



## **Global Employer Services Alert** Delivering Clarity

**Salary received in India  
for services rendered  
outside India shall not be  
taxable in India even  
where assignee fails to  
submit Tax Residency  
Certificate (TRC) –  
Bangalore Tribunal**

**Issue no:** GES/18/2018

**In this issue:**

[Facts of the case](#)  
[Issues before Tribunal](#)  
[Ruling of the Tribunal](#)  
[Conclusion](#)  
[Deloitte tax@hand App](#)  
[Do you know about Dbriefs?](#)

## Facts of the case

- MCN, the assessee was sent on an international assignment to the USA by her employer during FY 2013-14, while the salary continued to be paid in India.
- The residential status of the assessee was non-resident in India during FY 2013-14. Hence, the assessee claimed exemption from tax on the salary pertaining to the service period rendered outside India.
- The Assessing Officer (AO) disallowed the claim stating that the exemption falls under India-US DTAA and the assessee failed to provide the TRC from the US tax authorities.
- Aggrieved by the order, the assessee preferred an appeal against the order before Commissioner of Income-tax (Appeals) - 12 – CIT(A).
- The CIT(A)-12 looked into the facts of the case and allowed the salary exemption claimed by the assessee relying on the rulings pronounced by the jurisdictional High Court and coordinate bench in the case of Prahalad Vijendra Rao<sup>1</sup> and Bholanath Pal<sup>2</sup> respectively.
- However, subsequently another appellate order was passed by the CIT(A)-10 for the same assessment year on the same case, vide an ex-parte order. Such order upheld the observations made by the AO and disallowed the salary exemption claim.
- Consequently, the CIT(A)-12 passed rectification order under section 154 of the Income-tax Act, 1961 (the Act) and held its earlier order invalid.
- Accordingly, the assessee preferred an appeal before the Income-tax Appellate Tribunal (ITAT).

<sup>1</sup>198 Taxman 551

<sup>2</sup>52 SOT 369

## Issues before Tribunal

- Whether the CIT(A)-12 was right in rendering the order passed by her invalid under section 154? Whether the order passed by the CIT(A)-10 is valid?
- Whether salary received by the individual for services rendered outside India be claimed exempt?
- Whether failure to submit the TRC can be ground for denial of salary exemption benefit?

## Ruling of the Tribunal

- Favourable order passed by the CIT(A)-12 was well reasoned and a speaking order. Hence, the same cannot be invalidated for the reason that appeal file was transferred to CIT(A)-10 by a Departmental Administrative Order of the Pr.CCIT.

The mistake was either on the part of CIT(A)-12 in not implementing the order of Pr. CCIT or Pr.CCIT, in not communicating the order of transfer. However, the assessee should not suffer hardship due to mistake of officers.

- The order passed by CIT(A)-12 cannot be negated by invoking the provisions of section 154 of the Act since there is no power with the Revenue authorities to recall an order or deem an order as invalid. Section 154 only provides for rectifying mistake apparent from the fact of the record.
- The subsequent order passed by CIT(A)-10 is not a valid order in the eyes of law.
- Salary is taxable on accrual basis and salary is accrued outside India when the services are rendered outside India.
- In light of the ruling passed by the jurisdictional High Court and coordinate bench, salary received in India by a non-resident for the services rendered outside India, shall not be taxable in India under the Act.
- As per the plain reading of Section 90(1), TRC is required for claiming any benefit under the tax treaty. However, absence of TRC cannot be ground for denial of benefit as the assessee has furnished evidence of her stay abroad along with copy of US return in support of the claim for services rendered outside India.

## Conclusion

This is yet another ruling where the appellate forum has held that salary received in India for services rendered outside India by a non-resident, is not taxable in India. Submission of TRC is not mandatory, such exemption can be supported by evidence of rendering services abroad.

**Source:** ITA no. 2407/Bang/2018

## Deloitte tax@hand App

**Current. Comprehensive. Convenient.**

Download [tax@hand](#) app, a secure digital platform for timely global and regional news, perspectives, and resources. Do visit the [tax@hand](#) webpage [here](#).



**Deloitte.**

**IOS**



Download from App Store

**Android**



Download from Google Play

**Website**



Add to favorites

## Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page.



**Download the report**





Deloitte makes an impact that matters

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites).

DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2018 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited