope* - This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* - 1. The taxes to which the Convention shall apply are :

a) in the case of India :

1. the Income-tax including any surcharge thereon ; and
2. the surtax ;

hereafter referred to as Indian tax) ;

b) in the case of Italy :

1. the personal income-tax ;
2. the corporate income-tax ; and
3. the local income-tax ;

even if they are collected by withholding taxes at the source.

hereafter referred to as Italian Tax).

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1 of this Article

3. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws which are the subject of this Convention and furnish copies of relevant enactments and regulations.

CHAPTER II - DEFINITIONS

ARTICLE 3 : *General definitions* - 1. For the purposes of this Convention, unless the context otherwise requires :

a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with International Law ;

b) the term Italy means the Republic of Italy including the territorial waters of Italy and airspace above them, as well as any area beyond the said territorial waters, specifically it includes the sea-bed and the subsoil contiguous to the territory of the peninsula and the Italian islands situated beyond the territorial waters within bounds indicated by the Italian law on the exploration and the exploitation of their natural resources ;

c) the terms a Contracting State and the other Contracting State mean India or Italy, as the context require ;

d) the term tax means Indian tax or Italian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;

e) the term person shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States ;

f) the term company means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws of the respective Contracting States ;

- g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State ;
- h) the term fiscal year in relation to Indian tax means previous year as defined in the Income-tax Act, 1961 (43 of 1961) ;
- i) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State ;
- j) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the law in force in the Contracting State ;
- k) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Deptt. of Revenue) or their authorised representative, and in the case of Italy, the Ministry of Finance.

2. In the application of the provisions of this Convention by one of the Contracting States, any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to the taxes which are the subject of this Convention.

ARTICLE 4 : *Fiscal domicile* - 1. For the purposes of this Convention the term resident of a Contracting State means any person who is a resident of that State in accordance with the taxation laws of that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his residential status for the purposes of this Convention shall be determined in accordance with the following rules :

- a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as his centre of vital interests) ;
- b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode ;
- c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national ;
- d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both the Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated

ARTICLE 5 : *Permanent establishment* - 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on

2. The term permanent establishment includes especially :

- a) a place of management ;
- b) a branch ;
- c) an office ;
- d) a factory ;
- e) a workshop ;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- g) a warehouse in relation to a person providing storage facilities for others ;
- h) a premises used as a sales outlet or for receiving or soliciting orders ;
- i) an installation or structure used for the exploration or exploitation of natural resources ;
- j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site project or activities (together with other such sites, project or activities, if any) continue for a period of more than six months, or where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment :

Provided that for the purpose of this paragraph, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils in the State.

3. Notwithstanding the preceding provisions of this Article, the term Permanent establishment shall be deemed not to include :

- a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise ;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display ;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting

information, for the enterprise ;

e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

However, the provisions of sub-paragraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

f. Notwithstanding the provisions of paragraphs 1 and 2 where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if,

a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ;

b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or

c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprise controlling, controlled by, or subject to the same common control, as that enterprise,

d) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprise controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III - TAXATION OF INCOME

ARTICLE 6 : *Income from immovable property* - 1. Income derived by a resident of a Contracting State from immovable property including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State

2. The term immovable property shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, source and other natural resources shall also be considered as immovable property. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services

ARTICLE 7 : *Business profits* - 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or of the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred whether in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for purpose of export to the enterprise of which it is the permanent establishment

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

5. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article

ARTICLE 8 : *Air transport* - 1. Income derived from the operation of aircraft in international traffic by an enterprise of one of the Contracting States shall not be taxed in the other Contracting State

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article :

a) interest on funds connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft ; and

b) the term operation of aircraft shall mean business of transportation by air of persons, livestock, goods or mail, carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Shipping* - 1. Income of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

3. For the purpose of this Article, interest on funds connected with the operation of ships in international traffic shall be regarded as income from the operation of such ships and the provisions of Article 12 shall not apply in relation to such interest

4. For the purpose of paragraph 1 of this Article, income from the operation of ships in international traffic shall include :

a) profits derived from the rental on a full or bareboat basis of ships if such rental profits are incidental to the operation of ships in international traffic, and

b) profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

5. Paragraph 1 shall not apply to profits arising as a result of coastal traffic.

ARTICLE 10 : *Associated enterprises* - Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of the other enterprise and taxed accordingly.

