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Family pension received from UK based bank falls under residuary Article 23 of India-UK DTAA - taxable in UK only

Summary – The Delhi ITAT in a recent case of Karan Thapar, (the Assessee) held that where the assessee received family pension from the employer of the deceased wife i.e., from RBS, UK and the source country i.e. UK also deducted tax thereon at source , said income cannot be taxed for a second time in India.

Facts

• The assessee received amount of family pension from the employer of the deceased wife of the i.e., from RBS, UK and the source country, i.e. UK also deducted tax thereon at source.

• Article 20 of the Indo – UK DTAA which is related to pension, means the payment received by the employee in consideration of past employment.

• Article 20 has no relevance to the family pension which is generally received by the spouse or family members or legal dependent of the deceased employee from the employer of deceased family member.

• Article 23(3) is related to the items of income which are not included in the foregoing articles of the India-UK DTAA. Such income arising in the other contracting state may be taxed in that other state. Meaning thereby 'family pension' which was not within the ambit of foregoing articles of India-UK Treaty and arose in the other contracting state, may be taxed in other state. Accordingly, the family pension received by the assessee from the employer of deceased wife of the assessee was rightly taxed at source in UK and no amount of family pension is, thus, taxable in India.

• In the instant case, income received by the assessee from employer of deceased wife of the assessee and the country of source has deducted tax and assessee received amount after deduction of tax. Thus, the same income could not be taxed second time in the other contracting state, i.e., India.