RESIDENTIAL STATUS OF INDIVIDUALS – INTERPLAY WITH TAX TREATY

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INTRODUCTION

This article is the second part of a series of articles on Income-tax and FEMA issues related to NRIs. The first article in the series focused on various issues related to the residence of individuals under the Income-tax Act, 1961 ('the Act'). In this article, the author seeks to analyse some of the key issues related to the determination of the residential status of an individual under a tax treaty ('DTAA'). Some of the issues covered in this article would be an interplay of tax residency under the tax treaty with the Act, the applicability of the treaty conditions to not ordinarily residents, tie breaker rule under tax treaty in case of dual residency, the role of tax residency certificate and split residency.

BACKGROUND

Article 1 of a DTAA typically provides the scope to whom it applies. For example, Article 1 of the India — Singapore DTAA provides as follows,

"This Agreement shall apply to persons who are residents of one or both of the Contracting States."

Therefore, in order to apply the provisions of the DTAA, one needs to be a resident of at least one of the Contracting States which are party to the relevant DTAA. If one does not satisfy Article 1, i.e., if one is not a resident of either of the Contracting States to DTAA, the provisions of the DTAA do not apply[1]. Therefore, the Article on Residential status is considered to be a gateway to a DTAA. Usually, Article 4 of the DTAA deals with residential status. While the broad structure and language of Article 4 in most DTAAs is similar, there are a few nuances in some DTAAs and therefore, it is advisable to check the language of the respective DTAA for determining the residential status. For example, the definition of 'resident' for the purposes of the DTAA in the India — Greece DTAA and India — Libya DTAA is not provided as a separate article but is a part of Article 2 dealing with the definition of various terms.

1 There are certain exceptions to this rule — application of the article on Mutual Agreement Procedure, application of the nationality Non-Discrimination article and application of non-territorial taxation of dividends.

DTAAs are agreements between Contracting States or jurisdictions, distributing the taxing rights amongst themselves. The distributive articles in the DTAA provide the rules for distributing the income between the country where the income is earned or paid (considered as source country) and the country of residence. Therefore, it is important to analyse, which country is the country of source and which country is the country of residence before one analyses the other articles of the DTAA.

In the subsequent paragraphs, the various issues of the article dealing with treaty residence have been discussed.

Generally, Article 4 of the DTAA, dealing with residence, contains 3 paragraphs — the first para deals with the specific definition of the term 'resident' for the purposes of the DTAA, the second para deals with the tie-breaker rule in case an individual is considered as resident of both the Contracting States in a particular DTAA and the third para deals with the tie-breaker rule in case a person, other than an individual is considered as resident of both the Contracting States in a particular DTAA.

ARTICLE 4(1) — INTERPLAY WITH DOMESTIC TAX LAW

Article 4(1) of the DTAA generally provides the rule for determining the residential status of a person. Article 4(1) of the OECD Model Convention 2017 provides as follows,

"For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein."

The UN Model Convention 2021 has similar language, except that it includes a person who is liable to tax in a

Contracting State by virtue of its place of incorporation as well. Similarly, the US Model Convention 2016 also includes a person who is liable to tax in a Contracting State on account of citizenship.

Language of Article 4(1) of India's DTAAs

In respect of the major DTAAs entered into by India, most of the DTAAs follow the OECD Model Convention[2], whereas some of the DTAAs[3] entered into by India only refer to the person being a resident under the respective domestic law without giving reference to the reason for such residence such as domicile, etc.

With the exception of the DTAAs with the UAE and Kuwait, Article 4(1) of all the major DTAAs entered into by India refers to the definition of residence under the domestic tax law to determine the residential status under the relevant DTAA. In other words, if one is considered a resident of a particular jurisdiction under the domestic tax law of that jurisdiction, such a person would also be considered as a resident of that jurisdiction for the purposes of the tax treaty.

As the UAE and Kuwait did not impose tax on individuals, the DTAAs entered into by India with these jurisdictions provided for a number of days stay in the respective jurisdiction for an individual to be considered as a resident of that jurisdiction for the purposes of the DTAA. For example, Article 4(1) of the India — UAE DTAA provides,

"For the purposes of this Agreement, the term 'resident of a Contracting State' means:

(a) In the case of India: any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in India in respect only of income from sources in India.

