ITAT taxes salary received in India; dismisses employee's claim of having received salary on high seas

Summary – The Kolkata ITAT in a recent case of Tapas Kr. Bandopadhyay., (the Assessee) held that where assessee, a non-resident, rendered services as a marine engineer on board a ship outside territorial waters of any country, salary received by him in India by way of fund transfer from foreign companies directly to his NRE account in India, would be taxable in India under section 5(2)(a)

Facts

- The assessee was engaged with B Ltd., Singapore in the capacity as a Marine Engineer. He worked in international waters during the relevant year and received remuneration from aforesaid concern.
- The assessee claimed that he had to float on foreign water to render services during the course of voyage and accordingly when he would stay more than 182 days outside India or on foreign water, his residential status would be treated as 'Non-resident' as per provision of law and his salary income which was received outside India in foreign currency would not be taxable under section 5.
- The Assessing Officer opined that income received in India was taxable in India in all cases (whether accrued in India or elsewhere) irrespective of residential status of the assessee. He also observed that it was significant to know the meaning of income received in India. If the place, where the recipient got the money (on first occasion) under his control, was in India, it was said to be income received in India. In the instant case all the income was remitted by the employer to the bank accounts of the assessee maintained in India. Therefore, the assessee got the money under its control for the first time in India. Accordingly, the Assessing Officer brought salary income to tax in India.

Held

- *Held that* the scheme of the Act is such that charge of tax is made independent of territoriality and residency and currency. The revenue argued that the assessee though rendered services outside India had received salary in India by way of fund transfer from foreign company in abroad directly to NRE account of the assessee in India. The character of receipt of salary does not change. It was argued that the receipt contemplated under section 5(2)(a) is actual receipt. Hence, income which is actually received in India is taxable in India under section 5(2)(a).
- The assessee was only trying to introduce one more layer to the entire transaction that the assessee had the control over his money in the form of salary income in international waters and for the sake of convenience, he instructed the foreign employer to send the monies to his NRE account in India. It was argued by the assessee that income was actually earned by the assessee outside India and assessee had only brought those amounts into India. In other words, what was brought into India is not the salary income but only the salary amount. But no evidence has been brought on record to prove that the assessee had the control over his salary income in international waters. Moreover, if

this argument of the assessee is to be accepted, then the assessee goes scot free from not paying tax anywhere in the world on this salary income. The provisions of section 5(2)(a) are probably enacted keeping in mind that income has to suffer tax in some tax jurisdiction. If the argument of the assessee is accepted, then it would make the provisions of section 5(2)(a) of the Act redundant. It is only elementary that a statutory provision is to be interpreted *ut res magis valeat quam pereat*, *i.e.* to make it workable rather than redundant. From the provisions of section 5(1), in the case of a resident, the global income is taxable in India. In case of non-residents, the scope of total income has four modes, one of which is receipt in India, 'from whatever source derived'. If this is construed to mean that income from whatever source, should first accrue or arise in India and then it should be received in India to be included under section 5(2)(a), then section 5(2)(a) will lose its independence and will become a subset of section 5(2)(b) and there would not be any need for having section 5(2)(a) on the statute.

- The argument of assessee was that the salary was received on the high seas and by way of a convenient arrangement, the same was directed to be deposited in the NRE account of the assessee in India. The question that arises for consideration is can a person receive salary on high seas. The only possibility of receiving salary on board of a ship on high seas is to receive in hot currency. It is not the case of the assessee that the hot currency got deposited in the NRE account. On the other hand, the money was transferred from the employer's account outside India to the assessee's NRE account in India. In such circumstances, it is difficult to accept the contention of the assessee that salary was not received in India.
- The income in the present case did not suffer tax in any other jurisdiction nor was it received in any other tax jurisdiction. The receipt in the NRE account in India is the first point of receipt by the assessee and prior to that it cannot be said that the assessee had control over the funds that had been deposited in the NRE account from the employer.
- In view of above, it is held that salary received in India is taxable in India in terms of section 5(2)(a)