# SATURDAY INTERNATIONAL TAX GYAN!!!
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## SITG No. 256

**Varghese Paul**

**v.**

**ACIT**

**If vital interest of assessee is in India, then he won't be eligible for tie-breaker benefit and his global income will be taxable in India although he will get credit of taxes paid outside India.**

**03.05.2025**

[2025] 170 taxmann.com 129 (Bangalore - Trib.)

Jain Shrimal & Co.

# Facts of the Case

- Assessee was a salaried employee of a US company. Assessee has filed original return of income on 31.08.2015 declaring income of Rs.1,84,12,210/-. Assessee filed revised return of income on 07.03.2017 showing total income of Rs.1,50,43,540/-.

- The case was selected for scrutiny and it was observed that he filed his return of income and did not include his salary income earned abroad for from April 2014 to June, 2014.

- Assessee claimed benefit of the tie-breaker test on the ground that during the relevant period he was also a resident of US.

- Further, the Indian counterpart of the same company with whom assessee was employed later on had included the salary paid for the US assignment in Indian income while calculating his TDS.

# Assessee's Contention

- Learned A.R. appearing on behalf of the assessee referring to the tax residency certificate issued by the US authorities on 10.06.2019, i.e., after the completion of the assessment proceedings, inter alia, argued that the assessee was resident of US during that period and income earned by the assessee in US is not includable in the total taxable income. Accordingly, only Indian income was liable to be taxed in India.

- Assessee has also claimed the benefit of Article 16 of India US DTAA and contended that the salary income is taxable in the contracting state only.

# Revenue's Contention

- AO observed that the assessee was having two house properties in India as well as investments in India, therefore the assessee is not entitled for tie-breaker test benefit.

- Also, considering that the Indian employer of assessee had deducted tax on entire global income of assessee he contended that assessee is a resident and accordingly his global income will be taxed in India.

# 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 90 of Income Tax Act, 1961***

***90. (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—***

***(a) for the granting of relief in respect of—***
***(i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or***
***(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or***

***(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory)***

# Legal provisions

***90. (2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.***

## *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…***

## *Article 16 of India-US DTAA*

***1. ……salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.***

# Ruling

- Hon’ble Tribunal noted that the assessee qualified as a resident in India under domestic law, based on his personal and economic ties.
- It observed that the assessee failed to prove that his center of vital interests was in the United States, and thus did **not satisfy the tie-breaker** test under **Article 4** of the DTAA.
- The Tribunal held that salary income earned in the USA was taxable in India under **Section 5**, as part of the global income of a resident.
- It concluded that the DTAA exemption under **Article 16** could not be granted, since the assessee was not a US resident for treaty purposes.
- However, the ruling directed that **foreign tax credit** be allowed under **Section 90**, to provide relief from double taxation on the same income.
- Hence, the case was **partly allowed** in the favour of assessee.