(b) In the case of the United Arab Emirates: an individual who is present in the UAE for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned, and a company which is incorporated in the UAE and which is managed and controlled wholly in UAE."

2 India's DTAAs with Mauritius, the Netherlands, France, Germany, UK, UAE (in respect of Indian resident), Spain, South Africa, Japan, Portugal, Brazil and Canada.

3 India's DTAAs with Singapore and Australia.

Recently, the UAE introduced criteria for individuals to be considered as tax residents of the UAE. As per Cabinet Decision No. 85 of 2022 with Ministerial Decision No. 27 of 2023, individuals would be considered as tax residents of the UAE if they meet any one of the following conditions:

(a) The principal place of residence as well as the centre of financial and personal interests is situated in the UAE; or

(b) The individual was physically present in the UAE for a period of 183 days or more during a consecutive 12-month period; or

(c) The individual was physically present in the UAE for a period of 90 days or more in a consecutive 12-month period and the individual is a UAE national, UAE resident, or citizen of a GCC country and has a permanent place of residence in the UAE or business in the UAE.

While the UAE does not have a personal income tax, the compliance of above conditions is necessary for obtaining a tax residency certificate. As the India — UAE DTAA does not give reference to the domestic tax law of the UAE for determining treaty residence in the case of individuals and provides an objective number of days stay in the UAE criteria, there could be a scenario wherein a person is resident of the UAE under the domestic law but does not satisfy the test under the DTAA.

For example, Mr. A, a UAE national with a permanent home in the UAE, is in the UAE for 100 days during a particular year. As he satisfies the 90-day period specified in the Cabinet Decision, he would be considered a tax resident of the UAE under UAE laws. However, such a person may not be considered as a resident of the UAE for the purposes of the tax treaty as he is in the UAE for less than 183 days, leading to a peculiar mismatch.

Therefore, it is extremely important for one to read the exact language of the article while determining the tax residence of that DTAA.

Liable to tax

Article 4(1) of the DTAA treats a person as a treaty resident if he is **'liable to tax'** as a resident under the respective domestic tax law. In this regard, there has been a significant controversy in respect of the interpretation of the term **'liable to tax'**. There have been a plethora of decisions on this issue, especially in the context of the India — UAE DTAA. The question before the courts was

whether a person who is a resident of the UAE, which did not have a tax law, was liable to tax in the UAE as a resident and, therefore, eligible for the benefits of the India — UAE DTAA.

The AAR in the case of ***Cyril Eugene Periera vs. CIT (1999) 154 CTR 281***, held that as the taxpayer has no liability to pay tax in the UAE, he cannot be considered to be liable to tax in the UAE and, therefore, not eligible for the benefits of the India — UAE DTAA. However, the AAR in the cases of ***Mohsinally Alimohammed Rafik, In re (1995) 213 ITR 317*** and ***Abdul Razak A. Meman, In re (2005) 276 ITR 306***, has distinguished between 'subject to tax' and 'liable to tax' and has held that so long as there exists, sufficient nexus between the taxpayer and the jurisdiction, and so long as the jurisdiction has the right to tax such taxpayer (even though it may not choose to do so), such taxpayer would be considered as a resident of that jurisdiction. This view has also been upheld by the Supreme Court in the case of ***Union of India vs. Azadi Bachao Andolan (2003) 263 ITR 706*** and interpreted specifically by the Mumbai ITAT in the case of ***ADIT vs. Green Emirate Shipping & Travels (2006) 286 ITR 60***. It may be noted that the distinction between liable to tax and subject to tax is also provided by the OECD in its Model Commentary to the Convention.

While this issue was somewhat settled, the controversy has once again reignited by the introduction of the meaning of 'liable to tax' given by the Finance Act 2020. Section 2(29A) of the Act, as introduced by the Finance Act 2020, provides as follows,

""liable to tax", in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country;"

Therefore, the Act now provides that a person is liable to tax if there is tax liability on such a person even though such person may not necessarily be subject to tax, on account of an exemption in that jurisdiction. One may argue that the definition under the Act should have no consequence to a term under the DTAA. However, Article 3(2) of the OECD Model (as is present in most Indian DTAAs) provides that unless the context otherwise requires, a term not defined in the DTAA can be interpreted under the domestic tax law of the jurisdiction. Further, Explanation 4 to section 90 of the Act provides as follows:

"Explanation 4.—For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government."

