



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 231

Ashok Kumar Pandey

VS

ACIT

While testing tie breaker rule, the economic interest will be where assessee is involved in day to day working and also where his immediate nuclear family stays.

09.11.2024



Facts of the Case

- ❖ Assessee filed his return of income for assessment year 2013-14. Assessee was an individual deriving income from capital gains, dividend, interest income and income from house property.
- ❖ Assessee had a permanent home in India as well as in USA.
- ❖ For this year, the assessee claimed that he was resident in India as well as in the United States of America. As per tie-breaker rule, he claimed to be resident of USA.
- ❖ The stay of the assessee in India was more than 183 days. Assessee was staying with his wife and children in India, and the assessee was a Managing Director and had shareholding of more than 50 per cent in an Indian company.

Assessee's Contention

- ❖ Assessee has claimed that he is resident in India as well as in United States of America. Assessee holds a US passport and is a US national and stayed in India for more than 183 days which supports his claim of being a resident of the USA & India.
- ❖ Assessee has also stated that he has a permanent home in India as well as in USA and, therefore, his residential status will depend upon his personal and economic relation and its closeness (center of vital interest).
- ❖ Assessee explains that his family is U S National, holding US Passport, he is Overseas Citizen [OCI], has larger investments in US, one daughter out of three children is studying in USA, therefore his center of vital interest is in USA.
- ❖ Assessee claimed that his income from the USA, which included rental income, dividend income, capital gains, and bank interest was a key factor supporting his argument that his center of vital interest was in the USA. He, therefore, submitted that his economic social interest are more in United States of America and not in India and, therefore, according to Article 4(2) of DTAA, he should be considered as resident of USA.

Revenue's Contention

- ❖ Revenue points out the following:-
 - i) Stay of assessee in India is more than 183 days,
 - ii) Assessee is staying with his wife, son and daughter and they have shown their place of residence as Mumbai.
 - iii) Assessee is a Managing Director and has shareholding of more than 50% in an Indian company, namely, Revel Films Pvt. Ltd and he is actively involved in board meetings of the company as a managing director.
 - iv) Assessee has earned capital gains and dividend income from investments made in shares and trading in shares in India.

Therefore, revenue contended that assessee's center of Vital Interest i.e., personal and economic interest are closer to India.

- ❖ The Revenue's stance was that all income from the USA, including capital gains, dividends, rental income, and bank interest, should be taxed in India under Section 5 of the Income-tax Act as foreign income were mainly passive income.

Legal provisions

Article 4 of DTAA:

2. *Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :*

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;*
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;*
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;*
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting by mutual agreement.*

Legal provisions

Section 6 of the Act:

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) 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.

Section 5 of the Act:

(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which...

