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Fees for Technical Services and the Absence of 'Make Available Clause' in Tax Treaties: Can a Protocol Not Notified by the Government Trigger the 'Most Favoured Nation Clause'?

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ABSTRACT

The recent decisions of some courts in India to do away with the requirement of notification of a protocol, attached to a tax treaty, for its implementation, has raised serious concerns with regards to the interplay of international law vis-à-vis the municipal law of India. The object of this article is to critically reflect on the existing jurisprudence and constitutional provisions in India, along with the extant international practices. This article tends to argue that the recent judicial approaches reflect a manifest error of law, both in terms of national as well as international practices.

Keywords:. *Fees for technical services; Most favoured nation (MFN); Need for notification; Dualism; self-executing treaty*

1.0 Introduction

1. International tax law is faced with a neoteric tax dispute relating to the claim of benefits of the 'Most Favoured Nation (MFN)' clause[1] by virtue of a protocol, signed at the conclusion of some tax treaties,[2] but not notified by the Government of India. The Delhi High Court judgement in *Steria (India) Ltd v CIT*[3] and the Karnataka High Court judgement in *Apollo Tyres Ltd v CIT*[4] have intensified this debate further by holding that the protocol signed at the conclusion of the tax treaty was self-executing as it formed the integral part of treaty and no separate notification was required for its implementation. The present research aims at critiquing the recent judicial approaches in the light of the existing law and the jurisprudence evolved on the subject.

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2. This tax dispute assumes a special significance in the context of taxability of fees for technical services (FTS) or fees for included services (FIS) in the cases, where the tax treaty does not contain a 'make available clause'[5] and the same is sought to be imported into the treaty by the operation of the MFN clause, contained in a subsequent protocol, which is not notified by the Government. In other words, the legal question, which arises here, is whether a subsequent protocol signed between the treaty partners, but not notified by the Government of India, can be considered self-executing and legally given effect to.

2.0 The Doctrine of Transformation

3. The present dispute raises a cardinal question of interplay of international law vis-à-vis the municipal law of India. There are two well recognised theories in international law in this regard: *monism* and *dualism.* The monist theory suggests that the effect of international law is automatically incorporated in the domestic legal system and it does not require a specific municipal law for its implementation. This is known as the doctrine of incorporation. Under dualism, on the other hand, international law and domestic law are separate bodies of law, operating independently of each other and rules and principles of international law cannot operate directly in municipal law, and must be transformed or internalized into municipal law before they can affect individual rights and obligations. This is known as the doctrine of transformation.[6]

3.0 Common Law Practices

4. In the United Kingdom and many other common law countries, it is the dualistic prescription that prevails, which require active internalization of international law by Parliament. The classic case is the Privy Council decision in *Attorney General for Canada v Attorney General for Ontario,*[7] where the proposition was explicated thus:

> It will be essential to keep in mind the distinction between (1) the formation, and (2) the performance, of the obligations constituted by a treaty, using that word as comprising any agreement between two or more sovereign States. *Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action.* Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of the treaty alone, have the force of law. If the national executive,

> the Government of the day, decide to incur the obligations of a treaty which involve alteration of law they have to run the risk of obtaining the assent of Parliament to the necessary statute or statutes…. *Parliament, no doubt, …has a Constitutional control over the executive: but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the executive alone. Once they are created, while they bind the State as against the other contracting parties, Parliament may refuse to perform them and so leave the State in default.*
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> *[Emphasis Supplied]*

4.0 Indian Scenario

5. India follows the common law tradition of requiring the legislative transformation of treaty obligations, while directly incorporating rules of customary international law.[8] The Constitution of India specifically gives legislative power over entering into and implementing international obligations to the Union Legislature. Article 246, read with entries 10-14 of the Union List of the Seventh Schedule of the Constitution, ordains that legislative competence over foreign affairs, over entering into treaties with foreign countries and implementing them domestically, lies with Parliament. Parliament also has exclusive competence over participation in international conferences, associations and other bodies and implementing decisions made therein.[9] The Constitution also clarifies that the power of Parliament to make law for the implementation of international obligations extends even to those matters that are otherwise within the legislative competence of states.[10] Since the legislative competence over treaty-making and its implementation vests with Parliament, it has the power to define how international law obligations ought to be assumed and implemented domestically. By virtue of Article 73, however, the powers of the Union Executive are co-terminus with those of Parliament[11] and the Union Executive can act on all matters, and only on the matters, over which Parliament has been accorded competence by the Constitution, even in the absence of legislation on the point.[12] Thus, a twofold proposition emerges from a conjoint reading of Article 246, entries 10–14, and Article 73:

