

SC Italy Holds TRC Not the Sole Evidence Required to Avail DTAA Benefits; Assessee to Claim Benefit on Other Basis



Facts

Mr. Teobaldo Noschese {hereinafter referred to as the 'assessee'} was an Italian national who relocated from the Republic of Italy ('Italy') to the United Arab Emirates ('UAE') with his family. The assessee was an employee of Alstom Grid, an Italian company Alstom, and was subject to a withholding tax of EUR 34,706.53 on his 2011 salary during the period of tax residence in the United Arab Emirates.

The taxpayer moved an application with the Italian revenue authorities, seeking a refund of the subject withholding tax pursuant to Article 15 of the Italy-UAE DTAA. The Italian tax authorities requested the taxpayer to provide certain documents, including a certificate of tax residency (TRC) pursuant to Article 28(2) of the Italy UAE DTAA. Since the certificate was not received by them, the reimbursement request was dismissed.

Thereafter, an appeal was preferred by the assessee before the Provincial Tax Commission of Pescara which dismissed the same on account of non-furnishment of the TRC. Further aggrieved, the assessee appealed before the Regional Tax Commission of Abruzzo which ruled in his favor. The Abruzzo commission held that since the documents furnished proved that the assessee was a resident of UAE in 2011, he could only be taxed in UAE as per Article 15(1) of the DTAA. Consequently, the revenue preferred an appeal due to which the matter reached the Hon'ble Supreme Court of Italy for adjudication.

Ruling

The Hon'ble Supreme Court of Italy ruled in favor of the assessee. It held that a TRC was not the sole evidence for the assessee to establish his tax residency in order to avail treaty benefits. The assessee also had the option to employ other means to prove his tax residential status.

The Hon'ble Court held that since there was non satisfaction of conditions stipulated in Article 15(1) of the DTAA, the assessee could not be taxed in Italy when the income earned by him was liable to be taxed in UAE.

In view of the same the Apex Court declared the assessee qualified as a resident of the UAE in accordance with Article 4(1) of the DTAA and the taxes withheld by his Italian employer on the assessee's salary were directed to be refunded to the article as per Article 28 DTAA. The Hon'ble Supreme Court further clarified that the existence of taxing power with the State, being UAE, was sufficient to qualify the assessee as a beneficiary of the treaty benefits.

Source: Supreme Court Italy in Revenue Agency (Alstom) vs. Noschese Teobaldo vide [TS-838-FC-2023(ITL)], date of release: May 10, 2024