



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 217

Pralay Pradyotkanti Ghosh

v.

ITO

Salary received by non-resident from foreign employer for working in International waters will not be taxable in India.

03.08.2024



[2024] 164 taxmann.com 705 (Ahmedabad - Trib.)

Jain Shrimal & Co.

Facts of the Case

- ❖ The assessee was an Engineer (Under Water Inspector) working at offshore fields. During the year under consideration, it had received salary income from his Singapore based employer for the work done in oilfields in Bay of Bengal in international water.
- ❖ Employer had deducted TDS on same u/s 192 of the Act, however employee had shown it exempt in his return of income

Revenue's Contention

- ❖ Revenue contended that the place where assessee was posted is a part of India and it cannot be said that assessee has worked outside India.
- ❖ Hence, the services provided by assessee was within India and accordingly irrespective of whether assessee is resident or not his income will be taxable in India.

Assessee's Contention

- ❖ Assessee contended that he was working in Bay of Bengal in international waters and same is not a part of definition of India as per Section 2(25A) of the Income tax act.
- ❖ It further contended that the definition of "India" in the Act covers the areas of Exclusive Economic Zone: however, it does not cover sailing, i.e, operating ships.
- ❖ Also, if AO contends that assessee is a resident then his assessment would be time barred and order cannot be issued u/s 144C of the Act and assessee is engaged with an employer of Singapore.
- ❖ The activities as per the notification for services in exclusive economic zone which shall be taxable in India are:
 - ❖ (a) the prospecting for or extraction or production of mineral oils in the Continental Shelf of India or the exclusive economic zone of India;
 - ❖ (b) the provision of any services or facilities or supply of any ship, aircraft machinery or plant (whether by way of sale or hire) in connection with any activities referred to in clause (a):
 - ❖ (c) the rendering of services as an employee of any person engaged in an of the activities referred to in clause (a) or clause (b).

Ruling

- ❖ The EEZ extends up to 200 nautical miles from the baseline but does not constitute territorial waters, which extend only up to 12 nautical miles.
- ❖ The EEZ is recognized for its resource exploitation rights, but does not extend India's sovereignty to the extent that territorial waters do.
- ❖ Operations on a foreign ship within the EEZ, especially those not involving direct interaction with the seabed or subsoil, are not automatically considered as services rendered within 'India' for tax purposes.
- ❖ Section 9(1)(ii) of the Income Tax Act, 1961 states that income earned from services rendered in India is taxable.
- ❖ **Since the assessee's duties, which are not covered by Notification No. GSR 304(E), are performed on a foreign ship operating beyond the territorial waters (though within the EEZ) it can be concluded that the services are not rendered in India.**

Ruling

- ❖ Judicial pronouncements relied upon by the assessee are considered. It is noted that the place of performance of service is different in those cases.
- ❖ **However, the principle laid down in these cases cannot be ignored which says that the salary received by a non-resident engineer from foreign employer for services rendered outside India could not be subjected to tax in India merely because foreign employer remitted the salary to assessee's NRE account in India.** In assessee's own case for A.Y. 2016-17, the issue was decided in favour of assessee.
- ❖ Therefore, as a result of the discussion made hereinabove, the salary income earned by the assessee is "exempt income".

Our Comments

- ❖ Considering the above judgement and various other judgements it can be said that in case of non-resident salaried employees, salary is taxable in the country in which services are rendered irrespective of where the amount of salary is received.
- ❖ Thus, if a non-resident working outside India and receiving salary in Indian bank account will not be taxable in India. Similarly, if a non-resident receives salary amount outside India but is performing service in India then such salary would be taxable in India.
- ❖ In case of resident individual as per Income tax act entire salary would be taxable in India irrespective of where the service is performed or where the amount is received.

Section/Article	Section 9 and 2(25A)
DTAA/Country	-
Court	Ahmedabad Tribunal
Date of decision	12.07.2024

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



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