



TAX FLASH NEWS

Delhi High Court confirms exclusion of period of wrongful impounding of passport while determining residential status in India

Background

Recently, the Delhi High Court (High Court) in the case of Suresh Nanda¹ (the taxpayer) held that while determining the residential status of an individual under Section 6(1)(a) of the Income-tax Act, 1961 (the Act), any involuntary period of stay can be excluded.

Facts of the case

- The taxpayer was a non-resident for the period 1985 to 2006 and visited India routinely from United Arab Emirates (UAE).
- The taxpayer was subjected to search operations on account of alleged involvement in brokering defence deals and his passport was impounded by government agencies rendering him unable to travel abroad.
- The taxpayer filed his return as a non-resident for the Assessment Year (AY) 2007-08 and 2008-09. However, based on his stay details in India, the Assessing Officer (AO) treated the taxpayer as a resident for the said AY's and accordingly, the AO made additions to the taxpayer's income which was confirmed later by Commissioner of Income-tax (Appeals) [CIT(A)].

- Aggrieved with the order of the CIT(A), an appeal was preferred with the Income-tax Appellate Tribunal (the Tribunal) which ruled in favour of the taxpayer concluding the days of wrongful impounding of passports which constituted a forced stay in India, should be excluded.
- Aggrieved by the decision of the Tribunal, the tax department appealed before the High Court.

Issue before the High Court

Whether the Tribunal has erred in determining the residential status of the taxpayer and making additions to his income in India and whether the days of wrongful impounding of a passport which constituted a forced stay in India should be excluded or not.

High Court's ruling

- The High Court noted that the strict interpretation of Section 6(1)(a) of the Act would render the taxpayer a resident but the same would be unfair in consonance with the intention of the legislature.
- The High Court also opined that the taxpayer was compelled by external circumstances beyond his control to stay in India.

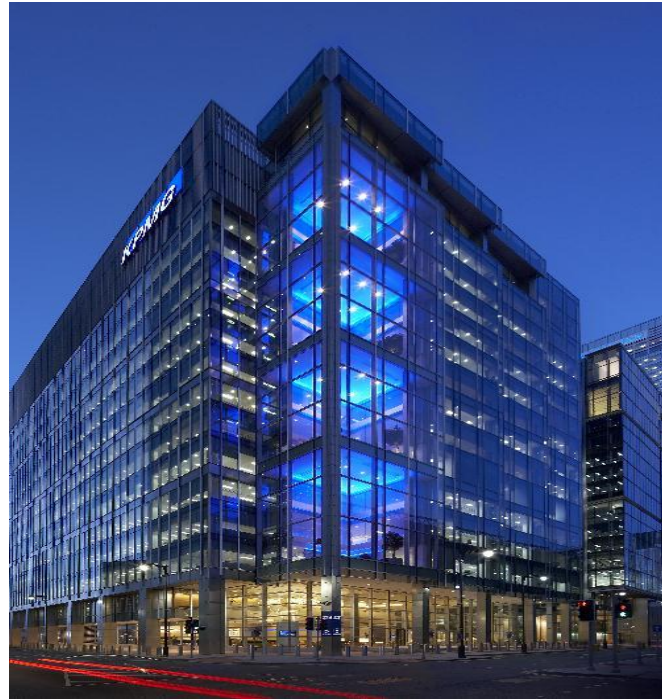
¹ CIT v. Suresh Nanda [2015] 57 taxmann.com 448 (Del)

- The High Court further observed that the option to be in India was a matter of the taxpayer's discretion and that his presence in India against his will must not be counted adverse to his chosen course or interest.
- The High Court dismissed the tax department's contention and ruled in favor of the taxpayer thereby, holding that involuntary stay during the period that followed till the passport was restored under the court's directive must be excluded for calculating the period under Section 6(1)(a) of the Act.
- However, the High Court also pronounced that the observation in this case cannot be treated as a thumb rule to the effect that each period of involuntary stay must be invariably excluded from the computation for the purpose of Section 6(1) of the Act and each case must be examined on its own merits in the light of facts and circumstances leading to 'involuntary' stay, if any, in India.

Our comments

The Delhi High Court has confirmed in the instant case that involuntary stay in India during the period that followed till the passport was restored must be excluded for calculating the period under Section 6(1)(a) of the Act.

Though, the High Court pointed out that this case cannot be treated as a thumb rule, however, this ruling provides relief to taxpayers who are unintentionally required to extend their period of stay in India, thereby, impacting their residential status and taxability of incomes in India.



Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bengaluru 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010