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SITG No. 295

Binny Bansal

v.

Deputy Commissioner of Income Tax

Section 6 Explanation 1(b) applies only to existing non-residents, while Explanation 1(a) applies only where the assessee leaves India for employment in the relevant previous year.

31.01.2026

[2026] 182 taxmann.com 226 (Bangalore - Trib.)

Jain Shrimal & Co.

Facts of the Case

- The assessee, an individual and co-founder of Flipkart, filed his return of income for AY 2020-21 declaring himself as a **non-resident**, reporting total income of Rs. 8.33 crore. The return was selected for scrutiny primarily due to a high refund claim of Rs. 136.15 crore after huge capital gains transactions.

- The assessee resigned from Flipkart with effect from 13 November 2018 and subsequently took up employment in Singapore from February 2019 onwards. During FY 2019-20, he stayed in India for 141 days and had also been present in India for more than 365 days in the preceding four years.

- In FY 2019-20, the assessee sold equity shares of Flipkart Private Limited (Singapore). He claimed exemption on capital gains under Article 13(5) of the India–Singapore DTAA and alternatively under Explanation 7(a) to section 9(1)(i) of the Act.

- The ld. AO treated the assessee as a resident under section 6(1)(c) of the Act, denied treaty benefits, and taxed the capital gains in India. The DRP upheld the ld. AO's rationale, leading to the final assessment order under appeal.

Assessee's Contention

- The assessee contended that he qualified as a **non-resident** under Explanation 1(b) to section 6(1)(c), arguing that he was "being outside India" for employment and had come to India only on visits during FY 2019-20, with total stay below 182 days.

- Without prejudice, it was argued that Explanation 1(a) could also be applicable as he had left India for employment outside India, thereby requiring substitution of the 60-day threshold with 182 days for the relevant previous year.

- On DTAA applicability, the assessee submitted that he was a tax resident of Singapore and, applying Article 4 of the India–Singapore DTAA, his centre of vital interests, permanent home, habitual abode, and personal and economic relations were closer to Singapore.

- Accordingly, the assessee claimed that capital gains on sale of Flipkart Singapore shares were not taxable in India under Article 13(5) of the DTAA.

Revenue's Contention

- It was argued that the assessee satisfied both limbs of section 6(1)(c), having stayed in India for more than 365 days in the preceding four years and more than 60 days during FY 2019-20, thereby qualifying as a resident.

- The Revenue contended that Explanation 1(b) to section 6(1)(c) applies only to individuals who are already non-residents and visit India, and not to persons who were residents in the immediately preceding years, as in the assessee's case.

- The Revenue further contended that Explanation 1(a) was inapplicable since the assessee had left India for employment in FY 2018-19 and not in FY 2019-20, which was the year under consideration.

Revenue's Contention

❖ Debating the tie breaker test in article 4(2) of the India-Singapore DTAA, the revenue argued as follows:

a) **Permanent Home**: Assessee owned residential properties in India, including a Bengaluru flat and house (on which assessee also claimed Section 54F in earlier years), which were available for use. The alleged rental accommodation in Singapore was not substantiated; hence, a permanent home existed in India.
b) **Centre of Vital Interests**: Assessee's substantial investments, wealth, and capital interests were located in India, including shareholding in Flipkart linked to Indian operations. His professional engagements and economic footprint during the year remained predominantly India-centric.
c) **Habitual Abode**: Assessee spent a significant number of days in India during the relevant year and consistently over preceding years. **It was particularly singled out that during the COVID distress, the assessee chose to stay back in India which in itself is indicative of the fact that the assessee's habitual abode resides in India**.
d) **Nationality**: Assessee is an Indian citizen. Accordingly, the nationality test under Article 4(2) also favored India.

Therefore, under the DTAA as well, the assessee was an Indian resident.

