



## Background

Recently, the Hon'ble Supreme Court in the case of NHK Japan Broadcasting Corporation<sup>1</sup> has held that if a statutory deduction from the salary of an expatriate employee constitutes an overriding charge on the salary, then the same should not be considered as an income of the expatriate.

## Facts

- NHK Japan Broadcasting Corporation ('the Company') is in the business of transmission of news and broadcasting.
- The Company hired few expatriates employees for its Indian operations.
- While on Indian assignment, salary of the expatriates was subject to deduction of a Citizen tax (a statutory levy in Japan on the Japanese Citizens).

## Issue before the Supreme Court

Whether Citizen tax constitutes an overriding charge on the salary paid to the expatriates and hence, does not constitute income of the expatriates liable to tax in India?

## The tax department's contention

The assessing officer included the amount of Citizen tax as part of the taxable income of the expatriates on the ground that it was a part of salary paid to the expatriates. Accordingly, tax should be withheld on the same.

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<sup>1</sup> CIT, Delhi-XVII vs NHK Japan Broadcasting Corporation [Civil Appeal No. 1712 of 2009 – Supreme Court]



### **The contention of CIT(A) and Appellate Tribunal**

- The Citizen tax is a statutory levy as per the Citizens Individual Inhabitant Tax Act ('the Act') in Japan on Japanese Citizens.
- The same constitutes an overriding charge on the salary paid to the expatriates. Therefore, it should not be considered as an income of the expatriates.

### **The Supreme Court decision**

- In case the Citizen tax constitutes an overriding charge on the salary paid to the expatriates, the same should not be considered as an income of the expatriates liable to tax in India.
- The matter has been referred back to the Income Tax Appellate Tribunal for examination of the provisions of the Act for determining whether the Citizen tax constitutes an overriding charge on the salary paid to the expatriates.

### **Our Comments**

This ruling highlights that if a statutory levy in the home country of the expatriate constitutes an overriding charge on his salary, then the same should not be construed as income of the expatriate liable to tax in India.

The facts and circumstances of the each case should be examined as to the nature of the levy before drawing any conclusion.

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