ARTICLE 11 *Dividends* - 1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the share of the company paying the dividends ;

b) 25 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid

3. The provisions of paragraph 2(a) would apply in respect of dividends arising out of the investment made after the date of signature of the Convention.

4. The term dividends as used in this Article means income from shares, jouissance shares or jouissance rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the dividends shall be taxable in that other Contracting State according to its own law.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed

profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State

ARTICLE 12 : *Interest - 1.* Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in both the Contracting States.

2. Notwithstanding the provisions of paragraph 1, the tax chargeable in a Contracting State on interest arising in that State and paid to a resident of the other Contracting State in respect of loans or debts shall not exceed 15 per cent of the gross amount of such interest

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if :

a) the payer of the interest is the Government of that Contracting State or a local authority thereof, or

b) the interest is paid to any agency or instrumentality (including a financial institution) which may be agreed upon in this behalf by the two Contracting States.

4. The term interest as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the interest shall be taxable in that other Contracting State according to its own law.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State due regard being had to the other provisions of this Convention

ARTICLE 13 : *Royalties and fees for technical services - 1.* Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so chargeable shall not exceed 20 per cent of the gross amount of the royalties or fees for technical services.

3. The term royalties as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience

4. The term fees for technical services as used in this Article means payments of any amount to any person other than payments to an employee of the person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provisions of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such a case, the royalties or fees for technical services shall be taxable in that other Contracting State according to its own law.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14 : *Capital gains - 1.* Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : *Independent personal services* - 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character may be taxed in that State. Such income may also be taxed in the other Contracting State if such services are performed in that other State and if :

a) he is present in that other State for a period or periods aggregating 183 days in the relevant fiscal year, or

b) he has a fixed base regularly available to him in that other State for the purpose of performing his activities but only so much of the income as is attributable to that fixed base.

2. The term professional services includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16 : *Dependent personal services* - 1. Subject to the provisions of Articles 17, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived herefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerning ;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 : *Directors fees* - Directors fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 18 : *Artistes and athletes* - 1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste or a musician or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-division or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-division or local authorities.

ARTICLE 19 : *Pensions* - Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in both the Contracting States.

ARTICLE 20 : *Government service* - 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative sub-division or a local authority thereof to any individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State, who :

i) is a national of that State, or

ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a national of and a resident of that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to remunerations and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative sub-division or a local authority thereof.

ARTICLE 21 : *Professors, teachers and researchers* - 1. A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, owned by the Government or non-profit organizations, and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 22 : *Students and trainees* - 1. An individual who is a resident of a Contracting State and visits the other Contracting State solely :

a) as a student at a university, college or other recognised educational institution in that other Contracting State, or

b) as a business apprentice, or

c) for the purpose of study, research or training, as a recipient of a grant, allowance or award, from a governmental, religious, charitable, scientific or educational organization,

shall be exempt from tax in that other Contracting State :

i) on his remuneration and all remittances from abroad for the purposes of maintenance, education or training ;

ii) on the grant, allowance or award; and

iii) in respect of remuneration for an employment in that other Contracting State for such period of time as may be necessarily required for the completion of study, research or training, as the case may be.

2. An individual who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding one year as employee of, or under contract with, an enterprise of the first-mentioned Contracting State or an organization referred to in paragraph 1 for the primary purpose of acquiring technical, professional or business experience from a person other than such enterprise or organization shall be exempt from tax in that other Contracting State in respect of remuneration for an employment in that other Contracting State for such a period, to the extent such remuneration does not exceed 5,000,000 Italian Liras or its equivalent in Indian rupees, as the case may be, in any year.

ARTICLE 23 : *Other income* - Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention may be taxed in both the Contracting States.

