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Newsflash

Mumbai ITAT Rules that the term “Employment” under Section 6 – Explanation 1(a) of the Income Tax Act, 1961 shall include “Self-Employment”

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1.0 Background

In accordance with Section 6(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the IT Act), an individual would be considered as an Indian tax resident if he has stayed in India for a period of 365 days or more within 4 years preceding the relevant financial year and has stayed in India for a period of 60 days or more in the relevant financial year.

Explanation–1(a) to section 6(1) of the IT Act further extends the period of 60 days and substitutes the same to 182 days in case of an Indian citizen who has left India for the purpose of employment outside India.

The Hon'ble Mumbai Income-tax Appellate Tribunal (hereinafter abbreviated as "ITAT") in the case of **the *Assistant Commissioner of Income Tax Vs. M/s Shri Nishant Kanodia ("the Taxpayer/ Assessee")*** has recently passed a ruling that for the purpose of Explanation 1(a) to section 6(1) of the Income Tax Act, 1961 (herein after referred to as "IT Act"), the term *"employment outside India"* shall include self-employment such as doing business. A brief overview on the said judgement of the Mumbai ITAT is covered in this Newsflash.

2.0 Facts Of the Case

2.1 The Taxpayer, an individual, was in receipt of notice u/s 153A of the Income Tax Act, 1961 w.r.t. AY 2013-14. The taxpayer had claimed his resident status as Non–Resident and not offered his global income to tax in India stating that he stayed in India for 176 days and went to Mauritius for the purpose of employment with Firstland Holdings Ltd., on the post of Strategist – Global Investment of the company for a period of 3 years. As such, the taxpayer claimed being a non–resident as per the provisions of section 6(1)(c) r/w Explanation 1(a) to section 6(1) of the Act.

2.2 The Assessing Officer (A.O.) did not agree with the contention of the assessee and held that the assessee left India in the relevant financial year on a business visa which is usually taken by an investor and not by an individual who leaves India for employment. As such, the A.O. held that the Taxpayer/ assessee is not entitled to take benefit of Explanation–1(a) to section 6(1) of the IT Act.

As such, the A.O. contended that since the assessee stayed in India for a period of 176 days (which is more than 60 days) in the relevant financial year and has been in India for a period of more than 365 days within four years preceding the said year, the assessee would be a Resident in accordance with Section 6(1)(c) of the IT Act accordingly, the income earned by the assessee from outside India is taxable under the Act.

2.3 Further, the Assessing Officer also held that the assessee holds 100% shareholding in Firstland Holdings Ltd., Mauritius and he has considerable control over affairs of the said

company. Therefore, the A.O. opined that copy of the appointment letter and salary slips provided by the assessee would be self–serving documents in view of the fact that the assessee had no permit for employment in Mauritius.

2.4 The Commissioner of Income Tax (Appeals) agreed with the contention of the assessee and held that the assessee was away from India for the purpose of employment outside India and is accordingly entitled to take the benefit of Explanation–1(a) to section 6(1)(c) of the IT Act. Being aggrieved of such decision, the Revenue appealed to the ITAT against the same.

3.0 Tribunal -Observation and Verdict

3.1 The ITAT considered the summary of the number of days of stay in India along with a copy of the relevant pages of his passport furnished by the Assessee and the appointment letter & salary slips issued by Firstland Holdings Ltd. Further, ITAT also noted the Revenue's argument that the assessee left India not for the purpose of employment but as an Investor on a business visa to Mauritius.

3.2 In the above case, the ITAT considered the issue of whether the term "employment outside India" includes "doing Business" by the taxpayer, came up for consideration before the Hon'ble ***Kerala High Court in CIT v/s O. Abdul Razak, [2011] 337 ITR 350 (Ker.)*** wherein the said Court held that no technical meaning can be assigned to the word "employment" used in the Explanation 1(a) and thus going abroad for the purpose of employment also means going abroad to take up self-employment like business or profession.

Thus, the Hon'ble Kerala High Court has interpreted the term "employment" in wide terms. The Hon'ble Kerala High Court, however, held that the term "employment" should not mean going outside India for purposes such as tourists, medical treatment, studies, or the like. The said Court also relied on the ***Central Board of Direct Taxes issued Circular No. 346, dated 30-6-1982***, which reads as follows:

"7.3 With a view to avoiding hardship in the case of Indian citizens, who are employed or engaged in other avocations outside India, the Finance Act has made the following modifications in the tests of residence in India:

*(i) & (ii) ***

(iii)Where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the test of residence in (c) above will stand modified to that extent in such cases."

3.3 The ITAT further relied on the following rulings:

- K. Sambasiva Rao v/s ITO, [2014] 42 Taxmann.com 115 (Hyd–Trib.)
- ACIT v/s Jyotinder Singh Randhawa, [2014] 46 Taxmann.com 10 (Del–Trib.)
- ACIT v/s Col. Joginder Singh, [2014] 45 Taxmann.com 567 (Del–Trib.).

3.4 The Hon'ble Tribunal concluded that no technical meaning is intended for the word "employment" used in the Explanation. As such, going abroad for the purpose of employment would only mean that the visit and stay abroad should not be for other purposes such as a tourist, or for medical treatment or for studies or the like.

Going abroad for the purpose of employment therefore would mean going abroad to take up employment or any a vocation as referred to in the aforementioned Circular, which takes in self-employment like business or profession.

4.0 Inference

The Tribunal's decision is a relief for many taxpayers going abroad for the purpose of business purpose as it not only provides for clarity on the meaning of the term "employment" but also ensures parity between taxpayers leaving India for the purpose of employment and those leaving India for business purpose.

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This Newsflash summarizes on the Mumbai ITAT Ruling stating that the term “Employment” under Section 6 – Explanation 1(a) of the Income Tax Act, 1961 shall include “Self-Employment”. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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