- it is open to Parliament to pass a law regulating how international obligations are assumed on the international stage and how they are implemented and enforced in India; and,

- in the absence of such legislation, the power to enter into treaties and its implementation vests with the Executive.[13]

5.0 The Manmull Jain Case

6. It is, therefore, manifest that treaty law is not, *ipso facto*, applicable in the Indian domestic sphere unless it has been transformed or internalized by a municipal legislation or a notification by the Executive in terms of Article 73. The jurisprudence emerged on the subject supports this construction. The leading case in this regard is *Union of India v Manmull Jain*,[14] where the Calcutta High Court, while dealing with the validity of a treaty in the absence of legislation, held thus:

> Making a treaty is an executive act and not a legislative act. Legislation may be and is often required to give effect to the terms of a treaty. *Thus, if a treaty, say, provides for payment of a sum of money to a foreign power, legislation may be necessary before the money can be spent; but the treaty is complete without the legislation.*
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> *[Emphasis Supplied]*

6.0 The Constitution Bench Decision in Maganbhai

7. Later, a Constitution Bench of the Indian Supreme Court in *Maganbhai Ishwarbhai Patel v Union of India*,[15] had an occasion to deal with the implementation of an award of a tribunal set up in pursuance of an agreement between India and Pakistan. The court, speaking through Hidayatullah CJ, stated the law thus:

> A treaty really concerns the political rather than the judicial wings of the State. *When a treaty or an award after arbitration comes into existence, it has to be implemented and this can only be done after all the three branches of government, the legislature, the executive and the judiciary, or any of them, possess the power to implement it. If there is any deficiency in the constitutional system, it has to be removed and the state must equip itself with the necessary power.* In some jurisdictions the treaty or the compromise read with the award acquires full legal effect automatically in the municipal law notwithstanding. Such treaties and awards are self-executing. Legislation may nevertheless be passed in aid of implementation but is usually not necessary.
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> *[Emphasis Supplied]*

Dilating on the point further, Shah J, in his concurring judgement in *Maganbhai*,[16] observed thus:

> By Art. 73, subject to the provisions of the Constitution, the executive power of the Union extends to the matters with respect to which the Parliament has power to make laws. Our Constitution makes no provision making legislation a condition of the entry into an international treaty in times either of war or peace. The executive power of the Union is vested in the, President and is exercisable in accordance with the Constitution. *The executive is qua the State competent to represent the State in all matters international and may by agreement, convention or treaties incur obligations which in international law are binding upon the State. But the obligations arising under the agreement or treaties are not by their own force binding upon Indian nationals. The power to legislate in respect of treaties lies with the Parliament under Entries 10 and 14 of List I of the Seventh Schedule. But making of law under that authority is necessary when the treaty or agreement operates to restrict the rights of citizens or others or modifies the laws of the State.* If the rights of the citizens or others which are justiciable are not affected, no legislative measure is needed to give effect to the agreement or treaty.
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> *[Emphasis Supplied]*

7.0 The Jolly George Verghese Case

8. In *Jolly George Verghese v Bank of Cochin*[17], where question of implementation of the International Covenants on Civil and Political Rights came in for consideration, Krishnaiyer J, speaking for a division bench, reiterated the law, thus:

> The Covenant bans imprisonment merely for not discharging a decree debt. Unless there be some other vice or mens rea apart from failure to foot the decree, international law frowns on holding the debtor's person in civil prison, as hostage by the court. India is now a signatory to this Covenant and Art. 51 (c) of the Constitution obligates the State to 'foster respect for international law and treaty obligations in the dealings of organised peoples with one another'. *Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter. A. H. Robertson in 'Human Rights-in National and International Law' rightly points out that international conventional law*

> *must go through the process of transformation into the municipal law before the international treaty can become an internal law.*
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> *[Emphasis Supplied]*

Thus, unless an international agreement, treaty, covenant or a protocol is backed by legislation or a notification by the Government of India in terms of article 73, it cannot be given effect to.