In other words, unless the context otherwise requires, the meaning of a term under the Act may be used to interpret the meaning of the same term under the DTAA as well if such term is not already defined in the DTAA. Now, the question of whether, in a particular case, what would be the context and whether the context in the DTAA requires another meaning than as provided in the Act is a topic in itself and would need to be examined by the courts.

The main issue to be addressed is whether an individual resident of the UAE would now be considered as a resident of UAE under the India — UAE DTAA. In this regard, it is important to note that the decisions mentioned above are in respect of the DTAA before it was amended in 2007. Prior to its modification, Article 4(1) of the DTAA defined the term 'resident' as one who was liable to tax under domestic law by reason of residence, domicile, etc. However, the present DTAA, as discussed above, refers to objective criteria of number of days stay in the UAE and therefore, this controversy may not be relevant to the India — UAE DTAA.

This controversy, however, may be relevant for the interpretation of the DTAAs wherein there is no tax on individuals, and the residence article in the DTAA gives reference to the domestic tax law.

TAX RESIDENCY CERTIFICATE ('TRC')

The question arises is whether a TRC would be sufficient for an individual to claim the benefit of the tax treaty. There are certain judicial precedents, especially in the context of the India — Mauritius DTAA, by virtue of the CBDT Circular No. 789 dated 13th April, 2000, that TRC is sufficient to claim the benefit of the DTAA. In the view of the author, while a TRC issued by the tax authorities of a particular jurisdiction would be sufficient to claim that the person is a resident, the taxpayer may still need to satisfy other tests, including anti-avoidance rules in the Act and DTAA to claim the benefit of the DTAA along with the TRC. Section 90(4) of the Act, which requires TRC to be obtained to provide the benefit of the DTAA, simply

states that a person is not entitled to treaty benefit in the absence of a TRC, and it does not state that TRC is the only condition for obtaining treaty benefit.

Further, one may also need to evaluate the TRC as well as the specific language of Article 4(1) in the relevant DTAA before concluding that TRC is sufficient to claim treaty residence. For example, if the UAE authorities provide a TRC stating that the person is a taxpayer under the domestic provisions of the UAE, such TRC may not even satisfy the treaty residence conditions, depending on the facts and circumstances.

The Cabinet Decision, as discussed above, recognises this particular issue and states that if the relevant DTAA between UAE and a particular jurisdiction specifies criteria for the determination of treaty residency, the TRC would need to be issued to the individual considering such criteria and not the general criteria provided in the UAE domestic law.

Now, another question that arises is whether the benefit of the DTAA (assuming that other measures for obtaining the benefit are satisfied) can be granted even in the absence of a TRC. In this case, one may refer to the Ahmedabad Tribunal in the case of ***Skaps Industries India (P.) Ltd. vs. ITO [2018] 94 taxmann.com 448***, wherein it was held as follows,

*"**9.** Whatever may have been the intention of the lawmakers and whatever the words employed in Section 90(4) may prima facie suggest, the ground reality is that as the things stand now, this provision cannot be construed as a limitation to the superiority of treaty over the domestic law. It can only be pressed into service as a provision beneficial to the assessee. The manner in which it can be construed as a beneficial provision to the assessee is that once this provision is complied with in the sense that the assessee furnishes the tax residency certificate in the prescribed format, the Assessing Officer is denuded of the powers to requisition further details in support of the claim of the assessee for the related treaty benefits. …..*

***10**….. Our research did not indicate any judicial precedent which has approved the interpretation in the manner sought to be canvassed before us i.e. Section 90(4) being treated as a limitation to the treaty superiority contemplated under section 90(2), and that issue is an open issue as on now. In the light of this position, and in the light of our foregoing analysis which leads us to the conclusion that Section 90(4), in the absence of a non-obstante clause, cannot be read as a limitation to the treaty superiority under Section 90(2), we are of the considered view that an eligible assessee cannot be declined the treaty protection under section 90(2) on the ground that the said assessee has not been able to furnish a Tax Residency Certificate in the prescribed form."*

Therefore, the ITAT held that section 90(4) of the Act does not override the DTAA. In a recent decision, the Hyderabad Tribunal in the case of ***Sreenivasa Reddy Cheemalamarri vs. ITO [2020] TS-158-ITAT-2020*** has also followed the ruling of the Ahmedabad Tribunal of Skaps (supra). A similar view has also been taken by the Hyderabad ITAT in the cases of ***Vamsee Krishna Kundurthi vs. ITO (2021) 190 ITD 68*** and ***Ranjit Kumar Vuppu vs. ITO (2021) 190 ITD 455***.

