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Salary income is taxable based on place of services rendered not place of receipt of salary – says Delhi ITAT

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Facts

- Pramod Kumar Sapra ('tax payer') employed with Reliance Industries Limited ('RIL') was deputed to Iraq as a Country Manager from 16 April 2010.
- He received salary in his India bank account during his deputation. Taxes were deducted by RIL on such salary.
- The tax payer qualified as non–resident of India for the tax year 2010-11. Accordingly, he claimed deduction amounting to INR 4,004,830 representing salary relating to services rendered in Iraq and offered a net income of INR 98,520 in his return of income.
- The return was subjected to scrutiny during which the said deduction of salary was accepted by the Assessing Officer ('AO').
- Later, the Principal Commissioner of Income Tax ('Pr. CIT'), held that the AO has not examined the issue of deduction of such huge quantum of salary in light of section 5(2) of the Income Tax Act, 1961 ('the Act'); salary will be taxable in India as received in India. Therefore, the Pr.CIT held that the impugned assessment order is prima-facie erroneous and prejudicial to the interest of the Revenue.
- Further to this, the Pr. CIT passed a revisionary order under section 263 of the Act setting aside the assessment order of the AO and disregarding the detailed submissions furnished by the tax payer providing details of his residential status and scope of taxable income.
- Aggrieved by the action of the Pr. CIT, the tax payer approached the Delhi Tribunal.

Issues before Tribunal

- Whether salary income received in India for services rendered outside India is taxable in India?
- Whether the impugned order by Pr. CIT needs to be quashed?

Ruling of the Tribunal

The order of the Pr. CIT was quashed and the deduction of salary as claimed by the tax payer was upheld by the Delhi Tribunal on account of the following :

- The details of the tax payer's physical presence were not disputed by either AO or Pr. CIT. Hence, his residential status is accepted as non-resident under section 6(1) of the Act.
- Receipt of salary in India and taxes deducted by RIL thereon cannot determine the taxability in India. Section 5(2) does not specifically envisage that the income received by a non-resident for services rendered outside India can be reckoned as part of taxable income in India. Hence, salary received for services rendered in Iraq cannot be held taxable in India as the same has not been received for services or activities carried out in India.
- Revisionary jurisdiction under section 263 can only be exercised on an assessment order if the said order is found to be erroneous insofar as it is prejudicial to the interest of the Revenue. Thus, both conditions viz. erroneous and prejudicial to the interest of Revenue are to be fulfilled simultaneously[1]. In this case, the order passed by the AO, could be described as erroneous in the absence of any proper enquiry. However, on merits, it is not prejudicial to the interest of the Revenue.

[1]Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC)

Comments

- Recently, Central Board of Direct Taxes (CBDT) had clarified[2] that the salary of a seafarer working on a foreign ship is not taxable in India even if credited to a non-resident external bank account in India. However, this circular was limited to the benefit of seafarers of a foreign ship. Besides, though there have been rulings on taxability of salary credited to the India bank account of an employee, these have largely been in the case of shipping companies.
- In light of the above, the Delhi Tribunal's ruling is a welcome move as it re-affirms the principle discussed in the said circular that salary received in India by a non-resident for services rendered outside India should not be taxable in India on a wider spectrum.

[2]CBDT Circular No. 13/2017 dated 11 April 2017

Source

Pramod Kumar Sapra v. Income Tax Officer, Delhi [2017] 87 taxmann.com 98 (Delhi - Trib.)

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