8.0 The Indian Position

9. In the context of tax treaties, section 90(1) of India's domestic law specifically incorporates this doctrine of transformation for the implementation of a treaty. The provision specifically requires the Government of India to *'make such provisions as may be necessary'* in this regard *'by notification in the Official Gazette.'*[18] Thus, in the context of tax treaties, when Parliament has acted in terms of Article 73 of the constitution of India and required a tax treaty to be implemented by way of notification in the official Gazette, then a tax treaty or a subsequent protocol sought to be attached to an earlier tax treaty can be implemented by way of notification alone and in no other manner. It is trite that when law requires a particular thing to be done in a particular manner, then it has to be done in that manner, and in no other manner.[19]

9.0 The Azadi Bachao Andolan Case

10. This aspect of law came to be noticed and ratified by the India Supreme Court in *Union of India v Azadi Bachao Andolan*[20], wherein the court was examining the validity of a government circular in terms of implementation of the India-Mauritius. Srikrishna J, speaking for the court, elucidated the law thus:

> 26. *A survey of the aforesaid cases makes it clear that the judicial consensus in India has been that section 90 is specifically intended to enable and empower the Central Government to issue a notification for implementation of the terms of a double taxation avoidance agreement.* When that happens, the provisions of such an agreement, with respect to cases to which where they apply, would operate even if inconsistent with the provisions of the Income-tax Act. We approve of the reasoning in the decisions which we have noticed. If it was not the intention of the legislature to make a departure from the general principle of chargeability to tax under section 4 and the general principle of ascertainment of total income under section 5 of the Act, then there was

> no purpose in making those sections "subject to the provisions" of the Act". *The very object of grafting the said two sections with the said clause is to enable the Central Government to issue a notification under section 90 towards implementation of the terms of the DTAs which would automatically override the provisions of the Income- tax Act in the matter of ascertainment of chargeability to income tax and ascertainment of total income, to the extent of inconsistency with the terms of the DTAC.*
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> ……
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> 30. ……*This Court is not concerned with the manner in which tax treaties are negotiated or enunciated; nor is it concerned with the wisdom of any particular treaty.* Whether the Indo-Mauritius DTAC ought to have been enunciated in the present form, or in any other particular form, is none of our concern. Whether section 90 ought to have been placed on the statute book, is also not our concern. Section 90, which delegates powers to the Central Government, has not been challenged before us, and, therefore, we must proceed on the footing that the section is constitutionally valid. *The challenge being only to the exercise of the power emanating from the section, we are of the view that section 90 enables the Central Government to enter into a DTAC with the foreign Government. When the requisite notification has been issued thereunder, the provisions of sub-section (2) of section 90 spring into operation and an assessee who is covered by the provisions of the DTAC is entitled to seek benefits thereunder, even if the provisions of the DTAC are inconsistent with the provisions of Income-tax Act, 1961.*
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> *[Emphasis Supplied]*

11. The Supreme Court further observed that the power to legislate in respect of treaties lies with Parliament, but making of law under that authority is necessary when the treaty or agreement operates to restrict the rights of citizens or others or modifies the law of the State.[21] In the context of tax treaties, there are some variance in procedures adopted by different countries but such treaties in India require to be transformed into the law of the land and it is for this purpose that section 90 of the Income Tax Act was brought on the statute especially enabling transformation of the treaty into the national law by way of notification. The Supreme Court put this thus:[22]

> 18. When it comes to fiscal treaties dealing with double taxation avoidance, different countries have varying procedures. In the United

> States such a treaty becomes a part of municipal law upon ratification by the Senate. In the United Kingdom such a treaty would have to be endorsed by an order made by the Queen in Council. *Since in India such a treaty would have to be translated into an Act of Parliament, a procedure which would be time consuming and cumbersome, a special procedure was evolved by enacting section 90 of the Act.*
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> *[Emphasis Supplied]*

10.0 The Recent CBDT Circular

12. The CBDT[23] in its recent circular[24] dated 3 February, 2022 has underlined the requirement of notification of a treaty in terms of section 90 as mandatory in the following terms:[25]