Legal provisions

Section 6 of the Income Tax Act, 1961:

6. 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 ;
(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, **being outside India**, comes on a visit to India in any previous year, 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 and in case of such person having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted.

Legal provisions

Article 13(5) of India-Singapore DTAA:

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property…
3. Gains from the alienation of ships or aircraft…
4. 1[***]

2[4A. Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.

4B. Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.

4C. However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.]

Legal provisions

❖ Article 4 of India-Singapore DTAA:

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who is a resident of a Contracting State in accordance with the taxation laws of that State.
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 has not 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 States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Ruling

- The Hon'ble Tribunal first examined the statutory framework of section 6(1) of the Act and noted that residential status must be determined strictly on the basis of the tests prescribed therein. On facts, it was undisputed that the assessee had stayed in India for more than 365 days during the four years preceding FY 2019-20 and for more than 60 days during the relevant previous year.

- The Hon'ble Bench held that, once the conditions of section 6(1)(c) are satisfied, the assessee is treated as a resident unless he clearly falls within the scope of the specific relaxations provided in Explanation 1. The Tribunal observed that these Explanations are exceptions and must be applied narrowly, consistent with legislative intent.

- On the assessee's reliance on Explanation 1(b), the Hon'ble Tribunal held that the phrase **"being outside India, comes on a visit to India" is intended to apply to individuals who are already non-residents and who visit India during the relevant year.** The Tribunal agreed with the Revenue that this provision is not meant to convert a person who was resident in earlier years into a non-resident merely because of overseas employment.

- The Hon'ble Bench placed emphasis on the legislative history and subsequent amendments to Explanation 1(b), observing that the **provision was designed to prevent hardship to non-residents** and to counter situations where individuals manage their stay in India to perpetually remain residents while carrying on substantial economic activities from India.

