

## Person migrating to Foreign Country - 182 days period to be considered for calculating residential status

**Summary – The High Court of Bombay in a recent case of Binod Kumar Singh, (the Assessee) held that if a person has migrated to Foreign Country, the 182 days period should be considered for calculating residential status**

### Facts

- The assessee migrated to a foreign country for education and carrying on his profession and during the relevant year the assessee was in India for 173 days.
- In course of assessment, the Assessing Officer opined that assessee was the resident of India for purpose of completing assessment.
- The Commissioner (Appeals) as well as the Tribunal held that the assessee was not an ordinary resident.
- On revenue's appeal:

### Held

- The HC stated that by virtue of section 6(1), an individual would be said to be a resident in India if he satisfies the requirement contained in clause (a) or clause (c). Requirement of clause (a) is that the person should have been in India during the relevant previous year for a period not less than 182 days. Clause (c) would require that he was within the country for not less than 365 days in four preceding years and has been in India for 60 days or more in the current year. This requirement of 60 days would be substituted by 182 days if he is an Indian citizen or a person of Indian origin and has come on a visit to India.
- An analysis of the facts studied by the Tribunal indicate that the assessee who was born in India in the year 1960, after completing his higher education went to Soviet Union for further education in engineering. From 1978 to 1984, he persuaded his Masters in Engineering in Radio Technology. He also did post graduation in Russian language. From 1984 to 1986, he had worked in trading pharma company in USSR. From the year 1986-87, he did his business management from Sweden. He again worked in a trading pharma company. Between 1989 to 1995, he had worked in Ukraine after which he set up his own business in pharmaceutical sector primarily in Russia, Ukraine and CIS countries for which purpose he had set up a trading house at Ukraine. He had acquired immovable property in Ukraine in 1995 and 1997. The assessee had permanent resident status in Ukraine till 2002. After that along with his family, he shifted to England but continued his business interest in Ukraine, Russia and CIS Countries. The assessee had acquired properties in Ukraine but continued his business interest as earlier.

- These facts would demonstrate that the assessee had migrated to a foreign country where he had set up his business interest. He pursued his higher education abroad, engaged himself in various business activities and continued to live there with his family. His whatever travels to India, would be in the nature of visits, unless contrary brought on record. The Tribunal, therefore, did not commit any error.
- In the result, revenue's appeal is dismissed.