> 4.4 Requirement of notification under Section 90 of the Income-tax Act, 1961:
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> *Further, it is a domestic requirement in India under sub-section (1) of section 90 of the Income-tax Act, 1961 that DTAA or amendment to DTAA are implemented after its notification in the Official Gazette. In the famous case of Azadi Bachao Andolan (2004,10 SCC) as well, Hon'ble Supreme Court of India has observed that the DTAA provisions come into force on the date of issue of notification of such DTAA. Hon'ble Supreme Court also made it clear in the judgment that the beneficial provision of sub-section (2) of section 90 springs into operation once the notification is issued.* The relevant extract of that judgment reads as under it:
>
> 'A survey of the aforesaid cases makes it clear that the judicial consensus in India has been that section 90 is specifically intended to enable and empower the Central Government to issue a notification for implementation of the terms of a double taxation avoidance agreement. When that happens, the provisions of such an agreement, with respect to cases to which where they apply, would operate even if inconsistent with the provisions of the Income-tax Act. We approve of the reasoning in the decisions which we have noticed. If it was not the intention of the legislature to make a departure from the general principle of chargeability to tax under section 4 and the general principle of ascertainment of total income under section 5 of the Act then there was no purpose in making those sections "subject to the provisions of the

> Act". The very object of grafting the said two sections with the said clause is to enable the Central Government to issue a notification under section 90 towards implementation of the terms of the DTAs which would automatically override the provisions of the Income- tax Act in the matter of ascertainment of chargeability to income tax and ascertainment of total income, to the extent of inconsistency with the terms of the DTAC..... .....'
> '……. This Court is not concerned with the manner in which tax treaties are negotiated or enunciated; nor is it concerned with the wisdom of any particular treaty. Whether the Indo-Mauritius DTAC ought to have been enunciated in the present form, or in any other particular form, is none of our concern. Whether section 90 ought to have been placed on the statute book, is also not our concern. Section 90, which delegates powers to the Central Government, has not been challenged before us, and, therefore, we must proceed on the footing that the section is constitutionally valid. The challenge being only to the exercise of the power emanating from the section we are of the view that section 90 enables the Central Government to enter into a DTAC with the foreign Government. *When the requisite notification has been issued thereunder, the provisions of sub-section (2) of section 90 spring into operation and an assessee who is covered by the provisions of the DTAC is entitled to seek benefits thereunder, even if the provisions of the DTAC are inconsistent with the provisions of Income-tax Act 1961.'* (Emphasis supplied)
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> *[Emphasis Supplied]*

11.0 Steria (India) and Other Cases: An Erroneous View

13. The judgment of the Delhi High Court in *Steria (India) Ltd*,[26] which was followed by it *in Concentrix Services Netherlands BV v ITO*[27] and by the Karnataka High Court in *Apollo Tyres Ltd*,[28] therefore, runs counter to the dualistic theory of international law, consistently followed by India and upheld by the Indian Supreme Court in cased cited *supra*. The Delhi High Court, therefore, erroneously observed that Clause 7 of the Protocol, attached to the India-France Tax Treaty, made this Protocol 'self-operational.' Clause 7 of the Protocol merely specifies the date of its entering into force and provides that the Protocol would apply 'with effect from the date on which the present Convention

or the relevant Indian convention, agreement or protocol enters into force, whichever enters into force later.' But this must be subject to the Protocol being notified in terms of section 90 of the Act. Clause 7, in no manner, does away with the requirement of notification of the Protocol and makes it self-operational. A bare look at Clause 7 of the Protocol bears this out:

> 7. In respect of articles 11 (Dividends), 12 (Interest) and 13 (Royalties, fees for technical services and payments for the use of equipment), if under any Convention, Agreement or Protocol signed after 1-9-1989, between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate of scope provided for in this Convention on the said items of income, *the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items income shall also apply under this Convention, with effect from the date on which the present Convention or the relevant Indian Convention, Agreement or Protocol enters into force, whichever enters into force later.*
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> *[Emphasis Supplied]*

14. The commentary by Klaus Vogel on "Double Taxation Conventions", which the High Court has based its reasoning on, merely states that when other additional documents are attached to a treaty, elaborating and completing the text of a treaty are part of the tax treaty and the same must be considered at the time of applying that treaty. It does not in any manner indicate that the additional protocol so attached with the treaty becomes self-executing and does not require its transformation in municipal law of the State. The words of Klaus Vogel are plain and simple in this regard:[29]

> As previously mentioned, (final) protocols and in some cases other completing documents are frequently attached to treaties. Such documents elaborate and complete the text of a treaty, sometimes even altering the text. Legally they are part of the treaty, and their binding force is equal to that of the principal treaty text. When applying a tax treaty, therefore, it is necessary carefully to examine these additional documents.

