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TAX FLASH NEWS

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Delay in furnishing a Tax Residency Certificate cannot be a ground to reject a tax treaty benefit

Recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Haresh C. Sheth[1] (the taxpayer) dealt with the issue of eligibility of India-US tax treaty (tax treaty) benefit on the interest income where there was delay in furnishing a Tax Residency Certificate (TRC) and Form 10F. The Tribunal allowed the taxpayer the benefit of the tax treaty since there were justifiable reasons for the taxpayer for not filing the TRC in the course of the assessment proceedings but filing it before the appellate authority.

Facts of the case

The taxpayer, a non-resident individual, derived interest income from fixed deposits and bank interest during the Assessment Year 2014-15. Such income was offered at a special tax rate, i.e., 10 per cent and 15 per cent under the tax treaty. However, the Assessing Officer (AO) declined to apply the beneficial provisions of the tax treaty and held that the interest income was taxable under the normal provisions of the Act.

During the appellate proceedings, the taxpayer filed additional evidence [i.e., Tax Residency Certificate (TRC), dated 30 January 2017 and Form 10F]. The Commissioner of Income-tax (Appeal) [CIT(A)] observed that for claiming the tax treaty benefits, the taxpayer was required to obtain the TRC and also file information in Form 10F. The benefit under the tax treaty has to be claimed by the taxpayer in the return of income itself. Rule 21AB(2A) of the Income-tax Rules, 1962 casts an obligation on the taxpayer to maintain such documents and furnish the same before the AO. Therefore, the said information should have been available with the taxpayer while filing the return of income. Since the taxpayer had failed to comply with the mandate of the provisions[2], the AO rightly declined the benefit of the tax treaty. Aggrieved, the taxpayer filed an appeal before the Tribunal.

Tribunal's decision

On a conjoint reading of Section 90(1), Section 90(4), Rule 21AB(1) to (2A) and Form 10F, it was observed that for availing the special rates under the tax treaty, the taxpayer is required to file TRC and the requisite information prescribed in 'Form 10F'.

There were justifiable reasons for the taxpayer for not filing the TRC in the course of the assessment proceedings.

The very basis of rejection by the AO of the taxpayer's claim for applying of special tax rate as per the tax treaty was absolutely misconceived and in fact misplaced. As stated by the taxpayer and rightly so, the taxpayer was not seeking credit of taxes paid on his income abroad but was seeking taxing of his interest income as per the special rates on the basis of the tax treaty.

The taxpayer had filed the TRC with the AO though after the conclusion of the assessment, coupled with the reasons that had led to delay in obtaining of the same along with Form 10F. Therefore, there was no justification in declining the tax treaty benefit.

Accordingly, the Tribunal set-aside the order of the CIT(A) and directed the AO to determine the taxability of the interest income as per the special rate of tax under the tax treaty.

Our comments

The eligibly of a tax treaty benefit vis-a-vis TRC requirement has been a subject matter of debate before the Courts/Tribunal.

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[1] Haresh C. Sheth v. ITO (ITA Nos.1380/Mum/2020) – Taxsutra.com

[2] Sub-sections (4) and (5) of Section 90 of the Income-tax Act, 1961

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The Ahmedabad Tribunal in the case of Skaps Industries India Pvt Ltd[3] held that the taxpayer cannot be denied the benefit under the India-US tax treaty on the ground that it has not furnished a TRC. However, the taxpayer has to satisfy the eligibility for the tax treaty benefit. The onus is on the taxpayer to give sufficient and reasonable evidence in support of his residential status so as to satisfy the conditions laid down under Article 4(1) of the tax treaty.

The Mumbai Tribunal in the present case while dealing with the issue of eligibility of India-US tax treaty held that there was no justification by lower authorities in declining the applicability of the special rate prescribed under the tax treaty where the taxpayer had filed the TRC with the AO after the conclusion of the assessment. There were justifiable reasons given by the taxpayer for not filing the TRC during the course of assessment proceedings.

In some of the cases, due to genuine reasons, taxpayers are not able to obtain a TRC from the foreign tax authorities. However, the same may have been obtained at a later point of time and furnished before the appellate authorities. In such genuine cases, this decision will help the taxpayers to claim a benefit under the relevant tax treaty.

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[3] Skaps Industries India Pvt Ltd v. ITO [2018] 171 ITD 723 (Ahd)

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