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ITAT Chennai Clarifies: Salary Received in India for Services Rendered Abroad Not Taxable – Implications for NRIs Working Remotely for Indian Employers

The assessee, a non-resident Individual based in Malaysia and tax resident of Malaysia, was employed with TCS Malaysia Sdn. Bhd. During the relevant year, a portion of his salary for services rendered in Malaysia was paid in India by TCS India for administrative convenience, on which TDS was deducted and deposited.

In his return of income filed in India, the assessee declared nil income, claiming exemption under Article 16 (Dependent Personal Services) of the India–Malaysia DTAA.

The assessing officer denied the assessee's claim of exemption, holding that income received in India is taxable in India under section 5(2) of the Income-tax Act, 1961 ("the Act"). The CIT(A) upheld this view.

The Chennai Bench of the ITAT allowed the assessee's appeal, holding that the salary received in India cannot be taxed in India, as the services were rendered by the assessee entirely in Malaysia and the income was already taxed in Malaysia.



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In the assessment order, Assessee's claim of exemption under Article 16 of Indo-Malaysia DTAA was denied. The CIT(A) held that part of salary received by the Assessee in India is taxable under section 5(2) of Act.

Key findings:

- a) **Interplay between Section 5(2) and Section 9(1)(ii)-** Section 5(2) begins with the phrase “subject to the provisions of this Act”, therefore, it must be read in harmony with Section 9(1)(ii), which provides that salary is deemed to accrue or arise in India only if services are rendered in India. Accordingly, mere receipt of salary in India does not trigger taxability if the income has accrued abroad.
- b) **Situs of accrual determined by situs of services rendered-** In terms of section 9(1)(ii) of the Act, salary income accrues where services are performed, not where payment is received. Thus, since the employment services were performed in Malaysia, the income did not accrue or arise in India.
- c) **Interpretation under Article 16 of Indo-Malaysia DTAA-** Even as per Article 16 of Indo-Malaysia DTAA, salaries derived by a resident of Malaysia shall be taxable only in Malaysia, unless the employment is exercised in India. In the present case, as the employment was wholly exercised in Malaysia, the income was not taxable in India.



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Conclusion

This ruling reinforces the consistent judicial view that for non-residents, mere receipt of salary in India does not make it taxable, unless the employment services are rendered in India.

In today's era of 'Work From Home' there could be instances of NRIs rendering services from their residence in a foreign country, without visiting India. In such cases, income from salary received in bank account in India, if any, would not be taxable in India inasmuch as, rendering of services in India is the decisive factor for taxation of employment income. In other words, remote work from abroad would not create tax exposure in India.

