

Bangalore ITAT grants treaty benefit applying ‘centre of vital interest’ test under India-US tax treaty

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Summary

An Indian tax resident is taxable on his global income under the provisions of Income-tax Act, 1961 (the Act). The tax treaties entered into by India contain manner (known as ‘tie-breaker’ rules) of determining residential status of an individual if he qualifies as a tax resident under the local laws of two countries. Among other rules, the tie-breaker rule of India-USA tax treaty provides that an individual shall be treated as a resident of the country in which he has a ‘centre of vital interest’.

The Bangalore bench of the Income Tax Appellate Tribunal (ITAT), in a recent decision¹, has held that an individual having factually demonstrable personal and economic ties closer to the USA is to be treated as a US tax resident and accordingly, salary earned by him in USA is not taxable in India.

Facts of the case

- The taxpayer, a USA citizen and employee of a US company, was sent on an assignment to the employer’s group company in India from June 2006 to August 2012. On completion of his Indian assignment, the taxpayer moved to the USA.
- For tax year 2012-2013, the taxpayer qualified as a tax resident of India and as well as USA under the respective domestic tax laws of both the countries.
- The taxpayer filed his India tax return and offered salary income earned till August 2012 to tax in India. Salary (earned in US) for the remaining period was claimed as not taxable in India on account of him being a resident of USA under the provisions of India-USA tax treaty for the remaining part of the year.

¹ The Deputy Commissioner of Income Tax v. Shri Kumar Sanjeev Ranjan - ITA No.1655/Bang/2017

- The tax officer denied the benefit of tax treaty since the taxpayer failed to furnish a tax residency certificate (TRC) of USA. Even otherwise, the tax officer held that the condition of 'Centre of Vital Interest' was not satisfied in the instant case as the taxpayer had been in India for six years and hence his economic and personal relations, developed over a period of time, were closer in India than in the USA.
- The first appellate authority² analysed the personal and economic relations of the taxpayer and noted that the taxpayer's family members, personal belongings, voting right, driving license, social ties, investments, settlement, social security etc. are in USA. Accordingly, it concluded that the taxpayer had his centre of vital interest in the USA during the remaining part of the year. The taxpayer also furnished his TRC before the first appellate authority.
- The tax department challenged the first appellate authority's decision before the ITAT.

ITAT' observation and ruling

- The ITAT noted entire factual matrix of the taxpayer and concurred with the first appellate authority's conclusion that the taxpayer had his centre of vital interest in USA.
- Further, the ITAT noted that the conclusion of centre of vital interest reached by the first appellate authority were based entirely on facts of the case, and thus acceptance of TRC by him directly in the first instance without remanding the matter back to the tax officer for fresh examination could not be faulted.

Our comments

This is a welcome ruling which provides clarity for interpretation of the 'centre of vital interest' test laid down under the India-USA tax treaty and the taxpayer's ability to claim benefits under the tax treaty in case of dual residency during a particular tax year.

² Commissioner of Income tax (Appeals)

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