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TAX FLASH NEWS

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Remuneration received in India by non-resident taxpayer for services rendered outside India not taxable in India

Background

As per the provisions of Income-tax Act, 1961 (the Act), taxation of income of an individual depends on his residential status in India during the particular year and when such income is due or received.

Recently, the Calcutta High Court (High Court) in the case of Sumana Bandyopadhyay & Anr.[1](the taxpayer) held that salary received by a Non-resident (NR) taxpayer in his Non-Resident (External) (NRE) bank account in India for the services rendered outside India shall not be includible in his taxable income.

Facts of the case

- The taxpayer was a marine engineer working outside India, and for Assessment Year (AY) 2010-11, his residential status under section 6 of the Act was NR.
- The taxpayer had received a salary from two employers in his NRE account in India for the services rendered outside India which he considered as not chargeable to tax in India.
- During the course of assessment proceedings, the Assessing officer (AO) added the salary to his income chargeable to tax on the grounds that the salary was received in his NRE account and thereby, constitutes receipt of income in India under section 5(2)(a) of the Act.
- The taxpayer preferred appeals with the Commissioner of Income-tax Appeals [CIT(A)] against the order of AO and further with the Tribunal. However, the same was rejected by both CIT(A) and the Tribunal.
- Aggrieved by the decision of the Tribunal, the taxpayer appealed before the High Court.

Taxpayer's contention

- The taxpayer contended that his residential status in India during the AY was that of a NR and accordingly, the salary earned by him outside India is not taxable in India.

High Court's decision

- The High Court observed that the tax department's only contention was that the salary received by the taxpayer in his NRE account directly from his employers constituted receipt of the said sum in India under Section 5(2)(a) of the Act.
- The High Court relied on an earlier ruling of the Karnataka High Court[2] wherein it was held that salary earned by NR for services rendered outside India cannot be said to be deemed to accrue or arise in India under Section 5(2)(b) of the Act.
- Further, the High Court also relied upon the clarificatory nature of the Circular issued by the Central Board of Direct Taxes (CBDT)[3], wherein it was given that any salary accruing to a NR seafarer for services rendered outside India on a foreign going ship shall not be included in the total income merely because the salary has been credited in the NRE account maintained in India.
- In view of the above, the High Court concluded that the AO was wrong in adding the salary received in the NRE account, to the taxable income of the taxpayer and accordingly, allowed the taxpayer's appeal.

[1] Sumana Bandyopadhyay & Anr. v. DDIT (GA 3745 of 2016 with ITAT 374 of 2016)

[2] DIT v. Prahlad Vijendra Rao [2011] 198 Taxman 551 (Kar)

[3] CBDT Circular No. 13/2017 dated 11 April 2017

Our comments

The High Court has once again clarified that salary income is not taxable only on receipt basis. This follows a recent ruling of the same High Court[4] wherein it was held that the salary received by a NR for the services rendered abroad accrues outside India and it is not chargeable to tax in India.

By dismissing the earlier contrary judgment of the Tribunal, the decision of the Calcutta High Court provides relief to NR taxpayers who receive salary income in India in respect of any services rendered outside India.

[4] Utanka Roy v. DIT (W.P. No. 369 of 2014) (Cal)

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Ahmedabad
Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru
Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala,
Bengaluru – 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh
SCO 22-23 (Ist Floor)
Sector 8C, Madhya Marg
Chandigarh – 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai
No.10, Mahatma Gandhi Road
Nungambakkam
Chennai – 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Gurugram
Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurugram, Haryana – 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad
Reliance Humsafar, 4th Floor
8-2-618/2, Road No.11, Banjara Hills
Hyderabad – 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Jaipur
Regus Radiant Centres Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road
Jaipur, Rajasthan, 302018.
Tel: +91 141 - 7103224

Kochi
Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata
Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091
Tel: +91 33 4403 4000
Fax: +91 33 4403 4199

Mumbai
Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai – 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida
Unit No. 501, 5th Floor,
Advant Navis Business park
Tower-B, Plot# 7, Sector 142,
Expressway Noida, Gautam Budh Nagar,
Noida – 201305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune
9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex, Mundhwa Road,
Ghorpadi, Pune – 411001
Tel: +91 20 6747 7000
Fax: +91 20 6747 7100

Vadodara
iPlex India Private Limited,
1st floor office space, No. 1004,
Vadodara Hyper, Dr. V S Marg
Alkapuri, Vadodara – 390 007
Tel: +91 0265 235 1085/232 2607/232 2672