

Salary income can't be deemed to have accrued in India merely if appointment letter has been issued in India

Summary – The Agra ITAT in a recent case of Arvind Singh Chauhan, (the Assessee) held that Salary income cant be said to accrue in India merely because appointment letter is issued in India.

Facts

- It is wholly incorrect to assume that an employee gets right to receive the salary just by getting the appointment letter. An employee has to render the services to get a right to receive the salary and unless these services are rendered, no such right accrues to the employee. Undoubtedly, if an assessee acquires a right to receive an income, the income is said to have accrued to him even though it may be received later, on it 's being ascertained, but this proposition will be relevant only when assessee gets a right to receive the income. The assessee gets his right to receive salary income when he renders the services and not when he simply receives the appointment letter.
- Where non-resident offers to tax incomes taxable irrespective of residential status, it cannot be said that he has accepted his residential status of a 'resident' and salary earned abroad cannot be taxed in his hands by invoking section 6(5) as section 6(5) has become redundant since 1989-90.
- Section 6(5) provides that, "If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income". This sub section is one of the few provisions which have remained intact since the Income Tax Act,1961, is enacted, but then ironically this sub section itself is redundant since long time, because effective assessment year 1989-90, previous year, for all sources of income and for all assessee, is uniform i.e. financial year immediately preceding the assessment year.
- Until that time, it was possible for an assessee to have different previous years for different sources of income, e.g. calendar year for business income and financial year for income form salaries, and, therefore, it was possible to have different residential status for different sources of income, because the number of days of presence in India was to be seen vis-à-vis the relevant previous years and those previous years, in some cases, could cover different period - even as assessment years for all those previous years remained the same. With the uniformity of previous years, such a situation is no longer possible, and, the legal provision incapable of any application. If this legal provision still exists on the statute, it can only be explained by inertia of the law makers in weeding out redundant legal provisions.