



State taxes paid in the United States of America (USA) eligible for foreign tax credit in India

Background

Where taxpayers qualify as ordinary resident in India, the tax paid outside India on income doubly taxed, is eligible for a claim of foreign tax credit in India.

In this context, the Ahmedabad Bench of the Income-tax Appellate Tribunal (the Tribunal) has recently in the case of Dr. Rajiv I. Modi¹ (the taxpayer) held that a taxpayer is entitled to credit in respect of state income taxes paid in the USA relying upon Section 91 of the Income-tax Act, 1961 (the Act), even though the case pertained to a country which had tax treaty with India, and to which Section 90 of the Act applied.

Facts of the case

- The taxpayer was a director in a pharmaceutical company and had received a salary of INR6.21 million from a U.S. based entity, during the relevant tax year 2009-10, which was doubly taxed both in India and the USA.
- On such taxable income, the taxpayer had inter-alia claimed a credit of state taxes paid in the USA amounting to INR 0.53 million while filing his income tax return in India.
- The Assessing Officer (AO) rejected the claim on the ground that Article 2 of the India-USA tax treaty (the tax treaty) covers only federal income tax in the USA.
- On appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] observed that there was a Mumbai Tribunal decision² on the same issue, in favour of the taxpayer, but declined to follow the said decision on the ground that it had been challenged before the High Court, and thereby upholding the order of the AO.

- Aggrieved by the order passed by the CIT(A), the taxpayer had filed an appeal with the Ahmedabad Tribunal.

Tribunal's decision

- The Tribunal relied extensively on the Mumbai Tribunal decision which was disregarded by the CIT(A).
- The Mumbai Tribunal decision had upheld foreign tax credit in respect of state income-taxes paid in the USA, on the following basis:
 - Section 90 of the Act deals with relief of taxes paid in a country with which India has entered into an agreement, and Section 91 of the Act deals with relief of taxes paid in any country with which there is no agreement under Section 90 of the Act;
 - Section 90(2) of the Act provides that the provisions of the Act shall apply only to the extent they are more beneficial to that taxpayer;
 - A Circular³ issued by the Central Board of Direct Taxes (CBDT) specifically clarifies that any beneficial provision in the law would not be denied merely because a corresponding provision in the tax treaty is less beneficial;
 - In view of the above, it is possible to treat Section 91 as having general application, even in a case where Section 90 would typically apply;

¹ Dr. Rajiv I. Modi v. DCIT (ITA No. 1285 [AHD] 2014, dated 21 September 2017)

² Tata Sons Ltd. v. DCIT (ITA No 3461 of 2009, dated 28 January 2011)

³ Circular 621, dated 19 December 1991

- In the instant case, the tax treaty provides that tax credits are admissible only in respect of federal taxes and not state taxes. Conversely, provisions of Section 91 of the Act permits credit for all income taxes paid abroad- whether state or federal;
 - Therefore, even in a case covered by the tax treaty, the provisions of Section 91 of the Act would be applicable to the extent it is more beneficial to the taxpayer;
 - As Section 91 does not discriminate between state and federal taxes and in effect, provides for both these income-taxes to be taken into account for the purpose of tax credit in India, the taxpayer would be entitled in principle, to such tax credits in India.
- Relying on the above, the Ahmedabad Tribunal held that the taxpayer is entitled to credits on both federal (under Section 90 of the Act) and state taxes (under Section 91 of the Act) paid in the USA. However, tax credit would need to be restricted to actual income tax liability in India, in respect of such doubly taxed income.



Our comments

This decision could enable resident individuals who travel to the USA for employment, to claim credit additionally with respect to state taxes paid in the USA, to the extent that aggregate taxes paid overseas do not exceed Indian tax liability on such income.

However, considering that Section 91 is applicable only in case of taxes paid in a country with which India does not have an agreement, application of this decision requires evaluation on a case-to-case basis. It may also be noted that any claim of tax credits is litigious, especially at lower levels.

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