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DIRECT TAX ALERT

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Bangalore ITAT restricts '182-day threshold relief' only to Non-Resident Indians settled overseas

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Bangalore ITAT restricts '182-day threshold relief' only to Non-Resident Indians settled overseas

In an important ruling on determination of tax residential status of individual, the Bangalore ITAT[1] held that the relaxation under section 6 of the Income-tax Act, 1961 ('the Act'), extending the India-stay threshold from 60 days to 182 days, is applicable only to individuals who were settled as 'non-residents' in the preceding year(s), and rejected the taxpayer's claim of non-resident status under the India–Singapore DTAA tie-breaker tests.

Background

- Mr. Binny Bansal ("the taxpayer") is an Indian citizen and a co-founder of Flipkart, an online e-commerce platform, and had been a tax resident of India since Assessment Year ("AY") 2011-12.

- During FY 2018-19, the taxpayer resigned from his India-based leadership role at Flipkart and took up overseas employment in Singapore with an entity promoted by him. In the subsequent year (FY 2019-20), he sold his shareholding in Flipkart Singapore generating capital gains of ~INR 10.74 billion.

- During FY 2019-20, the taxpayer visited India multiple times and stayed for 141 days. His aggregate stay in preceding four years was 1,237 days. The key events in chronological order are set out below.

Date	Key Events
13 Nov 2018	Resigned from Flipkart Group
14 Jan 2019	Incorporated X to 10X Technologies Pte Ltd, Singapore ('SGCo1')
11 Feb 2019	In-principle approval from Singapore government for issuance of employment pass for employment with SGCo1
17 Feb 2019	Entered into employment agreement with SGCo1, Singapore and appointed as CEO
21 Feb 2019	Left India for overseas employment
March 2019	Wife and children relocated to Singapore
Apr-Aug 2019	Frequent travel to India for business and personal purposes
20 Aug 2019	Entered employment agreement with Three State Capital Advisors PTE Ltd, Singapore ('SGCo2')
28 Aug 2019	Sold 1,02,355 shares of Flipkart Singapore in two tranches
1 Sep 2019	Visited India while still employed with SGCo1
4 Sep 2019	In-principle approval from Singapore government for issuance of employment pass for employment with SGCo2
4 Sep 2019	Resigned from SGCo1 while in India (with effect from 1 Sep 2019)
10 Sep 2019	Departed from India to Singapore
12 Sep 2019	Commenced employment with SGCo2
27 Nov 2019	Sold 5,39,912 shares of Flipkart Singapore in a single tranche

- During FY 2018-19, the taxpayer qualified as 'resident' of India. For FY 2019-20, the taxpayer filed his return of income in India claiming 'non-resident' status and sought exemption from capital gains tax on sale of shares of Flipkart Singapore under Article 13(5) of the India-Singapore DTAA.

Assessment Proceedings - FY 2019-20

- The Assessing Officer ('AO') held that the extended 182-day threshold under Explanation 1(b) to Section 6(1)(c) of the Act is applicable only to individuals who were non-residents in earlier years and visiting India during the relevant year.

[1] *Binny Bansal v. DCIT - IT(IT) A No.571/Bang/2023 dated 9 January 2026*

- Since the taxpayer was a resident of India in the immediately preceding year (FY 2018–19), the benefit of the extended threshold was held to be unavailable, and the taxpayer was assessed as a 'resident' under Section 6(1)(c) of the Act for FY 2019-20, upon satisfaction of statutory basic residency tests.

- As the taxpayer was holding Tax Residency Certificate ('TRC') issued by Singapore tax authority, the Revenue applied tie-breaker tests as per Article 4(2) of the India-Singapore DTAA and, finding the taxpayer's personal and economic nexus predominantly in India, concluded Indian residency.

- Consequently, the taxpayer's global income including capital gains from the sale of Flipkart Singapore shares were held to be taxable in India. The Dispute Resolution Panel upheld the above view. Aggrieved by this, the taxpayer filed an appeal before the Bangalore ITAT.

Issue under consideration:

- Whether an individual who leaves India for employment but was a resident in the immediately preceding financial year can be regarded as a 'person being outside India' and thereby avail the extended 182-day threshold (instead of 60 days) under Explanation 1(a) / (b) to Section 6(1)(c) of the Act?

