

Salary earned in USA exempted from tax as employee was held as resident of USA under tie-breaker rule of DTAA

Summary – The Delhi ITAT in a recent case of Raman Chopra, (the Assessee) held that Salary earned in USA exempted from tax as employee was held as resident of USA under tie-breaker rule of DTAA

Facts

- The assessee, an individual, derived income from salary and income from other sources.
- The Assessing Officer noted that during year 2010-11, the assessee was working in USA from 1-4-2010 to 1-7-2010 and the assessee claimed exemption as per article 16(1) of DTAA between India and US. Assessing Officer observed that since the period of assessee's stay in India was more than 183 days, his entire global income was to be taxed in India and as such assessee's claim for exemption under article 16(1) was disallowed and said sum was added back to the total income of the assessee. Based on above disallowance, the Assessing Officer initiated penalty proceeding under section 271(1)(c) and levied penalty.
- The Commissioner (Appeals) had upheld said order.
- On appeal:

Held

- As the assessee may be considered liable to tax both in India and US as per the tax laws in each jurisdiction, a determination of the residential status as per the India - USA Double Taxation Avoidance Agreement (Treaty) has to be done based on the tie breaker analysis as contained in Article 4(2) of the Treaty. Based on the tie breaker analysis as contained in article 4(2), the assessee is tie-breaking to USA for the period 1-4-2010 to 30-6-2010. Accordingly, the assessee shall be considered as a resident of USA for the period 1-4-2010 to 30-6-2010 as per the Treaty. Since the assessee was a resident of USA for the period 1-4-2010 to 30-6-2010 and had exercised his employment in USA during the above period, he was entitled to claim exemption of salary in India as per article 16(1). Accordingly, the assessee had claimed an exemption on remuneration received in India in respect of the services rendered in USA.
- Section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. On the facts and circumstances of this case, the assessee's conduct cannot be said to be contumacious so as to warrant levy of penalty.
- In the background of the aforesaid discussions and precedents, the levy of penalty in this case is not justified. Accordingly, the orders of the authorities below are set aside and the levy of penalty in dispute is deleted.