

# SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

SITG No.  
196

**Assistant Commissioner of Income-tax**

v.

**Nishant Kanodia**

**Employment as mentioned in Section 6(1) of the Income Tax Act shall also include self-employment or people going outside India for business purpose.**

## Facts of the Case

- ❖ During the assessment proceedings, on perusal of the return of income filed by the assessee, it was observed that the assessee had claimed his residential status as 'Non-Resident' and had not offered his global income to tax in India.
- ❖ The assessee, an Indian citizen, spent 176 days in India during the relevant assessment year.
- ❖ It was observed that the assessee went to Mauritius on an occupation permit to stay and work in Mauritius as an investor and not as an employee.
- ❖ Assessee submitted a copy of his passport from 1-4-2008 to 31-3-2014. Further, the assessee provided the year-wise details of his stay in India for the period from 1-4-2008 to 31-3-2014.

## Assessee's Contention

- ❖ It was further submitted that the assessee went to Mauritius for the purpose of employment, on the post of Strategist - Global Investment of the company for a period of three years.
- ❖ Assessee submitted that he was leaving India for the purpose of employment and argued that the extended period of 182 days under Explanation 1(a) to section 6(1) should apply and since his stay was less than 182 days he would qualify as a non-resident for the year.

## Revenue's Contention

- ❖ The revenue authorities disagreed. They contended that the assessee left India as an 'investor', not an 'employee'.
- ❖ Accordingly, the Assessing Officer held that the residential status of the assessee for the year under consideration was 'resident' as per the provisions of clause (c) of section 6(1) and the assessee was not entitled to take benefit of Explanation -1(a) to section 6(1) and income received by the assessee from offshore jurisdiction was added to the total income of the assessee.

# Legal provisions

## Section 6(1) of Income Tax Act, 1961,

*For the purposes of this Act,—*

*(1) An individual is said to be resident in India in any previous year, if he—*

*(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or*

*(b) [\*\*\*]*

*(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or **periods amounting in all to sixty days or more in that year.***

*Explanation 1.—In the case of an individual,—*

*(a) **being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted***  
;

# Ruling

- ❖ In the present case, it is undisputed that the assessee, being an individual, was in India for a total period of 176 days in the relevant year and more than 365 days in last 4 years.
- ❖ From the copy of the appointment letter, it is found that the assessee was appointed as Strategist - Global Investment for a period of three years which can be extended as per mutual discussion in due course.
- ❖ As a remuneration, the assessee was offered a salary of USD 1,00,000 per month subject to the deduction of applicable taxes. Further, the assessee was also provided various other benefits, perquisites, allowances, etc. as a Strategist – Global Investment. The work of assessee would involve finding more investors and business development in various countries.
- ❖ Assessee has placed on record the Occupation Permit issued by the Government of Mauritius as an Investor. According to assessee he was an employee and filed return in Mauritius accordingly.

# Ruling

- ❖ However, AO contended that he was an investor only and in this regard, the Assessing Officer has also taken into consideration that the assessee was holding 100 percent shareholding in Mauritian company, from which the assessee received alleged salary and fees for negotiation and obtained investments for the company and assessee had no permit for employment in Mauritius.
- ❖ **The Tribunal relying on the judgement of Hon'ble Kerala High Court in CIT v. O. Abdul Razak [2011] 10 taxmann.com 4 took into consideration the CBDT Circular No. 346 dated 30-6- 1982 and held that no technical meaning can be assigned to the word 'employment' used in the Explanation and thus going abroad for the purpose of employment also means going abroad to take up self-employment like business or profession.**
- ❖ Therefore, the assessee was entitled to claim the benefit of the extended period of 182 days.
- ❖ Consequently, the assessee was correctly categorized as a non-resident. Jain Shrimal & Co.

## Our Comments

- ❖ It is an important judgement that self-employment is also considered and covered under the definition of employment under Income tax act Section 6(1) as in recent times we have seen many Indian citizen moving out to USA, UAE or Canada etc for setting up their own business and this decision would help them take the same benefit under Income tax as was available to people going out for job.
- ❖ **Few other judgements which support and agree by including self employment as employment under Section 6(1) is as under:**
- ❖ **(i) K. Sambasiva Rao v. ITO [2014] 42 taxmann.com 115/62 SOT 167 (Hyd - Trib.);**
- ❖ **(ii) Asstt. CIT v. Jyotinder Singh Randhawa [2014] 46 taxmann.com 10/64 SOT 323 (Delhi - Trib.);**
- ❖ **(iii) Asstt. CIT v. Col. Joginder Singh [2014] 45 taxmann.com 567 (Delhi - Trib.)**

<b>Section/Article</b>	6(1) of the Income Tax Act
<b>DTAA/Country</b>	
<b>Court</b>	Mumbai Tribunal
<b>Date of decision</b>	08.01.2024

**Note:** Case law name in **Red**- in favour of the revenue, **Green**-In favour of the Assessee, **Orange** = Partial



**Visit our website blog for previous case laws.-**

<https://jainshrimal.com/blog/#taxgyaan>



**Join Whatsapp group for discussion on International taxation  
By scanning the QR-**





# Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.