

Residency certificate was sufficient evidence for accepting residential status as per India-Mauritius Tax treaty

Summary – The Mumbai ITAT in a recent case of HSBC Bank (Mauritius) Ltd., (the Assessee) held that On basis of Tax Residency Certificate issued by Mauritian Revenue Authority, assessee bank was to be held as 'beneficial owner' of interest income qua provisions of article 11(3)(c) of India-Mauritius Tax Treaty and thus, such income was not taxable in India

Facts

- The appellant bank was an LLC which earned interest income of Rs. 94.57 crore from investments in debt securities made in accordance with the SEBI Regulations which was claimed not taxable in India on the strength of article 11(3)(c).
- The said exemption was denied by the Assessing Officer which was in conformity with the directions of the DRP. Pertinently, the exemption was denied on the ground that (i) the interest was 'derived' by the assessee; (ii) that interest was not 'beneficially owned' by the assessee and (iii) that the assessee ought to be carrying on *bona fide* banking business, which it did not.
- On appeal, the Tribunal accepted the pleas of the assessee so far as the first two aforesaid conditions were concerned. In other words, the Tribunal held that the interest income in question was derived by the assessee and that it was carrying on *bona fide* banking business. However, with regard to the third condition of 'beneficial ownership', the Tribunal remanded the issue to the file of the Assessing Officer with certain directions.
- This aspect was agitated by the assessee by way of a Miscellaneous Application under section 254(2) and the Tribunal recalled its decision so far as it pertained to the issue of 'beneficial ownership'.
- In the instant appeal, the assessee pointed out that the proceeding was to adjudicate the issue of 'beneficial ownership' while evaluating assessee's claim of non-taxability of the aforesaid interest income in terms of article 11(3)(c).

Held

- Article 11(3)(c) of the India-Mauritius Tax Treaty, *inter alia*, prescribes that interest income arising in a contracting state shall be exempt from tax in that state provided it is derived and beneficially owned by any bank carrying on a *bona fide* banking business which is resident of the other contracting state.
- The appellant has primarily relied on the Tax Residency Certificate issued by the Mauritian Revenue authorities certifying the fact that assessee is a tax resident of Mauritius. Factually speaking, there is no dispute on this aspect. The only controversy is whether such Tax Residency Certificate enables an inference that the interest income in question is beneficially owned by the assessee. In this context, the CBDT Circular No. 789, dated 13-4-2000 of the CBDT is quite eloquent, whose relevant content

reads that 'wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly.'

- Ostensibly, as per the clarification issued by the CBDT, *vide* Circular No. 789, dated 13-4-2000 wherever a Certificate of Residency is issued by the Mauritian authority, such Certificate will constitute sufficient evidence for accepting the status of residence as well as the beneficial ownership for applying the provisions of the India-Mauritius Tax Treaty. Thus, the aforesaid clarification by the CBDT supports the assertion of the assessee that based on the Certificate of Tax Residency issued by the Mauritian authority there is sufficient evidence to accept the position that the 'beneficial ownership' of the impugned interest income is with the assessee.
- At this point, it may be noted that the CBDT Circular No. 789, dated 13-4-2000 (*supra*) is specifically in the context of incomes by way of dividend and capital gain on sale of shares. It would equally apply even in the present situation where the application of the provisions of the India-Mauritius Tax Treaty is sought to be applied for considering the taxability of interest income as per article 11(3)(c) of the India-Mauritius Tax Treaty.
- On this aspect itself the plea of the assessee is to be upheld that assessee is the 'beneficial owner' of the impugned interest income on the strength of the Tax Residency Certificate issued by the Mauritian authorities.
- Moreover, in the context of element of interest income earned by the assessee from Hyundai Motor India Ltd., the Chennai Bench of the Tribunal in its direction in the case of *Hyundai Motor India Ltd. v. Dy. CIT* [[2017](#)] 81 taxmann.com 5 (Chennai - Trib.) has already observed that the recipient therein (*i.e.*, the assessee in the instant case, was the 'beneficial owner' of the interest income *qua* the provisions of article 11 of the India-Mauritius Tax Treaty. Be that as it may, in view of aforesaid discussion, the stand of the assessee is to be upheld that it is the 'beneficial owner' of the interest income of Rs. 94.57 crore *qua* the provisions of article 11(3)(c) of the India-Mauritius Tax Treaty and thus, such income is not taxable in India.