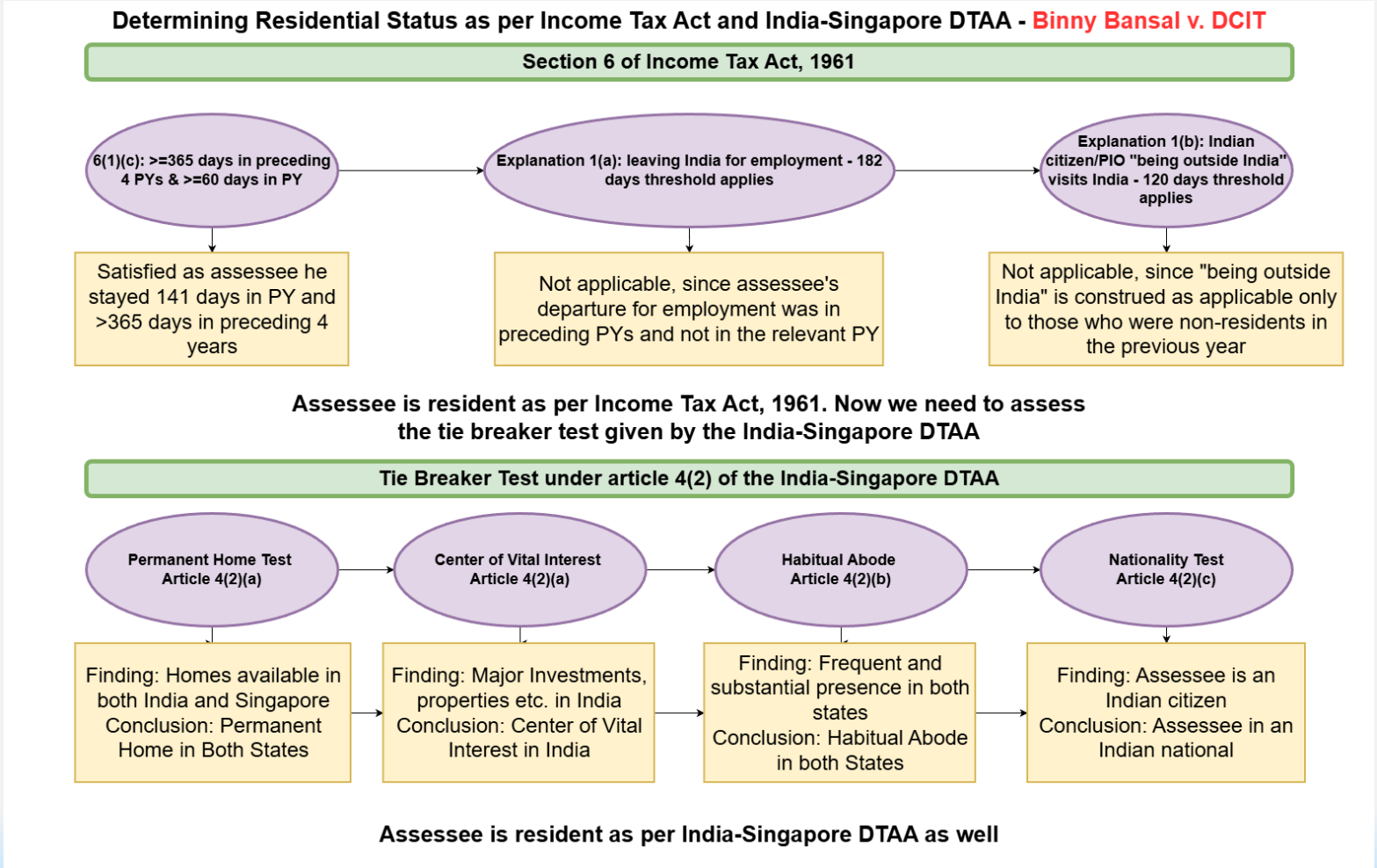
Ruling

- The Tribunal further rejected the assessee's alternative plea under Explanation 1(a). It held that the relaxation under this clause applies only to the previous year in which an Indian citizen leaves India for the purpose of employment outside India. On facts, the Tribunal recorded that the assessee had left India for employment in FY 2018-19 and not in FY 2019-20, the year under consideration.

- The Hon'ble Bench categorically observed that extending the benefit of 182 days to subsequent years would lead to an unintended consequence **whereby every person visiting India could repeatedly claim such relaxation year after year.** The Tribunal held that such an interpretation would defeat both the intention and the spirit of the provisions.

- After analysing the assessee's personal and economic ties, including location of major investments, ownership of immovable properties, absence of comparable investments in Singapore, and the gradual migration of family members, the Hon'ble Tribunal concluded that the assessee's economic and personal relations were closer to India. Accordingly, applying the tie-breaker rule, the Tribunal held that the assessee was a resident of India and not entitled to DTAA benefits and thus the entire capital gain was taxable in India.

Summary Flowchart



Our Comments

- Where an individual has been already employed overseas and, in the relevant previous year, also commences a business abroad, we need to check whether such commencement constitutes “leaving India for the purposes of employment” under Explanation 1(a), i.e., whether such self-employment is to be tested independently so as to satisfy the provision, or whether it is to be viewed in conjunction with the continuing overseas employment, thereby suggesting that the assessee has not, in substance, left India for employment in that previous year.

- Further, where an individual is treated as a deemed resident solely due to the absence of taxation in any other jurisdiction and his income from India being more than Rs.15 lakh as per section 6, it remains unclear whether such technical residency disqualifies the individual from invoking Explanation 1(b) in the subsequent year since 1(b) only welcomes those who were non resident in the previous year as per the memorandum to Finance Act 1994.

- It is worth noting that the Hon’ble Tribunal examined all four tie-breaker tests, even though ordinarily the analysis concludes once residence is determined in one of the Contracting States.

Section/Article	Section 6, article 4 and article 13(5)
DTAA/Country	India-Singapore DTAA
Court	ITAT Bangalore
Date of decision	09.01.2026

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

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