

Assessee needn't be unemployed while going abroad for a job; only stay in India would determine residential status

Summary – The Delhi ITAT in a recent case of Raj Jain., (the Assessee) held that where status of assessee was a non-resident, fact that assessee was already employed before leaving India should not effect his residential status

Facts

- The assessee filed its return of income and declared taxable income under the head 'salary'.
- During scrutiny assessment, the assessee pleaded that he was working in whirlpool China and salary was accrued and arose in China only and that he was non-resident during the relevant financial year therefore, he was not liable to be taxed in India.
- The Assessing Officer did not accept the assessee's contention and made the assessment on ground that assessee was already employed in whirlpool India prior to leaving India.
- On appeal, the Commissioner (Appeals) held that the salary income of assessee was not taxable in India.
- On revenue's appeal.

Held

- During the relevant period the assessee was working for Whirlpool China and the salary was credited in HSBC Hong Kong. The assessee was employed with Whirlpool China from 1-8-2004 till 30-6-2006. During the relevant financial year, the assessee's stay in India was less than 182 days. The residential status of the assessee was not resident during the relevant period.
- In view of the established legal position, the assessee was not resident during the relevant period as he has left India for the purpose of employment outside India. His stay during the relevant financial year was less than 182 days in India. Therefore, his status was non-resident during the relevant financial year. The contention that he was already employed in the Whirlpool India prior to the leaving India for working with Whirlpool China shall not effect the residential status of the assessee. Considering these facts in view, the order of the Commissioner (Appeals) that salary income of the assessee accrued and arose during the employment in China is not taxable in India was upheld.