In the case of individuals, the treaty residence for most of the major DTAAs is linked to residential status under domestic tax law and the number of days stay is a condition for determining the residential status under most domestic tax laws. Therefore, one may be able to substantiate on the basis of documents such as a passport which provide the number of days stay in a particular jurisdiction. However, a Chartered Accountant issuing a certificate under Form 15CB may not be able to take such a position as the form specifically asks one to state whether TRC has been obtained.

SECOND SENTENCE OF ARTICLE 4(1)

The second sentence of Article 4(1) of the OECD/ UN Model Convention excludes a person, as being a resident of a particular jurisdiction under the DTAA, who is liable to tax only in respect of income from sources in that jurisdiction. This sentence is found in only a few major DTAAs entered into by India[4].

The objective of this sentence is to exclude those taxpayers as being treaty residents of a particular jurisdiction, wherein they are not subject to comprehensive taxation. The first question which arises is whether the second sentence would apply in the case of a person who is a resident of a country, which follows a territorial basis of taxation, i.e. income is taxed in that country only when received in or remitted to that country. For example, Mr. A is a tax resident of State A, which follows a territorial basis of taxation, like Singapore [although India — Singapore DTAA does not contain the second sentence

4 India's DTAAs with Germany, UK, USA, UAE, Australia, Spain, South Africa and Portugal.

of Article 4(1)]. If India — State A DTAA contains the second sentence in Article 4(1), the question that arises is whether Mr. A would be considered as a resident of State A for the purposes of the DTAA. In this regard, in the view of the author, the objective of the second sentence is to exclude individuals who are not subject to comprehensive tax liability and not to exclude countries where the tax system is territorial. In other words, so long as Mr. A is subject to comprehensive taxation in State A, the second sentence should not apply and Mr. A should be considered as a treaty resident of State A for the DTAA. The OECD Commentary also states the same view[5].

An interesting decision on this would be the recent Hyderabad ITAT decision in the case of ***Jenendra Kumar Jain vs. ITO (2023) 147 taxmmann.com 320***. In the said case, the taxpayer, who was transferred from India to the USA during the year, opted to be taxed as a 'resident alien' under USA domestic tax law, i.e. only income from sources in the USA would be taxable in the USA. In this regard, the ITAT held that as the taxpayer was taxed in the USA, not on the basis of residence but on the basis of source, such taxpayer would not be considered as a resident of the USA for the purposes of the India — USA DTAA.

The next question which arises is whether the second sentence would apply in the case of an individual who is considered as a not ordinarily resident ('RNOR') under section 6(6) of the Act. For example, whether a person would be considered as a resident of India under the DTAA and thus can access the Indian DTAAs when such a person is considered as a deemed resident but RNOR of India under section 6(1A) of the Act. In the view of the author, the second sentence does not apply in the case of an RNOR as the RNOR is not liable to tax only in respect of sources in India. Such a person may be taxable on worldwide income, if such income is, say, earned through a profession which is set up in India.

Another interesting issue arises is whether the second sentence applies in the case of third-country DTAAs after the application of a tie-breaker rule (explained in detail in the subsequent paras). Let us take the example of Mr. A, who is a resident of India and the UK under the respective domestic tax laws and is considered as a resident of the UK under the tie-breaker rule in Article 4(2) of the India — UK DTAA. In case Mr. A earns income from a third country, say Australia, the question arises is whether the India — Australia DTAA can be applied. In this regard, para 8.2 of the OECD Model Commentary on Article 4, 2017, provides as follows,

"…It also excludes companies and other persons who are not subject to comprehensive liability to tax in a Contracting State because these persons, whilst being residents of that State under that State's tax law, are considered to be residents of another State pursuant to a treaty between these two States…."