CHAPTER IV

ARTICLE 24 : *Method for elimination of double taxation* - 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

3. (a) The amount of Italian tax payable under the laws of Italy and in accordance with the provisions of this Convention, whether directly or by deduction by a resident of India, in respect of income from sources within Italy which has been subjected to tax both in India and Italy, shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax

b) For the purposes of the credit referred to in sub-paragraph (a) above, where the resident of India is a company by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India

4. (a) If a resident of Italy owns items of income which are taxable in India, Italy, in determining its income taxes specified in Article 1 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the Indian tax on income, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

On the contrary, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

b) For the purposes of paragraphs 3 and 4 of this Article, where tax on business profits, dividends, interests, royalties or fees for technical services arising in a Contracting State is exempted or reduced in accordance with the taxation laws of that State, such tax which has been exempted or reduced shall be deemed to have been paid.

5. Income which is in accordance with the provisions of this Convention is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State on other income.

CHAPTER V - SPECIAL PROVISIONS

ARTICLE 25 : *Non-discrimination* - 1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances and under the same conditions are or may be subjected

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to persons who are so resident

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances and under the same conditions.

5. In this Article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 26 : *Mutual agreement procedure* - 1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The claim must be lodged within two years from the date of the assessment or of the withholding of tax at the source whichever is the later.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 27 : *Exchange of information* - 1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the Convention as well as to prevent fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. 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 and 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 in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation :

a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State ;

b) to supply information which is 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 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 (*ordre public*).

ARTICLE 28 : *Diplomatic and consular activities* - Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements

ARTICLE 29 : *Refunds* - 1. Tax withheld at source in a Contracting State shall be refunded on application by or on behalf of the taxpayer or by the State of which he is a resident if such resident is entitled to a refund of that tax under the provisions of this Convention.

2. Application for refund shall be made within the time limit fixed by the law of the Contracting State in which the tax has been withheld and shall be accompanied by a certificate of the Contracting State of which the taxpayer is a resident certifying that the

conditions required for entitlement to the refund have been fulfilled.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 26 of this Convention

CHAPTER VI FINAL PROVISIONS

ARTICLE 30 : *Entry into force* - 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

2. This Convention shall enter into force on the date of exchange of instruments of ratification and its provisions shall have effect :

- a) in India, in respect of income assessable in any previous year commencing on or after the first day of April of the calendar year next following the calendar year in which the Convention enters into force ;
- b) in Italy, in respect of income assessable in any taxable period commencing on or after the first day of January of the calendar year next following the calendar year in which the Convention enters into force.

3. The existing Agreement between the Government of India and the Government of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Rome on 12th January, 1981 shall cease to have effect at the time when the provisions of this Convention shall be effective in accordance with the provisions of paragraph 2

ARTICLE 31 : *Termination* - This Convention shall remain in force indefinitely, but either of the Contracting States may on or before 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force give to the other Contracting State, through diplomatic channels, written notice of termination

in such event the Convention shall cease to have effect :

- a) in India, in respect of income assessable for any taxable period (previous year) commencing on or after the 1st day of April in the calendar year next following that in which such notice is given.
- b) in Italy, in respect of income assessable for any taxable period commencing on or after the 1st day of January in the calendar year next following that in which such notice is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the present convention Done in duplicate at New Delhi the 19th day of February, 1993, in Hindi, Italian and English languages, all texts being equally authoritative except in the case of doubt when the English text shall prevail.

PROTOCOL

To the Convention between the Government of the Republic of India and the Government of the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

At the signing of the Convention concluded today between the Government of the Republic of Italy and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Convention

It is understood :

- a) that, with reference to Article 7, paragraph 3, the expression expenses which are incurred for the purposes of the business of the permanent establishment means the expenses directly connected with the activity of the permanent establishment, and royalties, commission and interest to the extent of the actual amount of expenses reimbursed, and in both cases as admissible in accordance with the provisions of the taxation laws of the Contracting State in which the permanent establishment is situated ;
- b) that, with reference to Article 12, paragraph 2, the expression loans or debts means, in the case of India, loans or debts approved in this behalf by the Government of India ;
- c) that, with reference to Article 20, the remuneration paid to an individual in respect of services rendered to the Bank of Italy, to the Italian State Railways (FF.SS.), to the Italian State Post undertaking (PP.TT.), to the Italian Foreign Trade Institution (I.C.E.), to the Italian Tourism Body (E.N.I.T.), and to any corresponding Indian body or institution, are covered by the provisions concerning Government service and, consequently, by paragraphs 1 and 2 of the aforesaid Article.