Taxpayer's Contention:

- An Individual qualifies as a "resident" of India if any one of the conditions prescribed under Section 6 of the Act is satisfied:

  Condition 1: Section 6(1)(a)
  - Stay in India of 182 days or more during the relevant financial year

  OR

  Condition 2: Section 6(1)(c)

  The following **twin** conditions to be satisfied
  - Stay in India of 60 (refer note below) days or more in the financial year and;
  - Stay in India of 365 days or more in the preceding 4 financial years

Note: In the following cases, 60 days is relaxed with 182 days stay in India:

(i) **Explanation 1(a)** - In case of an Indian citizen leaving India for the purpose of employment

(ii) **Explanation 1(b)**[2] - In case of an Indian citizen / person of Indian origin who, being outside India, comes on a visit to India

Claim of 'Being Outside India' and 182-day benefit

- The taxpayer argued that he was eligible for the extended 182-day relaxation (instead of 60 days) as per Explanation 1(b) read with section 6(1)(c) since:
  - He is an Indian citizen;
  - He left India on 21 February 2019 (FY 2018–19) to relocate and take up overseas employment with SGCo1 and therefore, qualified as a person *"being outside India"*; and
  - He thereafter *"visited"* India for 141 days during FY 2019-20, which was below 182-day threshold, thereby qualifying him as a non-resident for that year.

  Relying on the legislative history of section 6, including Memorandum to the Finance Bills (1978 and 1982) and Budget speech, the taxpayer argued that the expression *"being outside India"* was intended to provide relief to Indians employed or engaged in vocations abroad, enabling them to visit India without triggering tax residency.

- It was further argued that the Revenue cannot read into or expand the expression "*being outside India*" to impose an additional condition of being a "non-resident" for the preceding year(s). Such an interpretation would create a permanent disadvantage whereby the 60 days will be applicable in the succeeding years.

Alternate claim - Left India for employment in FY 2019-20 and 182-day benefit

- Alternatively, the taxpayer argued that he was also eligible for extended 182-day relaxation (instead of 60 days) under Explanation 1(a) to Section 6(1)(c) since:
  - He resigned from SGCo1 on 5 September 2019 while in India;
  - He subsequently left India on 10 September 2019 to take up fresh employment with another Singapore entity, SGCo2 squarely qualifying the condition of 'leaving India for the purpose of employment' under

[2] *Substitution of 120 days instead of 60 days for individuals with India-sourced income exceeding INR 1.5 million has been subsequently introduced by the Finance Act, 2020.*

Explanation 1(a); and

- His stay in India during FY 2019-20 was 141 days, which is below the 182-day threshold, thereby qualifying him as a non-resident for that year.

Tie-breaker test - Singapore resident

- The taxpayer also claimed residency in Singapore under the tie-breaker tests under Article 4(2) of India-Singapore DTAA, contending that:
  - Permanent Home - Residential property in India was uninhabitable and a service apartment in Singapore was his only permanent home.
  - Centre of Vital Interests / Habitual Abode - the taxpayer and his wife resided and worked in Singapore and children attended school there, establishing Singapore as his centre of vital interests and habitual abode.

Invalidity of Assessment Proceedings

- The taxpayer challenged the validity of the assessment proceedings on the following grounds:
  - Notice under section 143(2) issued by NFAC3, which lacked jurisdiction as the case fell within the scope of International Tax charge, rendering the assessment order invalid.
  - The AO alleged the taxpayer as a 'resident,' who is not an eligible assessee under Section 144C(15); consequently, the draft assessment order was invalid, and the subsequent final order is barred by limitation.

Revenue's Contention:

Condition of 'Being Outside India' not satisfied

- The Revenue contended that the taxpayer did not qualify as a person "being outside India", under Explanation 1(b) to Section 6(1)(c), and was therefore not entitled to avail the extended 182-day threshold, on the following grounds:
  - The taxpayer had stayed in India for more than 182 days in each of the nine years preceding FY 2019-20, evidencing a continuous and sustained presence in India.
  - Explanation 1(b), as clarified in CBDT Circular Nos. 554 and 684, is intended to safeguard NRIs from inadvertently becoming tax residents. It does not extend to individuals who were residents in the immediately preceding year.
  - The phrase "being outside India" requires more than temporary physical absence; it mandates that, as on the first day of the relevant year, the taxpayer had a settled, permanent, and independent base abroad. Since the taxpayer left India only in February 2019 and visited India multiple times in FY 2019-20 aggregating to 141 days, maintaining substantial business, personal, and economic nexus within India, and therefore does not fall within the scope of the relaxation under Explanation 1(b).
  - Subsequent arrangements, such as overseas tenancy or children's schooling, cannot retroactively establish permanency or a settled overseas base at the start of the relevant financial year.