Therefore, the OECD suggests that in the above example, as India would not be able to tax the entire income (being the loser State in the tie-breaker test under the India — UK DTAA), Mr. A would not be subject to comprehensive taxation in India and therefore, one cannot apply the India — Australia DTAA or any other Indian DTAAs which contain the second sentence in Article 4(1).

However, this view of the OECD has been discarded by various experts. In the view of the author as well, the above view may not be the correct view as the residential status in the DTAA is only 'for the purposes of the Convention' and therefore, cannot be applied for any other purpose. As also explained in the first part of this series, the tie-breaker test has no relevance to residential status under the Act, and a person resident under the Act will continue being a resident under the Act even if such person is considered as a resident of another jurisdiction under a DTAA. In the above example, Mr. A continues to be a resident of India under the Act[6] as well and, therefore, should be eligible to access Indian DTAAs.

ARTICLE 4(2) – TIE-BREAKER TEST

If an individual is a resident of both the Contracting States to a DTAA under the respective domestic tax laws (and therefore, under Article 4(1) of the DTAA), one would need to determine treaty residency by applying the tie-breaker rule. Article 4(2) provides in the case of a dual resident; the treaty residency would be determined as follows:

A. The jurisdiction in which the taxpayer has a permanent home available to him ('permanent home test'),

B. If he has a permanent home in both jurisdictions, the jurisdiction with which his personal and economic relations are closer (centre of vital interests) ('centre of vital interests test'),

5 Refer Para 8.3 of the OECD Model Commentary on Article 4, 2017.

6 In contrast with the domestic tax law of Canada and UK wherein domestic residency is amended if under the tie-breaker rule in a DTAA, the taxpayer is considered as resident of another jurisdiction.

C. If his centre of vital interest cannot be determined, or if he does not have a permanent home in either jurisdiction, the jurisdiction in which he has a habitual abode ('habitual abode test'),

D. If he has a habitual abode in both or neither jurisdiction, the jurisdiction of which he is a national ('nationality test'),

E. If he is a national of both or neither jurisdiction, the jurisdiction as mutually agreed by the competent authorities of both jurisdictions.

The language of Article 4(2) is clear regarding the order to be followed while determining the treaty residency in the case of dual residents. It is important to note that some of the conditions are subjective in nature and are used to determine which jurisdiction has a closer tie to the taxpayer. Therefore, one needs to consider all the facts holistically and carefully while applying the various tie-breaker tests to determine treaty residence in such situations.

PERMANENT HOME TEST

Generally, a permanent home test is satisfied if the taxpayer has a place of residence available to him in a particular jurisdiction. The availability of the home cannot be for a short period but needs to be for a long time to be considered as permanent. However, the OECD Commentary as well as a plethora of judgements have held that it is not necessary that the home should be owned by the taxpayer. Even a home taken on rent would be considered as a permanent home of the taxpayer if he has a right to use such a property at his convenience. Similarly, the parents' property would also be considered as a permanent home as the taxpayer would have a right to stay at the said property. Another example could be that of a hotel. While generally, a hotel may not be considered a permanent home, if the facts suggest that accommodation would always be available to the taxpayer as a matter of right, it may be considered a permanent home. On the other hand, even if a person owns a particular residential property in a particular jurisdiction, it may not be considered a permanent home if the taxpayer has given the said property on rent and the taxpayer does not have the right to use the property at any given time[7].

CENTRE OF VITAL INTERESTS TEST

The centre of Vital Interests generally refers to the social and economic connections of the taxpayer to a particular jurisdiction. Examples of social interests would be where the family of the taxpayer is located, where the children of the taxpayer attend school, and where his friends are. Similarly, examples of economic interests would be a place of employment, a place where major assets are kept, etc. This is a difficult test to substantiate as there is a significant amount of subjectivity involved. Moreover, there could be situations wherein the personal interests may be located in a particular jurisdiction, whereas the economic interests may be located in the other jurisdiction. In such a situation, one may not be able to conclude the tie-breaker test on the basis of the centre of vital interests test as no specific weightage is given to either of the nature of interests.

HABITUAL ABODE TEST

The habitual abode test is another subjective test that seeks to determine where the taxpayer seeks to reside for a longer period. This could be on the basis of the number of days stay (if the difference in the number of days stay is significantly at variation between the jurisdictions) or on the intention of the taxpayer to spend a longer period of time. An example given in the OECD Model Commentary is that of a vacation home in a particular jurisdiction and the main property of residence in another jurisdiction. In such a situation, the jurisdiction where the vacation home is situated may not be considered to be the habitual abode of the taxpayer as the stay in such a property would always be for a limited period of time.

