Shri Paul Xavier Antony samy vs. The ITO, International Taxation 2(1) [TS-138-ITAT-2020(CHNY)] dated 28th February, 2020

Facts:

- The individual assessee stayed in India for 151 days before leaving for employment in Australia, which qualified him to acquire the status of "Non-resident".
- In the return filed, the assessee had taken the benefit of Article 15 of India-Australia DTAA and claimed the salary income received for services rendered in Australia as non-taxable in India.
- However, the salary income was credited in the bank account in India and therefore ITO opined that the same will be liable to be taxed in India in terms of sec 5(2)(a) of the IT Act.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether salary received by assessee in Indian bank account from abroad would be subject to tax in India?

Held:

- ITAT stated that there was no dispute that the assessee was a resident of Australia and non-resident in India during the year under consideration and hence was entitled to the benefit of exemption under Article 15(1) of India-Australia DTAA.

- Further, ITAT also noted that as per provisions of section 9(1)(ii), "salary income would be deemed to accrue or arise in India, only if it is earned in India in respect of services rendered in India".
- Relying on the ruling in Prahlad Vijendra Rao, Avtar Singh Wadhwan and Sumanabandyopadhyay and Anr, ITAT observed that the salary income earned from services rendered in Australia was liable to be taxed only in Australia and not in India.
- Accordingly, ITAT ruled in favour of the assessee.

Sreenivasa Reddy Cheemalamarri vs. Income-tax Officer, International Taxation -1 [TS-158-ITAT-2020(HYD)] dated 05th March, 2020

Facts:

- The assessee, a non-resident individual, employed in Austria, received his salary net of TDS from the employer.
- While filing his return, the assessee claimed double taxation relief u/s 90 of the IT Act and declared Nil income and further claimed refund of TDS.
- However, AO brought to tax the salary income and foreign allowance received by the assessee on the grounds that the same was received in India and therefore was liable to be taxed in India.
- AO also stated that as the assessee was unable to produce Tax Residency Certificate of Austria, details of bank account outside India and other supporting evidences required by the Act, he was not eligible to claim exemption under India-Austria DTAA.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the assessee was eligible to claim the benefit of India-Austria DTAA in absence of Tax Residency certificate in respect of salary and foreign allowances received in India?

Held:

- ITAT observed that the assessee was unable to procure the requisite certificate from Austria for understandable reasons and therefore treated the same as "impossibility of performance".
- ITAT stated that the taxpayer cannot be obligated to do impossible task and be penalized for the same.
- Further, ITAT observed that if the assessee provided sufficient circumstantial evidence in such cases, the requirement of section 90(4) ought to be relaxed.
- ITAT also noted that in the previous year relevant to AY 2014-15, the assessee qualified as non- resident in India and tax resident in Austria.
- Moreover, ITAT also noted that by virtue of DTAA and the IT Act, there is no bar in law for receiving the money in India.
- Relying on the ruling of Sunil Chitranjan Muncif and Prahlad Vijendra Rao, ITAT directed AO to delete the tax on salary income and foreign allowances earned by the assessee outside India.
- Accordingly, ITAT ruled in favour of the assessee.

Union of India & Anr. Vs. U.A.E. Exchange Centre [TS-215-SC-2020] dated 24th April, 2020

Facts:

- The assessee, being a limited company incorporated in UAE, is engaged in offering remittance services for transferring amounts from UAE to various places in India.
- The assessee operates through a Liaison office (LO) in India and performed activities like
  - downloading particulars of remittances through electronic media,
  - printing cheques/drafts drawn on banks in India.
- The entire expenses of LO were met exclusively out of funds received from UAE through normal banking channels and no commission or fees were charged by LO for its activities.
- HC quashed the AAR ruling which held that income accrued in India from the activities conducted by LO.

- Aggrieved, the Revenue filed an appeal with the Supreme Court.

Issue:

- Whether the activities conducted by LO are 'preparatory' or 'auxiliary' in character?
- Whether PE will be attributed under India-UAE DTAA?

Held:

- SC held that activity carried on by the LO in India did not contribute to earning of profits, directly or indirectly, by the assessee in UAE.
- The entire transaction was concluded in UAE and the activities performed by LO in India was only supportive of the transaction carried on in UAE.
- SC held that the activities conducted by LO were merely 'preparatory' or 'auxiliary' in character in terms of Article 5(3)(e) of DTAA.
- SC thus held that the fixed place of business of the non-resident assessee in the form of LO would not qualify within the definition of PE in terms of Articles 5(1) and 5(2) of the DTAA.
- Replying on the SC ruling in Morgan Stanley and Co. Inc and E-funds IT Solution, SC held that the non-resident assessee does not constitute PE under India – UAE DTAA.
- Accordingly, SC rules in favour of the assessee.