Alternate claim - condition of "leaving India for the purpose of employment" not satisfied

- The taxpayer cannot simultaneously assert that (i) he was outside India in FY 2018-19 (to claim benefit under explanation 1(b)) and that (ii) he left India in September 2019 for fresh employment for the purpose of explanation 1(a); these two positions are mutually inconsistent.

Colourable device to obtain undue tax benefit

- The employment arrangements were structured to portray the taxpayer as a non-resident and constituted a colourable device to avoid Indian capital gains tax since:
  - the taxpayer was the founder, promoter and substantial shareholder of both the Singapore-based entities registered on the same address, with continuing predominant linkages to India.
  - The internal role changes from SGCo1 to SGCo2 cannot be treated as independent employment.

Tie breaker test - Indian resident

- On tie-breaker tests under Article 4(2) of India-Singapore DTAA, Revenue contended that the taxpayer's permanent home, centre of vital interests, and habitual abode were in India, based on following:
  - Ownership of high-value residential properties and substantial investments in India;
  - SGCo1 deriving significant value from Indian

[3] *National Faceless Assessment Centre*

operations;

- Significant Indian presence of 141-day stay in India during FY 2019-20 indicates a transitional stay in Singapore;
- Family relocation and other personal ties occurring only in subsequent years and hence not relevant for determination of residency for year under consideration.

Assessment proceedings validly conducted

- Validity of section 143(2) notices issued by the NFAC stands settled by the binding ruling of jurisdictional Karnataka High Court[4].

- Section 144C expressly requires AO to issue draft assessment order where the return of income was filed as 'non-resident'.

Bangalore ITAT's ruling:

On applicability of Explanation 1(b) to Section 6(1)(c)

- The ITAT, relying on judicial precedents[5], held that the expression *"being outside India"* is to be interpreted as applicable only to 'non-residents' residing abroad, and accordingly, upheld denial of relaxation of extended 182 days period under Explanation 1(b) to section 6(1)(c).

On applicability of Explanation 1(a) to Section 6(1)(c)

- Explanation 1(a) applies only in the year of departure. The taxpayer left India for the purpose of employment in FY 2018-19. Hence, the explanation 1(a) does not apply in the succeeding year 2019-20.

Tie-breaker test - Indian resident

- **Permanent home** - Availability of accommodation existed in both India and Singapore, and no distinction could be drawn merely on the basis that the taxpayer owned property in India while residing in rented accommodation in Singapore.
- **Centre of vital interests** - It must be examined for the entire year and not merely the period after migration. Based on taxpayer's disclosures, substantial economic interests such as major investments, capital commitments, loans, and immovable properties were located in India, with no meaningful investments in Singapore. Accordingly, the ITAT concluded that taxpayer's centre of vital interests remained closer to India.
- **Habitual Abode** – the taxpayer was held to have a habitual abode in both India and Singapore, having stayed 141 days and maintained a residential house in India, while also working in Singapore for part of the year.
- **Nationality** - It is undisputed that the taxpayer is an Indian national.
- Considering the overall factors, the ITAT held that the taxpayer is a tax resident of India even under the India-Singapore DTAA.

Assessment held valid

- Following the decision of the Karnataka High Court, the ITAT held that the notice issued under Section 143(2) by NFAC is valid and legally enforceable.

- Further, the requirement to test 'eligible assessee' status under section 144C arises *"in the first instance"*, which refers to the residential status as claimed by the assessee in the return of income. Accordingly, where non-resident status is claimed in the return, the AO is mandatorily required to issue a draft assessment order, and the draft order so issued is valid.

Contributors

Ashish Agrawal (Partner)

Anuj Shah (Principal)

Parth A. Shah (Senior Associate)

Jenil Doshi (Senior Associate)

For any queries in relation to this tax alert, please feel free to reach out.

[4] *Adarsh Developers Vs. DCIT (Writ Petition No. 1109/2023)*
[5] *PCIT v. Binod Kumar Singh [2019] 264 Taxman 335 (Bombay HC); ADIT v. Sudhir Choudrie [2017] 55 ITR(T) 681 (Delhi ITAT)*

DHRUVA INSIGHT

- This ruling materially narrows the scope of the 182-day relaxation under Section 6 by holding that the benefit of Explanation 1(b) is available only to individuals who were non-residents in the earlier year(s), significantly upending the historical interpretation of the provision. Though the ruling is based on a very peculiar fact pattern, this interpretation is likely to create legal and practical challenges especially in cases involving mid-year overseas employment transitions following prolonged Indian residence.