# Our Comments

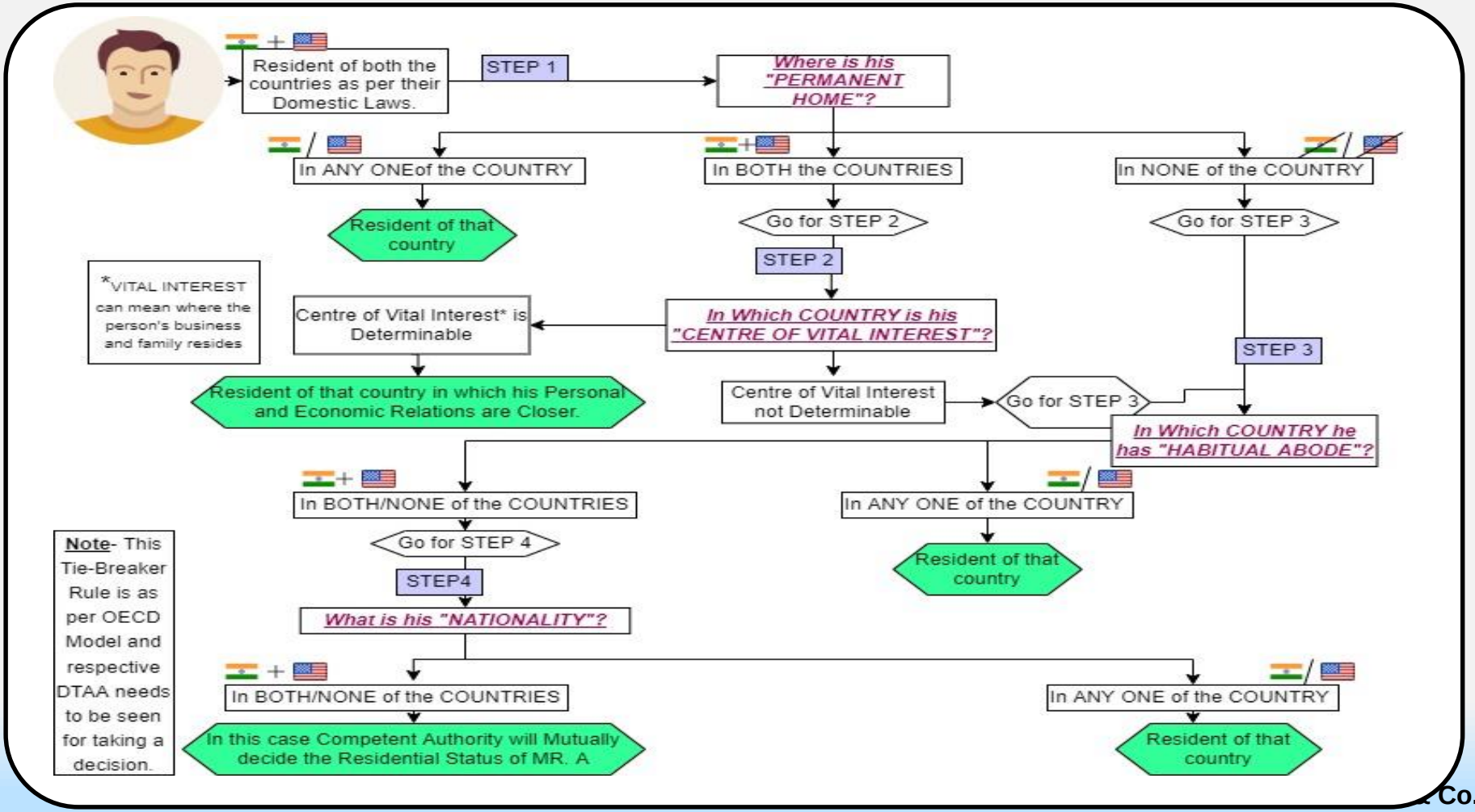
- The income earned from employment in the U.S. was rightfully taxed in India, as the individual remained a resident under Indian law and DTAA and was liable on a global basis under Section 5(1)(c).

- The case underscores that residency under Section 6 of the Income-tax Act prevails unless the assessee conclusively proves a tie-breaker advantage under Article 4 of the DTAA. Mere physical stay abroad in a tie breaker situation does not override deeper economic and personal ties in India.

- While the DTAA permits source-based taxation where employment is exercised, the exemption under Article 16(2) was not available since the assessee stayed in India beyond 183 days and the salary was not paid by a non-resident employer.

- Although a Tax Residency Certificate (TRC) from the U.S. was obtained, the tie-breaker test under Article 4(2) required deeper evaluation of the center of vital interests, which continued to lie in India due to the presence of family, property, and economic ties.

**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.



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|---|---|
| **Section/Article** | Article 4 & 16 of DTAA; Section 5 & 90 of ITA, 1961 |
| **DTAA/Country** | India-US DTAA |
| **Court** | Bangalore – Tribunal |
| **Date of decision** | 25.10.2024 |

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


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