

TAX FLASH NEWS

15 July 2019



Period of 182 days to be considered for residential status of an Indian citizen, coming to India for visits

- Taxability in India depends upon the residential status of a person in India as per the Income-tax Act, 1961 (the Act), which in turn is determined on the basis of the number of days of physical stay in India during a particular Financial Year (FY)
- An individual is said to be 'resident' in India in any FY if he/she is:
 - Present in India in that year for a period or periods totalling to 182 days or more; or
 - Present in India for at least 60 days or more during the FY and 365 days or more during the preceding four tax years.

However, for an Indian citizen or for a person of Indian origin, who being outside India, comes on a visit to India in any FY, the residency for India tax purposes triggers at 182 days stay in India and not at 60 days stay in India.

- In this context, the Bombay High Court recently held¹ that the period of 182 days to be considered for calculating residential status of a person (being an Indian citizen) who migrated to a foreign country, during his visits to India for a particular FY.

Facts of the case

- The taxpayer, an individual, was born in India in the year 1960 and later went to a Soviet Union for higher education during the period 1978 to 1984. From 1984 to 1986, he worked in various trading pharma companies in the USSR. Later,

he had set up a trading house at Ukraine, acquired immovable properties in Ukraine in 1990s and was a permanent resident of Ukraine till 2002.

- The taxpayer then shifted to England, but continued his business interest in Ukraine, Russia and CIS countries
- During the relevant FY 2005-06, the taxpayer was in India for 173 days on account of his visits to India and had filed his income tax return for the said FY as not an ordinary resident. Consequently, the taxpayer had not offered the amounts deposited in his foreign bank accounts as only his India sourced income was taxable in India.
- The Assessing Officer (AO), had held that the taxpayer was a resident of India and had made the following additions on the ground that the taxpayer was an ordinary resident:
 - INR417,189,166² in respect of the amounts deposited in his foreign bank account; and
 - INR56,000,000³ in respect of the money earned outside India.
- The Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal (the Tribunal) had deleted the addition made by the AO on grounds that the taxpayer would qualify as not an ordinary resident and accordingly money earned/deposited overseas are not taxable in India
- Aggrieved by the Order of the Tribunal, Revenue had filed an appeal with the High Court.

¹ PCIT v. Binod Kumar Singh [2019] 107 taxmann.com 27 (Bom)

² Section 68 of the Act

³ Section 69 of the Act

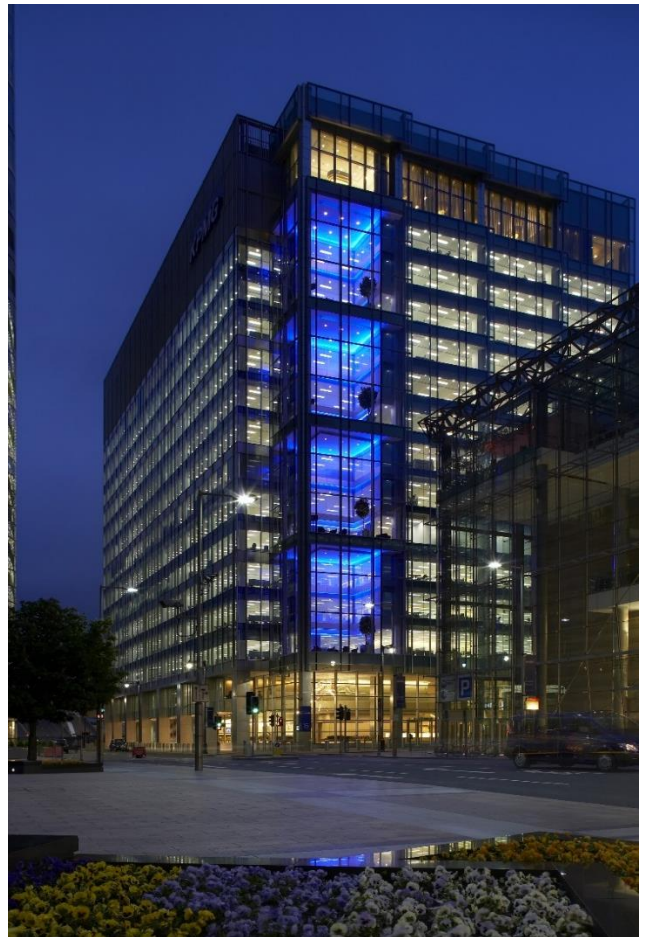
High Court's decision

- Based on the facts of the taxpayer, the High Court observed the following:
 - The taxpayer had migrated to a foreign country where he had pursued his higher education abroad, engaged in various business activities and continued to live with his family and had set up a business interest
 - The taxpayer was in India for 173 days during the relevant FY 2005-06
 - Based on the information on records, the taxpayer's travel to India, were in the nature of visits alone.
- As per the Clause (b) of Explanation 1 of Section 6(1) of the Act, the residency triggers at 182 days stay in India and not at 60 days stay in India for a citizen of India, being outside India and coming on visits to India during a relevant FY
- The HC also negated the need for reference of Section 6(6)⁴ of the Act, as in the present case the issue is about the number of days of stay in the relevant FY.
- Given the above, the High Court upheld the order of the Tribunal and deleted the addition made by the AO on grounds that the taxpayer is not an ordinary resident and accordingly money earned/deposited overseas is not taxable in India.

Our comments

This decision only clarifies the conditions that need to be satisfied for determination of residential status of an individual, who being a citizen of India, migrated to a country outside India where he has set up business interest and has come on a visit to India during a particular FY. The question raised by Revenue as to whether the date of travel outside India should be included as a day of resident in India or not, being academic, remains unanswered. It would be prudent for an individual to substantiate that he lived outside India and is only on visits to India during his stay in India in any particular FY.

⁴ Section 6(6) of the Act provides for the conditions for an individual to qualify as a Not Ordinarily Resident



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