- On DTAA tie-breaker tests, the ITAT placed decisive weight on economic and financial linkages such as Indian investments, capital commitments and immovable assets over physical relocation or overseas family settlement in determining the centre of vital interests. This has particular relevance for founders / promoters and high-net-worth individuals with concentrated Indian wealth.

- The ruling also reflects a substance-based scrutiny of employment within promoter-controlled overseas entities, indicating heightened examination where migration coincides with significant asset liquidity events.

- Practical implications for globally mobile promoters / executives:
  - Non-resident status should not be assumed solely based on physical relocation or overseas employment.
  - The first year following migration is particularly vulnerable, especially where Indian residence existed in the immediately preceding year.
  - Careful planning of the exit year, employment commencement, asset holding structure and India visits is very critical.
  - Cases where change of residential status coincides with sale of shares and the taxpayer claims non-taxability in India consequent to such change, would be subject to extremely close scrutiny of factual and legal aspects

www.dhruvaadvisors.com

Follow us on:

ADDRESSES

Mumbai
Dhruva Advisors India Pvt. Ltd.
1101, One World Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai – 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad
Dhruva Advisors India Pvt. Ltd.
402, 4th Floor, Venus Atlantis, 100 Feet Road, Prahlad Nagar,
Ahmedabad – 380 015
Tel: +91 79 6134 3434

Bengaluru
Dhruva Advisors India Pvt. Ltd.
67/1B, Lavelle Road,
4th Cross, Bengaluru,
Karnataka – 560001
Tel: +91 90510 48715

Delhi / NCR
Dhruva Advisors India Pvt. Ltd.
305-307, Emaar Capital Tower-1,
MG Road, Sector 26, Gurugram
Haryana – 122 002
Tel: +91 124 668 7000

New Delhi
Dhruva Advisors India Pvt. Ltd.
1007-1008, 10th Floor, Kailash Building, KG Marg, Connaught Place,
New Delhi – 110001
Tel: +91 11 4471 9513

GIFT City
Dhruva Advisor IFSC LLP
510, 5th Floor, Pragya II,
Zone-1, GIFT SEZ, GIFT City,
Gandhinagar – 382050, Gujarat.
Tel: +91 7878577277

Pune
Dhruva Advisors India Pvt. Ltd.
406, 4th Floor, Godrej Millennium,
Koregaon Park,
Pune - 411001,
Tel: +91 20 6730 1000

Kolkata
Dhruva Advisors India Pvt. Ltd.
4th Floor, Camac Square,
Unit No. 403 & 404B,
Camac Street,
Kolkata - 700016, West Bengal
Tel: +91-33-66371000

Singapore
Dhruva Advisors Pte. Ltd.
#16-04, 20 Collyer Quay,
Singapore – 049 319
Tel: +65 9144 6415

Abu Dhabi
Dhruva Consultants
1905 Addax Tower,
City of Lights, Al Reem Island,
Abu Dhabi, UAE
Tel: +971 26780054

Dubai
Dhruva Consultants
Emaar Square Building 4,
2nd Floor, Office 207, Downtown,
Dubai, UAE
Tel: +971 4 240 8477

Saudi Arabia
Dhruva Consultants
308, 7775 King Fahd Rd,
Al Olaya, 2970,
Riyadh 12212, Saudi Arabia

KEY CONTACTS

Dinesh Kanabar
Chairman & CEO
dinesh.kanabar@dhruvaadvisors.com

Punit Shah (Mumbai)
Partner
punit.shah@dhruvaadvisors.com

Mehul Bheda (Ahmedabad/ GIFT City)
Partner
mehul.bheda@dhruvaadvisors.com

Aditya Hans (Bengaluru/ Kolkata)
Partner
aditya.hans@dhruvaadvisors.com

Vaibhav Gupta (Delhi/ NCR)
Partner
vaibhav.gupta@dhruvaadvisors.com

Sandeep Bhalla (Pune)
Partner
sandeep.bhalla@dhruvaadvisors.com

Nimish Goel (Middle East)
Leader, Middle East
nimish.goel@dhruvaadvisors.com

Dilpreet Singh Obhan (Singapore)
Partner
dilpreet.singh@dhruvaadvisors.com