NATIONALITY TEST

Given the subjectivity involved in the other tie-breaker tests, in most situations, practically, the tiebreaker is determined by the jurisdiction where the taxpayer is a national. As India does not accept dual citizenship, the question of a taxpayer being a national of both jurisdictions and therefore, having the residential status be determined mutually by the competent authorities does not arise.

Timing of application of the tie-breaker tests

Having understood some of the nuances of the various tie-breaker tests, it is important to analyse the timing of the application of the tie-breaker tests, i.e. at what point in time does the tie-breaker test have to be applied? Unlike the basic residence test based on the number of days, which applies in respect of a particular year, as the tie-breaker tests are driven by facts which are subjective and can change, this question of timing of application gains significant relevance.

Let us take the example of Mr. A who moved from India to Singapore in October 2023 as he got a job in Singapore.

7 Refer para 13 of OECD Model Commentary on Article 4, 2017.

Let us assume that for the period October to March, Mr. A, who has not sold his house in India, is staying in various hotels in Singapore and he takes an apartment on rent in the month of March 2024 after selling his property in India. Now, if Mr. A is a tax resident of India and Singapore and one is applying the tie-breaker rule, one may arrive at a different conclusion on treaty residence depending on when the tie-breaker rule is applied. For example, if one applies in October 2023, he has a permanent home only in India, whereas if one applies in March 2024, he has a permanent home only in Singapore. In the author's view, one would need to apply the tie-breaker rule when one is seeking to tax the income, i.e. when the income is earned or received, as the case may be. This would be in line with the application of the DTAA as a whole, which would need to be applied when one is taxing the said income, as DTAAs allocate the taxing rights between the jurisdictions.

Split Residency

The above example is a classic case of split residency wherein a person can be considered as a resident of different jurisdictions within the same fiscal year. This issue is also common where the tax year differs in the jurisdictions involved. For example, India follows April to March as the tax year, whereas Singapore follows January to December. Let us take the example of Mr. A, who moved to Singapore for the purpose of employment along with his family in January 2023. He has not come back to India after moving to Singapore. He qualifies as a tax resident of Singapore for the calendar year 2023 under the domestic tax law. He has a permanent home only in Singapore. In such a situation, Mr. A qualifies as a tax resident of India for the period April 2022 to March 2023 and as a tax resident of Singapore for the period January 2023 to December 2023. In such a situation, in respect of income earned till December 2022, Mr. A is a resident of India and not of Singapore, and therefore, in such a scenario, Mr. A is a treaty resident of India under the India — Singapore DTAA for the period April 2022 to December 2022. In respect of the income earned from January 2023 to March 2023, Mr. A will be considered as a resident of India as well as Singapore under the domestic tax law. However, as he has a permanent home available only in Singapore, he would be considered as a treaty resident of Singapore during such a period. Therefore, for income earned from April 2022 till December 2022, Mr. A is a treaty resident of India, whereas from January 2023 till March 2023, he is a treaty resident of Singapore.

This principle of split residency finds support in the OECD Model Commentary[8] as well as various judicial precedents[9].

CONCLUSION

The above discussions only strengthen the case that one cannot determine the residential status under the Act as well as the DTAA together, as while the definitions may be linked to each other, there are certain nuances wherein there is divergence in applying the principles. For example, the concept of split residency does not apply to residential status under the Act. Similarly, under the Act, the residential status of a person does not change depending on the income, whereas in the case of a treaty, the treaty residence may be different for each stream of income (in many cases for the same stream of income as well) depending on the timing of application of the treaty residence. Further, each DTAA has its own unique nuances and language used and therefore, it is important that one analyses the specific language of the treaty while interpreting the same. ■

8 Refer Para 10 of the OECD Model Commentary on Article 4, 2017.

9 Refer the decisions of the Delhi ITAT in the case of Sameer Malhotra (2023) 146 taxmann.com 158 and of the Bangalore ITAT in the case of Shri Kumar Sanjeev Ranjan (2019) 104 taxmann.com 183.