KPMG

TAX FLASH NEWS

06 January 2017

Salary received by a non-resident for services rendered abroad accrues outside India. Not chargeable to tax in India

Background

The Income-tax Act, 1961 (the Act)[1] provides for taxation of income based on the residential status of the individual, when such income is due, received or accrued. The Calcutta High Court has recently held[2] that salary received by a non-resident for services rendered abroad, accrues outside India and is not chargeable to tax in India irrespective of the source of income.

Facts of the case

- The taxpayer, an Indian citizen, was working as a marine engineer for a foreign shipping company and had rendered services outside India for a period of 286 days during the Assessment Year (AY) 2011-12.
- The taxpayer had filed return of income for the AY 2011-12 as a Non-Resident, disclosing remuneration of INR 563,850, in US Dollars.
- The taxpayer had received an intimation under section 143(1) seeking to tax such amount, against which the taxpayer had sought a revision from the jurisdictional Commissioner of Income Tax (CIT) under Section 264 of the Act.
- During the course of the proceedings under Section 264, the taxpayer has claimed that he had received INR 27,92,417 from his employer during the AY in question.
- The CIT had found the income to be assessable under the Act but did not provide for any exemptions thereto, remanding the matter back to the assessing officer.

Taxpayer's contentions

- The taxpayer, relying upon judicial precedents[3], contended that the salary received by him would not be taxable in India as the services were rendered outside India.
- The taxpayer further contended that such an assessment has to be completed by the CIT.

High Court's observation and ruling

- The High Court observed that income will not be treated as taxable in India solely on the basis that such income was received or deemed to be received in India. The place of accrual of income, viz., the place where the services have been rendered becomes material in determining whether the income accrued in or outside India.
- Since it was not disputed that the taxpayer received salary for services rendered outside India, for 286 days, there was no question of taxing the same in India. The income received by the taxpayer for services rendered outside India has to be considered as income received out of India and treated as such.

[1] Section 5,6 and 9 of the Act
[2] Utanka Roy v. DIT (W. P. No. 369 of 2014) (Cal)
[3] DIT v. Prahlad Vijendra Rao [2011] 198 Taxman 551 (Kar), CIT v. Avtar Singh Wadhwan [2001] 247 ITR 260 (Bom)

- The High Court further held that the CIT had the power to set aside the intimation under Section 143(1) and grant appropriate relief to the taxpayer.
- On the basis above, the High Court allowed the appeal of the taxpayer and set aside orders under both Sections 143(1) and 264.

Our comments

The High Court has clarified that the place where the employment was exercised is of paramount importance in ascertaining whether the income had accrued in India or not. It is to be noted that a reference has not been made to the case of Tapas Kr. Bandopadhyay[4], in which the Kolkata Tribunal had held that the salary received by a non-resident in India is taxable in India on a receipt basis.

The judgment has also not clearly specified the place of receipt of salary, but has held that the income received by the taxpayer for services rendered outside India has to be considered as income received out of India and therefore treated as such.

Considering that a judgment of the High Court has binding value as compared to a tribunal judgment, this case comes as a relief to non-resident taxpayers receiving salary income for services rendered outside India.

---

[4]Tapan Kr. Bandopadhyay v. DDIT (ITA No. 70/Kol/2016) *https://portal.ema.kworld.kpmg.com/tax/in/Tax%20Flash%20News/KPMG-Flash-News-Tapas-Kr-Bandopadhyay-1.pdf* as accessed on 05 January 2017

www.kpmg.com/in

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, Bangalore 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

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

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

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 44034000
Fax: +91 33 44034199

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

Noida
6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune
703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.