Other public bodies or institutions may also be included in the preceding list by mutual agreement between the competent authorities of the Contracting States ;

- d) that, with reference to Article 24, paragraph 4(b), tax exempted or reduced means, in the case of India, any amount which would have been payable, in respect of a taxable year as Indian tax but for a deduction allowed in computing the taxable income or a exemption or reduction of tax granted for that year under :

(i) Sections 10(4), 10(4A), 10(4B), 10(15)(iv), 10A, 32AB, 80HH, 80HHC, 80-I and 80-U of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on and have not been modified since the date of signature of this Convention or have been modified only in minor respects so as not to affect their general character ;

(ii) any other provision which may subsequently be made granting an exemption or reduction from tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has been modified only in minor respects so as not to affect its general character ;

- e) that, with reference to Article 26, paragraph 1, the expression notwithstanding the remedies provided by the national laws means that the mutual agreement procedure is not alternative to the national ordinary proceedings which shall be, in any case preventively initiated, when the claim is related to an assessment of taxes not in accordance with this Convention ;

f) that, with reference to paragraph 3 of Article 29, the provisions herein contained shall not be construed as preventing the competent authorities of the Contracting States from mutually agreeing upon a different procedure for the granting of tax benefits provided by this Convention.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the present Protocol Done in duplicate at New Delhi the 19th day of February, 1993, in the Hindi, Italian and English languages, all texts being equally authoritative except in the case of doubt when the English text shall prevail.

JUDICIAL ANALYSIS

The assessee (an Italian company) had entered into a technical collaboration agreement with Modipan, an Indian company. Under the agreement the assessee was to supply copies of specifications and/or drawings for the modification of the equipment installed at Modis for achieving the results. As per clause (3) of the agreement the assessee was to make available outside India for use by the Modis any improvements which were successfully developed and put into commercial use by the assessee in the field. For that purpose the assessee was required to permit annual technical visits to its plant, relevant parts of its research centre, any factory in Italy as specified by a specified number of technicians of Modis for a specified period per year, the cost of which was to be borne by Modis. In clause (4) of the Agreement the assessee was required to depute its technicians twice a year to the Modis plant to inspect the plant progress and assess the problems, if any, at the cost of Modis. Clause 9 of the agreement bound Modis not to engage any technician of the assessee without its previous written consent during the term of the agreement and for a further period of 5 years. As per article III the term of agreement was five years and it was provided that even after the expiry of 5 years and for a further period of 5 years, the secrecy clause shall continue to be in force. Article IV of the agreement dealt with secrecy and bound Modis to condition that all designs, etc., supplied by the assessee and any knowledge received as a result of implementation of the agreement should be kept confidential and to be used by Modis only and enjoined upon Modis not to divulge or disclose directly or indirectly to any third party without prior written consent of the assessee. The agreement provided for renewal at the expiry of the term of the agreement on the terms to be mutually agreed upon. The question was whether the payment received by the assessee under the agreement was royalty within the meaning of Double Taxation Avoidance Agreement between Italy and India.

It was held that viewed in the context of terms of agreement, it could not be said that the assessee parted with its property in the form of designs/technical detail, formula, etc., forever in favour of Modi in consideration of the amount received. The assessee continued to hold property right in the information/designs, formula, etc., under the agreement with Modi and also bound Modis fully not to pass on the information, formula, etc., supplied to anybody else without written consent of the assessee, which could not be in the case of an outright sale. Therefore, the amount received was royalty under the terms of DTAA between India and Italy and, therefore, taxable as such in India. *Asstt. CIT v. Snla Fibre SPA* [1996] 55 TTJ (Delhi) 554.