15. Prof. Vogel's commentary, therefore, merely offers an interpretative assistance in the sense that if an additional agreement or protocol is attached to a treaty, it constitutes part of the main treaty and must be taken into consideration for applying a treaty. But before such an additional agreement of protocol is taken into consideration, it must be subjected

to the process of transformation into India's domestic law by way of a notification under section 90 of the Act as an additional protocol, modifying the terms of the earlier treaty is nothing but a treaty only and it must entail all its procedural trappings. Vogel's commentary, therefore, does not advocate the abrogation of the requirement of transformation of a treaty into municipal law. Brian J. Arnold puts it thus:[30]

> It is commonplace for them to amend a tax treaty by entering into a Protocol to the treaty. *Under international law, an agreement designated as a Protocol is simply a treaty under a different name. Thus, as described above, it must be ratified under the rules applicable to treaties before it becomes effective.*
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> *[Emphasis Supplied]*

12.0 Conclusion

16. The *Steria (India) Ltd*[31] and *Apollo Tyres Ltd* [32] cases, therefore, were not correctly decided as they contradict the dualistic theory consistently being practiced in India and upheld by the Indian Supreme Court in *Maganbhai Ishwarbhai Patel,*[33] *Jolly George Verghese*[34] and *Azadi Bachao Andolan.*[35] A protocol sought to be annexed to a previous treaty must, therefore, undergo the process of transformation for its implementation as per the common law jurisprudence, except in the case of treaties, which are not of primary importance and do not affect private rights.[36] This common law practice is at sharp variance with the US practice, where all treaties, made or which shall be made under the authority of the United States, shall be the supreme law of the land.[37] A distinction is, however, made by the US courts between a self-executing treaty and a non-self-executing one and a self-executing treaty tends to overrule the municipal law.[38] For determination of the nature of the treaty, i.e., whether the treaty is self-executing or not, the intention of the signatory parties and the surrounding circumstances are crucial considerations in this regard.[39] In the Indian context, however, the question of a self-executing treaty does not arise and the Delhi High Court, in *Steria (India) Ltd,*[40] totally misconstrued clause 7 of the protocol, annexed to the India-France Treaty as self-executing.

17. Any contrary construction will run afoul of the prevailing international practices on the implementation of additional protocols, which are often attached to the main treaty. A reference, for instance, may be made in this regard to Protocol 12 to the European Convention on Human Rights which was adopted on 4 November 2000 in Rome and signed by 37 countries. This protocol, however, was ratified only by 17 countries. The

UK ratified it only on 1 April 2005 in order to give effect to it.[41] Likewise, two attempts to ratify the 1977 Additional Protocols to the Geneva Conventions of 1949 failed in Australia in 1989 due to Opposition objections and it became enforceable only after its ratification on 21 June 1991 with the Geneva Convention Amendment Act.[42] Similarly, the UK Government had, even though, declared on 22 October 1993 that it would ratify the two Additional Protocols 'as soon as the necessary implementing amendments to the Geneva Convention Act 1957 can be enacted,'[43] it ratified the amendment only on 28 January 1998. Thus, the additional protocol or covenant must go through the process of ratification under the municipal law for its implementation. The Delhi High Court, in *Steria (India) Ltd*,[44] could not consider the existing international practices in this regard. The Steria judgement and the other decisions, based on it, suffers from a manifest error of law.

