

TAX FLASH NEWS

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Indian resident is eligible for foreign tax credit on taxes paid in the UK on remuneration income

Recently, the Delhi Bench of Income-tax Appellate Tribunal (the Tribunal) in the case of Kapil Dev Ranwan¹ (the taxpayer) held that the taxpayer being a resident of India is eligible for Foreign Tax Credit (FTC) as per Article 24 of the India-UK tax treaty (the tax treaty) on taxes paid in UK on remuneration income.

Facts of the case

The taxpayer, a salaried employee was on an international assignment to the UK during the year 2011-12. The taxpayer claimed relief under Section 90 of the income-tax Act, 1961 read with Article 24 of the tax treaty. The Assessing Officer (AO) invoked Article 16(2)² of tax treaty and did not allow the relief claimed by the taxpayer as the taxpayer's stay in the UK was not more than 183 days.

The taxpayer contended that as per provisions of Article 24 of the tax treaty if income of an Indian tax resident is taxed in UK then the same shall be liable to FTC in India. The tax credit would be limited to the proportionate taxes payable on the double tax income in India. Further, the taxpayer was in the UK for a period exceeding 183 days, hence, Article 16(2) was not applicable.

Tribunal's decision

The taxpayer was working in the UK for more than 183 days. Besides this the tax department was aware of the fact that the taxpayer had paid taxes for the remuneration received in the UK. Therefore, Article 16(2) does not apply in the present case.

As per the provisions of Section 90(2) and Article 24 of the tax treaty, the claim made by the taxpayer was valid and, therefore, the AO as well as the CIT(A) was not right in making and sustaining the addition in that respect.

Our comments

Residents are allowed to claim credit against taxes paid on income arising abroad, according to the provisions of the relevant tax treaty. However, there has been a considerable litigation on allowability of FTC under a tax treaty.

The Ahmedabad Tribunal in the case of Elitecore Technologies Pvt Ltd³ held that the amount of tax paid in respect of income arising in a foreign country and subjected to tax both in India and the foreign country shall be allowed as FTC against Indian tax payable in respect of such profits or income in such manner that the credit should not exceed the Indian tax which is proportionate to the income arising in the other country.

The Delhi Tribunal in the instant case has held that the taxpayer being a resident of India is eligible for FTC as per Article 24 of the tax treaty on taxes paid in UK on remuneration income.

¹ Kapil Dev Ranwan v. DCIT [ITA No. 875/DEL/2017 (A.Y 2012-13)] - Taxsutra

² Remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall not be taxed in that other State if :

- he is present in the other State for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year
- the remuneration is paid by, or on behalf of, an employer who is not resident of that other State; and
- the remuneration is not deductible in computing the profits of an enterprise chargeable to tax in that other State

³ Elitecore Technologies Pvt Ltd v. DCIT [2018-TII-121-ITAT-AHM-INTL]

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