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**Calcutta High Court rules that salary received by a non-resident for services rendered abroad accrues outside India and is not chargeable to tax in India**

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## Background

- Shri Utanka Roy (i.e. taxpayer) is an Indian citizen and employed with a foreign shipping company as a marine engineer.
- The tax payer qualified to be non-resident of India as he had spent 286 days outside India for AY 2011-12.
- The tax payer has received his remuneration from the foreign company for the services rendered outside India.
- The Income tax department issued intimation cum assessment order under section (u/s) 143(1) of the Income Tax Act, 1961 ("the Act")
- Aggrieved by the intimation, the tax payer filed an application u/s 264 of the Act with Commissioner of Income Tax (CIT).
- During the assessment proceedings, the tax payer has claimed that his salary income was INR 27,92,417 instead of INR 5,63,850.
- The CIT has passed the order in which the entire salary income of INR 27,92,417 was considered taxable and had noted that appropriate exemption was not claimed by the tax payer.
- Aggrieved by CIT's order, the tax payer has filed a writ petition before the High Court of Calcutta seeking exemption from payment of tax on salary income which he received for services rendered outside India.

## Issue before the High Court

Based on the facts of the case, following are the two issues:

- Whether the income earned by a non resident for the services rendered outside India is taxable in India?
- Whether the Commissioner has the powers u/s 264 of the Act to grant exemption of the income earned for the services rendered outside India even if not claimed by the tax payer in the return of income?

## Ruling of the High Court

The Hon'ble High Court has ruled that:

- Section 5 (2) of the Act provides that income received / accrued / arising in India (including deemed income) shall be taxable for a Non-resident.
- Explanation 2 to the said section clarifies that income will not be treated to be received in India if the same is already included as part of total income on the basis that such income received has accrued or arisen in India.
- Essential criterion is to find out the place of accrual of income.
- The place where services are rendered is material to determine the place of accrual of income.
- The income received for services rendered outside India has to be considered as income received out of India.
- The power of the commissioner u/s 264 of the Act is wide enough to grant appropriate relief to the taxpayer.
- It is the duty of the tax officers to apply the relevant provisions of the Act for the purpose of determining the true figure of the tax payer's taxable income and the consequential tax liability.

## Comments

The Hon'ble Calcutta High court has reiterated that -

- Salary received for the services rendered outside India has to be considered as income received out of India and is thereby exempt from tax for a Non-Resident.
- Tax officers have to provide appropriate reliefs and benefits as per the provisions of the Act, even if the taxpayer fails to claim the same.

The Hon'ble Calcutta High Court's decision is welcome after the negative rulings of the Calcutta Tribunal where in it was held that the income received by a Non-Resident for services rendered outside India is taxable in India, as the salary is received in India.

**Source:** W.P. no. 369 of 2014, in the High Court at Calcutta

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