Endnotes

1. An MFN clause obligates a state to offer to its treaty partner a 'more favourable' tax treatment (than what is agreed upon in their tax treaty), if such 'more favourable' tax treatment is offered by the first state in its tax treaty with a different third state, if both the second and the third states are OECD members.
2. *See* India's Direct Tax Avoidance Agreement (hereafter called 'the tax treaty') with Belgium, Sweden and France.
3. *[2016] 72 taxmann.com 1 (Del).*
4. *[2018] 92 taxmann.com 166 (Kar).*
5. Under the 'make available clause', unless the technical or included services are made available to the recipient of services, they would not be taxable as FTS or FIS under the treaty. The concept in the tax treaties essentially means the person acquiring the services is equipped to apply the technology or technical knowledge or technical expertise contained therein in future.
6. *See* James Atkin and Baron Atkin, in M. Akehurst, *Modern Introduction to International Law* (Harper Collins, London 1970) 145.
7. *[1937] AC 326 (Privy Council).*
8. *See* Aparna Chandra, 'India and International Law: Formal Dualism, Functional Monism,' Indian Journal of International Law 57, 25–45 (2017). https://doi.org/10.1007/s40901-017-0069-0.
9. The Constitution of India, 7th schedule, Union List, entry 13.
10. Article 253 provides that:
    Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.
11. Constitution of India, Art 73:
    (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub clause

(a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

12. *See Ram Javaya Kapur v State of Punjab' AIR 1955 SC 549.*
13. *See* TM Franck & AK Thiruvengadam, 'International Law and Constitution-Making', Chinese J Intl L (2003) 467, 470; *Also See* Rajeev Dhavan,'Introduction – Indian Governance and Treaties: The Advent of the WTO' in Shiva Kant Jha (ed): *Final Act of WTO: Abuse of Treaty-Making Power* (2006) vi-xvi.
14. *AIR 1954 Cal 615.*
15. *(1970) 3 SCC 400.*
16. *ibid*.
17. *1980 AIR SC 470*
18. *See* Income Tax Act 1961, s 90(1) gives, which reads as follows:

"90. (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India, -

(a). for the granting of relief in respect of –

(i). income on which have been paid both income under this Act and income tax in that country or specified territory, as the case may be, or

(ii) income tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(c) ……

(d) ……

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement."

19. *See Chandra Kishore Jha v Mahavir Prasad, AIR 1999 SC 3558 (para 12); see also Dhananjaya Reddy v State of Karnataka, AIR 2001 SC 1512 (para 22).*
20. *[2003] 132 Taxman 373 (SC).*
21. *See Azadi Bachao Andolan (n 20)* para 17.
22. *ibid* para 18.
23. Central Board of Direct Taxes, India's apex body in direct tax administration.
24. Circular no 3/2022, F.No. S03/1/2021-FT&TR-1 dated 3 February 2022, circular-3-2022.pdf (incometaxindia.gov.in)> accessed 11 March 2022.
25. *ibid*, para 4.4.
26. *See Steria (India)* (n 3).
27. *[2021] 127 taxmann.com 43 (Delhi).*
28. *See Apollo Tyres* (n 4.)
29. As extracted in *Steria (India)* (n 3).

30. *See* Brian J. Arnold, 'An Introduction to Tax Treaties', <Microsoft Word - TT_Introduction_Eng.docx (un.org)> accessed 14 March 2022.
31. *See Steria (India)* (n 3).
32. *See Apollo Tyres* (n 4).
33. *See Maganbhai* (n 15).
34. *See Jolly George Verghese* (n 17).
35. *See Azadi Bachao* (n 20).
36. *See* Gurdip Singh, *International Law* (Eastern Book Company, Lucknow 2015) p 72.
37. *See* The US Constitution, Art 6 cl 2.
38. *See Whitney v Robertson, 124 US 190 (1888)*.
39. *See Sei Fuji v State of California 38 Cal 2d 718.*
40. *See Steria (India)* (n 3).
41. *See* Joel Quek, 'A View from Across the Water: Why the United Kingdom Needs to Sign, Ratify and Incorporate Protocol 12 To the European Convention on Human Rights', 11 UC Dublin L Rev 101(2011).
42. *See* Paul Griffiths and Helen Gwilliam, 'Comment on Australia's Ratification of the 1977 Additional Protocols to the Geneva Conventions of 1949', 11 U Tas L Rev 104(1992).
43. *See* P Rowe and MA Meyer, 'Ratification by the United Kingdom of the 1977 Protocols Additional to the Geneva Conventions of 1949: Selected Problems of Implementation,' 45 N Ir Legal Q 1994 – HeinOnline
44. *See Steria (India)* (n 3).