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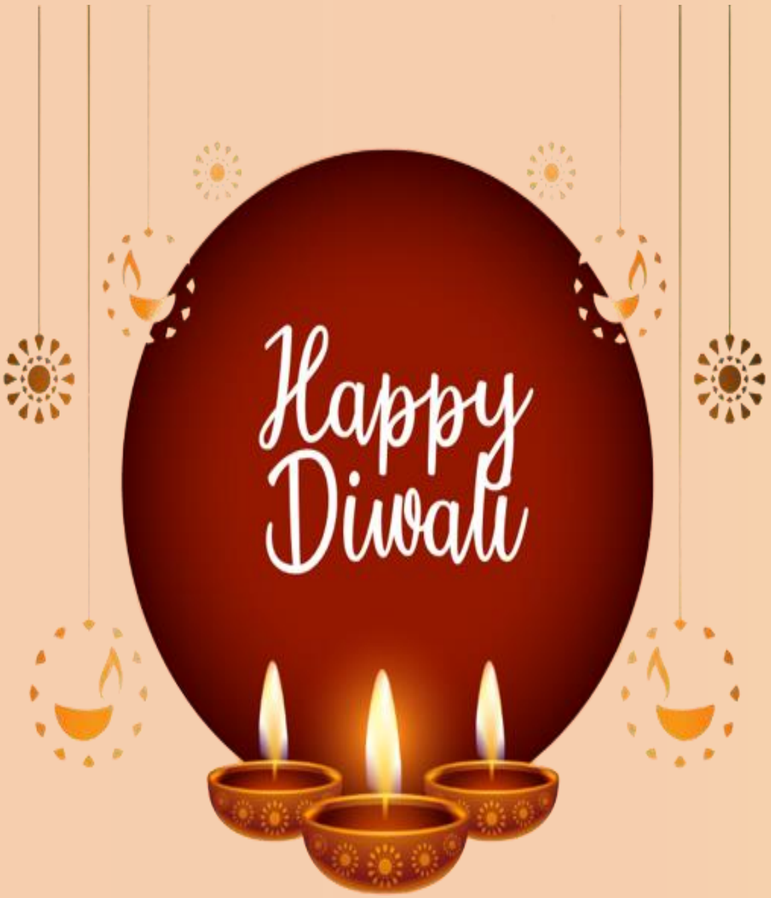
SITG No. 179

Durga Prasad Sana
v.
Income-tax Officer (International Taxation)

[2023] 154 taxmann.com 532 (Hyderabad - Trib.)

Foreign assignment allowance received by assessee for service outside India is not taxable in India



11.11.2023

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Facts of the Case

- The assessee was an employee of IBM India (an Indian company) which send the assessee on long-term assignment to Abu Dhabi, UAE.

- During the year, the assessee received salary which included the component of the foreign allowance received outside India and assessee transferred the foreign assignment allowance from the bank accounts held in India to the NOSTRO accounts to top it up to the Travel Currency Card (TCC), which he could use only abroad, but not in India.

- Assessee offered such portion of the salary which was received by him in India, but claimed the foreign assignment allowances received outside India as 'exempt income'.

Revenue's Contention

- Learned Assessing Officer while processing the return took the view that though the assessee qualify to be non-residents during the financial year 2018-19 and physically working outside India, he was only loaned to other organizations to work in other countries.

- The assessee continued to be on the pay rolls of IBM India Private Limited only. Further, the Indian company transferred the sums representing the foreign allowances through the bank which were disbursed outside India.

- According to the learned Assessing Officer, the very fact that the employer deducted the TDS in India on the entire amounts paid to the assessee itself shows that as per the employer, it was an Indian source income earned by the assessee in India, and, therefore, the situs of employment is in India only, because the contract of employment was in India and accordingly the salary was taxable in India.

- Further, the income was received by the assessee in India when the employee transferred the foreign assignment allowance from the bank accounts held in India to the nostro accounts to top it up to the Travel Currency Card (TCC) and, therefore, point of receipt is the point of payment and bank in India received that payment in India and bank was acting as an agent for assessee and hence assessee received payment in India.

