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Assessee entitled to take credit in respect of state taxes paid in US, says Ahmedabad Tribunal

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Facts

- Dr. Rajiv I. Modi ("the tax payer"), a salaried individual, was a director in a pharmaceutical company. He received salary of INR 62.11 Lakhs from a US-based entity during the financial year 2009-10.
- In the tax return for the said year, the tax payer claimed a credit for the state taxes of INR 5.33 Lakhs paid by him in the US against his India tax liability.
- The Assessing officer ("AO") disallowed the claim for credit of state taxes on the ground that Article 2 of the Double Taxation Avoidance Agreement ("DTAA") covers only the federal income tax paid in US.
- Aggrieved by this order, the tax payer filed an appeal before the Commissioner of Income Tax (Appeals) ("CIT (A)"). In the appeal, the tax payer relied on the decision of Mumbai Tribunal in case of Tata Sons Limited¹ wherein it was held that since section 91 of Income Tax Act, 1961 ("Act") does not discriminate between state and federal taxes, assessee is entitled to take tax credits in respect of state income taxes paid abroad.
- The CIT (A) refused to rely on the Mumbai Tribunal decision on the ground that an appeal against it is pending before the High Court and upheld the order of the AO.
- Aggrieved by the CIT (A)'s order, the tax payer filed an appeal before the Income Tax Appellate Tribunal, Ahmedabad ("the Tribunal").

Issue before the Tribunal

- Whether the disallowance made by AO and sustained by CIT (A) for state taxes paid by the tax payer in the US was correct

Ruling of the Tribunal

- Section 90(2) of the Income Tax Act provides that when a DTAA has been entered into with any country, the provisions of the Act shall apply to the extent they are more beneficial to the tax payer.
- The provisions of Section 91 of the Act are to be treated as general in application and can yield to the treaty provisions only to the extent the provisions of the treaty are beneficial to the tax payer.
- Even though the tax payer was covered by the scope of the India-US DTAA, so far as tax credits in respect of state taxes paid for in the US are concerned, the provisions of section 91 of the Act, being beneficial to the tax payer would apply.
- Since section 91 of the Act does not discriminate between state and federal taxes, and in effect provides for both these types of income taxes to be taken into account for the purpose of tax credits against Indian income tax liability, the tax payer is entitled to tax credits in respect of state income taxes paid abroad. Accordingly, the plea of the tax payer in respect of credit for the state taxes paid is allowed.

¹ Tata Sons Ltd. V. Dy CIT [2011] 10 taxmann.com 87 (Mum.)

Comments

This is a welcome decision wherein the Tribunal has held that state taxes paid overseas could be allowed as credit based on Section 91 of the Income Tax Act. The Tribunal appears to have looked into the intent of the legislation while pronouncing the ruling that recourse to tax treaty provisions would not disentitle a tax payer from making a claim under the domestic tax law.

Source :

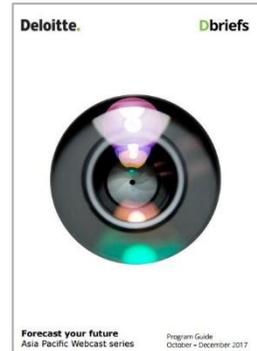
Dr. Rajiv I. Modi Vs Deputy Commissioner of Income Tax (OSD) [2017] 86 taxmann.com 253 (Ahmedabad - Trib.)

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