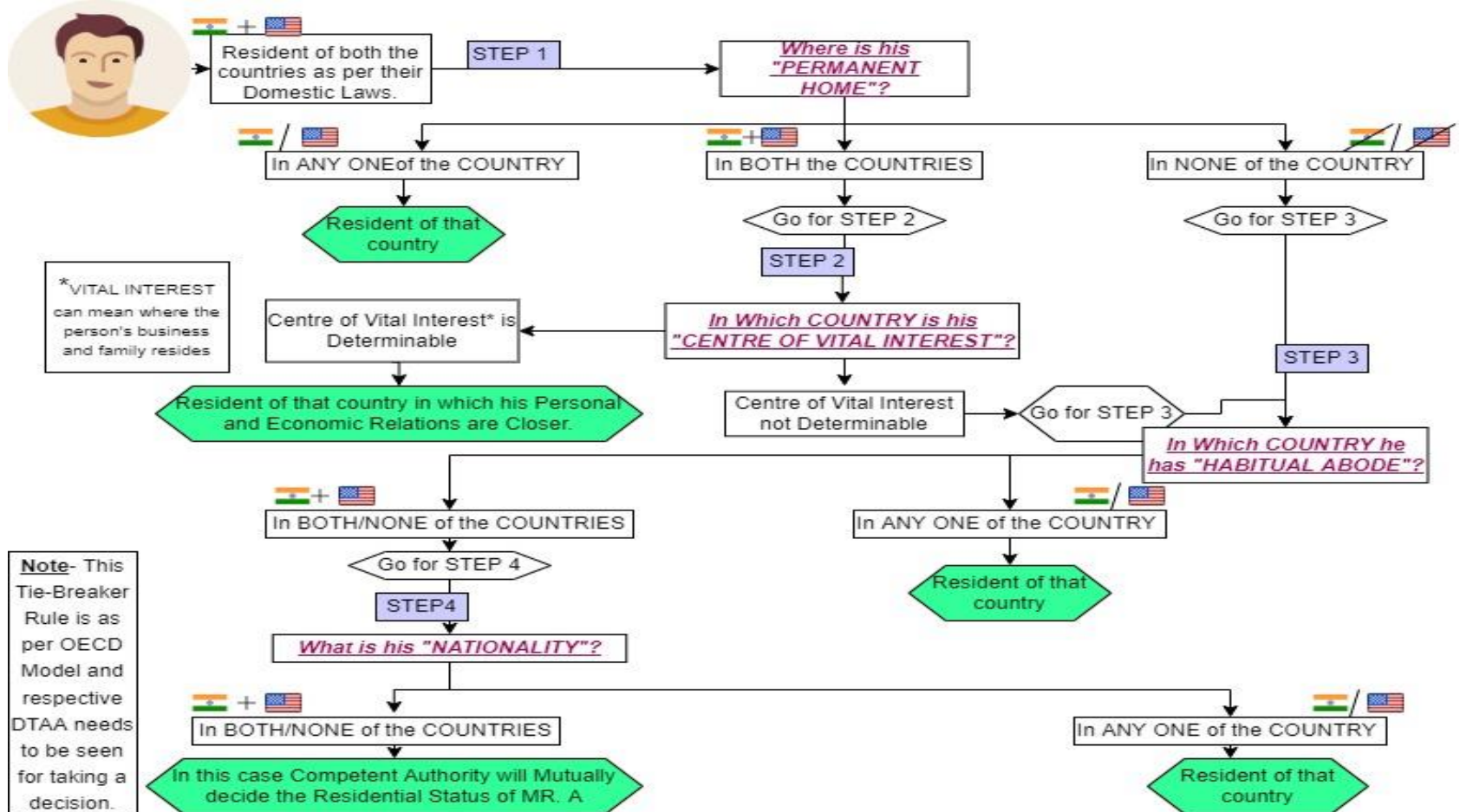
Ruling

- ❖ The ruling noted that assessee stayed in India for more than 183 days during the year, making him a "resident" of India as per Indian domestic law.
- ❖ While assessee had a permanent home in both countries, the ruling concluded that his personal and economic interests are closer to India due to his active involvement in business here and his family living in India (except for one daughter studying in the USA).
- ❖ Regarding his economic interest, it was observed that he has come back to India for carrying on business in a private limited company which is set up by him and his wife in 2009. It has a work in progress of approximately Rs. 69,152,085/- and long-term unsecured borrowing from the directors of Rs. 81,256,726/- (financed by assessee).

Ruling

- ❖ Assessee holds 50% of the share in the balance 50% of the shares are held by his wife. It was observed that the assessee's economic interests in the USA were largely passive (rental income and income from investments), **showing a closer economic relationship with India.**
- ❖ Hon'ble ITAT emphasized that the **nucleus family (wife and children) living in India is a key factor in determining the assessee's personal relationships.** The stay of his extended family including parents in USA is not so much relevant to decide whether his personal relationship is close to USA or not. This is also so because, though his parents are USA National, but his brother and his sisters are also staying there. Since the assessee's immediate family resides in India, this supported the conclusion that his center of vital interest was closer to India, despite his extended family being in the USA.
- ❖ Thus, he **is a resident of India for tax purposes**, and his global income, including from the USA, is taxable in India.

Tie-breaker :- For better understanding of Tie Breaker rule, we have tried to prepare a chart showing key conditions and steps as per OECD Model Convention.



Section/Article	Section 6, read with section 5 of the Income-tax Act, 1961 and article 4 of DTAA
DTAA/Country	India USA
Court	Mumbai Tribunal
Date of decision	03-10-2024

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



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