Assessee's Contention

- Assessee contended that he being a non-resident would not be liable to tax under the Act as the foreign assignment allowance was not received nor accrued nor deemed to be received/accrued in India during the year for services rendered in India.

- He further contented that this issue is no longer **res integra** and an identical facts for arising in the cases of Bodhisattva Chattopadhyay v. CIT [2019] 111 taxmann.com 374 (Kol. - Trib.), Sri Ranjit Kumar Vuppu v. ITO (International Taxation) - II [ITA No. 86/Hyd/2021, dated 22/04/2021/[2021] 127 taxmann.com 105/190 ITD 455 (Hyd. Trib.), Dy. CIT v. Sudipta Maity [2018] 96 taxmann.com 336/172 ITD 94 (Kol. - Trib.), Sri Srinivas Mahesh Laxman v. ITO International Taxation - 1 [IT Appeal No. 1991 (Hyd) of 2018, dated 28-5-2021] and Venkata Rama Rao v. ITO, International Taxation - 1 [IT Appeal No. 1992 (Hyd) of 2018, dated 25-2-2021], wherein the Coordinate Benches of this Tribunal while placing reliance on the decisions of the Hon'ble High Courts of Bombay, Karnataka and Calcutta in the cases of CIT v. Avtar Singh Wadhwan [2001] 115 Taxman 536/247 ITR 260 (Bom.), DIT (International Taxation) v. Prahlad Vijendra Rao [2011] 10 taxmann.com 238/198 Taxman 551 (Kar.) and Utanka Roy v. DIT (International Taxation) [2017] 82 taxmann.com 113/390 ITR 109 (Cal.) **held that the income derived by a non-resident for performing services outside India, the accrual thereof happens outside India, such income cannot be taxed in India under section 5(2) of the Act.** He also placed reliance on the decision of the Co-ordinate Bench of the Tribunal in the case of Tadimarri Prasanth Reddy v. ITO (International Taxation) and others in [ITA No. 366/Hyd/2022 and others, for the assessment year 2018-19, dated 28/06/2023] stating that the facts are identical.

Ruling

- Hon’ble Tribunal while passing judgement considered the various case laws relied upon by assessee in the proceedings which were passed by co-ordinate benches and held as under:

- The foreign assignment allowance that was topped up to the TCC of the assessee, though it was transferred by the employer from their bank account in India to the Axis bank's nostro accounts, is not taxable in India.

- The Tribunal repelled contentions of the Revenue as to the double non-taxation of this amount, because it was not subjected to any tax in the host country, stating that such a fact is immaterial to decide the issue, because the question effectively is whether such foreign assignment allowance is taxable in India or not? **For such question, the subjection of the said amount to tax in the host country is totally irrelevant.**

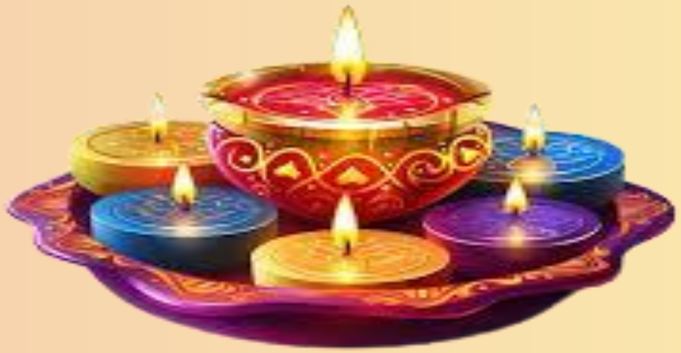
- Accordingly the judgement was passed in favor of assessee and such income was not taxable in India.

Our Comments

- Thus, considering the above judgement, there are 2 principles which have been made clear:

  - An income cannot be considered as taxable for the employee just because employer has deducted TDS on same.
  - An income for a non-resident cannot be liable for tax in India just for the reason that such income is not taxable in any other country.
  - A non-resident employee earning any income for services outside India cannot be taxed in India even if it’s Indian employer is making payment in his Indian bank account.

Section/Article	Section 5(2)
DTAA/Country	India UAE
Court	Hyderabad Tribunal
Date of decision	16.08.2023



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