

# Tax Flash News

29 June 2023

## Important to submit a tax residency certificate for the claim of tax treaty benefits

### Background

A Tax Residency Certificate (TRC) is required to claim benefits under the tax treaty. Such TRC should be obtained by the taxpayer from the tax authorities of a foreign country where such taxpayer is resident to substantiate the claim under the tax treaty. Claim of tax treaty benefits without a valid TRC, would not be accepted by the Income tax authorities.

In this context, the Ahmedabad Bench of the Income Tax Appellate Tribunal (the Tribunal) has held<sup>1</sup> that TRC from the country of residence is an important document to be furnished for the claim of tax treaty benefits in the India tax return.

### Facts of the case

- The taxpayer, an individual, is a US citizen and a non-resident Indian. The taxpayer had filed the return of income, inter alia, showing an interest income on 2 Aug 2016. Such interest income was offered to tax at a special rate of 15% as per the India-USA tax treaty.
- The return of income was processed by CPC and intimation<sup>2</sup> was issued, in which CPC levied tax at the normal rate on interest income and did not apply the special rate of 15%.
- The taxpayer filed a rectification<sup>3</sup> with a request to re-compute the interest income at the tax rate applicable as per the tax treaty. However, the Assessing Officer (AO) passed the order levying tax at a maximum marginal rate on the interest income.

- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO by observing the following:
  - The taxpayer had not been able to establish that he was a tax resident of the USA by producing a TRC (mandatory documentation) for the relevant period;
  - Providing a copy of a United States passport indicating the date of arrival into India and departure from India has not been adequate to establish that the taxpayer was a tax resident of the USA for the relevant period.

### Taxpayer's contention

- The taxpayer relied on a judicial precedent<sup>4</sup> wherein it was held that the non-production of TRC by itself would not disentitle the taxpayer to claim the tax treaty benefits.
- The taxpayer also admitted that he has not been able to provide a copy of the TRC as the concerned authorities in the USA didn't issue a TRC despite several applications to them.
- Further, the taxpayer requested that the case be restored to the file of CIT(A) to enable him to provide adequate documentation in support of the fact that he was a tax resident of the USA for the said period.

<sup>1</sup> Parag Bhikhubhai Patel v. ITO [I.T.A. No.464/Ahd/2020 (Assessment Year: 2016-17)]

<sup>2</sup> Under Section 143(1) of the Income-tax Act, 1961

<sup>3</sup> Under Section 154 of the Act

<sup>4</sup> Skaps Industries Pvt. Ltd. v. ITO (ITA Nos. 478 & 479/Ahd/2018 for AYs 2013-14 and 2014-15)

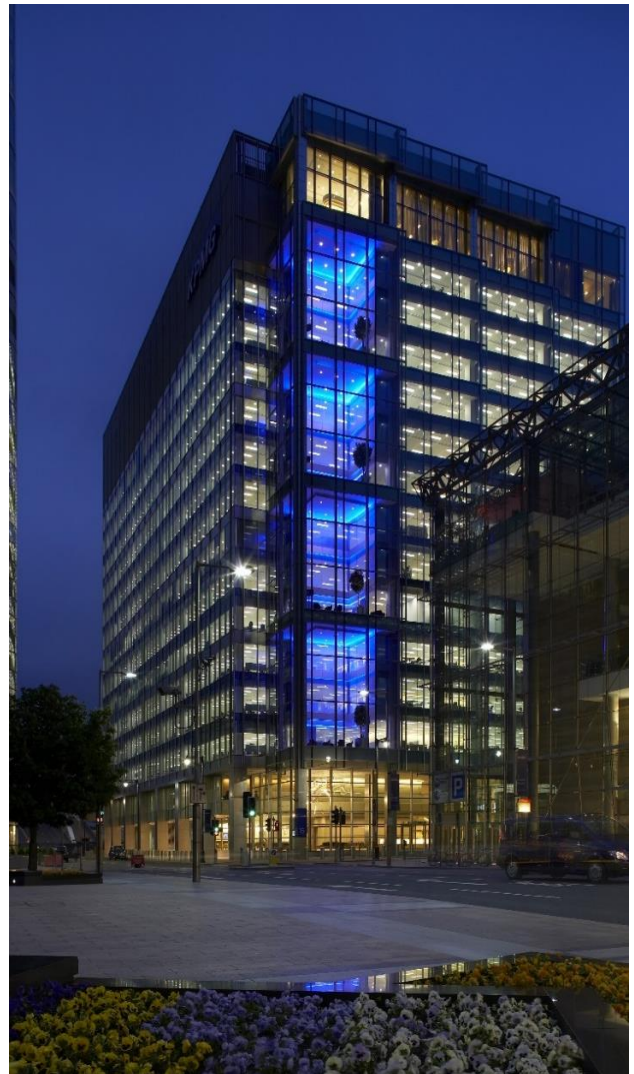
## ITAT's decision

- The taxpayer did not have a copy of TRC even on the date of the hearing of his case.
- The copy of the US Passport containing details of travel into India and departure from India by itself is not enough to confirm/demonstrate that the taxpayer was a tax resident of the USA during the relevant period.
- The ITAT restored the matter to CIT(A) to allow the taxpayer to submit the supporting documents in order to validate the claim of his residential status in the USA.

## Our comments

This decision places reliance on the importance of TRC for substantiating a claim of tax treaty benefits. The ITR form requires the individual to confirm the availability of TRC (relating to the period for which the benefits under the relevant tax treaty are claimed) by way of selecting a 'Yes' or 'No'. Even in case of non-availability of TRC at the time of filing the India tax return, it is pertinent that the taxpayer obtains the TRC for supporting the claim of tax treaty benefits. In case of non-availability of TRC, the claim of tax treaty benefits might not be accepted by the tax authorities.

Considering this is a fact-specific case and a ruling of the Tribunal, adoption of the same in other jurisdictions/sets of facts could be evaluated on a case-to-case basis.



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