

DOUBLE TAXATION RELIEF

1. R a resident Indian, has derived the following income for the previous year relevant to the assessment year 2009-2010.

Particulars	Rs.
(1) Income from profession	3,00,000
(2) Share income from a partnership in country X (tax paid in country Y for this income in equivalent Indian rupees Rs 25,000)	2,00,000
(3) Commission income from a concern in country Y (tax paid in country Y at 20%) converted in Indian rupee.	40,000
(4) Interest from schedule banks.	20,000

R wishes to know whether he is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.

Solution: (a) Computation of total income

Particulars	Rs	Rs
(a) Income from business:		
(i) Income from profession	3,00,000	
(ii) Share income in partnership firm in country X	2,00,000	5,00,000
(b) Income from other sources:		
(i) Interest from schedule bank	20,000	
(ii) Commission earned in country Y, assumed from other sources	40,000	60,000
Total income		5,60,000
(b) Computation of tax liability :		
Tax on total income of Rs. 5,60,000		1,17,000
Add : Education cess @ 2%		2,340
Add : SHEC @		1,170
Less : Double taxation relief : (2,00,00 + 40,000) × 21.52%		1,20,510
		51,648
Tax payable		68,862
Tax payable to be rounded off to the nearest multiple of Rs 10 (Sec. 288B)		68,860

Note: (i) Average rate of tax in the foreign country 20%.

(ii) Average rate of tax in India:

$$\frac{1,20,510}{5,60,000} \times 100 = 21.52\%$$

Whichever is less, is applicable

2. Mr. Prasad, ordinarily resident in India, furnished the following particulars of his income/savings during the previous year 2008-2009.

	Rs
(i) Income from foreign business (Including Rs 2,00,000 from business connection in India) accruing outside India	12,00,000
(ii) Loss from Indian business	(-) 2,00,000
(iii) Income from house property	4,00,000
(iv) Dividends gross from Indian companies	60,000
(v) Deposit in Public Provident Fund	70,000
(vi) Tax paid in foreign country	2,50,000
There is no double taxation avoidance treaty. Compute the tax liability	

Solution: (a) Computation of total income

Particulars	Rs	Rs
1. Income from house property		4,00,000
2. Income from business :		
(a) Income from Indian business	(-) 2,00,000	
(b) (I) Income from foreign business accruing or arising outside India	(+) 10,00,000	
(ii) Income from foreign business deemed to accrue or arise in India	<u>(+) 2,00,000</u>	10,00,000
3. Income from other sources		
Dividends from Indian companies exempt [Sec. 10(34)]		Nil
Gross total income		14,00,000
Less : Deduction for approved savings (Sec. 80C): PPF Deposits		70,000
Total income		13,30,000
Tax liability on total income :		
Income-tax on slab rates		3,48,000
Add: Surcharge on income tax @ 10%		34,800
		3,82,800
Add : Education cess : 2% on the aggregate of income tax and surcharge		7,656
Add : SHEC @ 1%		3,828
Tax liability		3,94,284
Less : Double taxation relief on foreign business profits, not deemed to accrue or arise in India (Sec. 91) 10,00,000 × 20.833%		2,08,330
Tax payable		1,85,954
Tax payable to be rounded off to the nearest multiple of Rs 10 (Sec.,288B)		1,85,950

Note: 1. Relief is allowed on the doubly taxed income either at average rate of Indian tax or average rate of foreign income tax, whichever is lower;

(a) Average rate of Indian income tax : $3,94,284 / 13,30,000 \times 100 = 29.65\%$

(b) Average rate of foreign income tax: $(2,50,000/12,00,000) \times 100 = 20.833\%$

2. The amount of doubly taxed income has been worked out as under:	Rs
Income from foreign business, accruing outside India	12,00,000
Less: (i) Income from business connection deemed to accrue or arise in India which is not entitled to double taxation relief.	2,00,000
Doubly taxed income	<u>10,00,000</u>

3. Loss from Indian business has been set-off against profits from foreign business which is deemed to accrue or arise in India.

The mode of set-off increases the amount of double taxation relief.

3. The Income-tax Act, 1961 provides for taxation of a certain income earned by X. The Double Taxation Avoidance Agreement, which applies to X, excludes the income earned by X from the purview of tax. Is X liable to pay tax on the income earned by him? Discuss.

Answer: Where any conflict arises between the provisions of the Double Taxation Avoidance Agreement and the Income-tax Act, 1961, the provisions of the Double Taxation Avoidance Agreement would prevail over those of the Income-tax Act. X is, therefore, not liable to pay tax on the income earned by him.

4. Explain briefly the proposition of law in case of any conflict between the provisions of the Double Taxation Avoidance Agreement (DTAA) and the Income-tax Act, 1961.

Answer: Where there is conflict between the provision as contained in the tax treaty and the provisions of Income Tax Act, a payer can take advantage of those provisions which are more beneficial to him. Thus, tax treaties override the provisions of Income Tax Act which can be enforced by the appellate authorities/courts.

5. Arif, a resident both in India and Malaysia in previous year 2008-2009, owns immovable properties (including residential house) at Malaysia and India. He has earned income of Rs 50 lakh from rubber estates in Malaysia during the financial year 2008-2009. He also sold some property in Malaysia resulting in short-term capital gain of Rs 10 lakh during the year. Arif has no permanent establishment of business in India. However, he has derived rental income of Rs 6 lakh from property let out in India and he has a house in Lucknow where he stays during his visit to India. The Article 4 of the Double Taxation Avoidance agreement between India and Malaysia provides that where an individual is a resident of both the contracting States, he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests).

You are required to state with reasons whether the business income of Arif arising in Malaysia and the capital gains in respect of sale of the property situated in Malaysia can be taxed in India.

Answer: Where the Central Government has entered into an agreement with the government of any other country for granting relief to tax or for avoidance of double taxation, the provisions of the Income-tax Act, 1961 are applicable in such case to the extent they are more beneficial to the assessee.

Arif has a residential house both in Malaysia and India. Thus, he has a permanent home in both the countries. However, he has no permanent establishment of business in India. The Double Taxation Avoidance Agreement (DTAA) with Malaysia provides that where an individual is a resident of both countries, he is deemed to be resident of that country in which he has a permanent home and if he has a permanent home in both the countries, he is deemed to be resident of that country, which is the centre of his vital interests, i.e. the country with which he has closer personal and economic relations. Arif owns rubber estates in Malaysia from which he derives business income. However, Arif has no permanent establishment of his business in India. Therefore, his personal and economic relations with Malaysia are closer, since Malaysia is the place where—(a) the property is located and (b) the permanent establishment (PE) has been set-up. Therefore, he is deemed to be resident of Malaysia for AY 2009-2010.

So, in this case, Arif is not liable to income tax in India for assessment year 2009-2010 in respect of business income and capital gains arising in Malaysia.

6. Sania, a resident Indian, furnishes the details for the assessment year 2009-2010.

	Rs
(1) Income from profession	1,04,000
(2) Share income from a partnership in country X (Tax paid in country X for this income in equivalent Indian rupees Rs 8,000)	40,000
(3) Commission income from concern in country Y (Tax paid in country Y at 20%) converted in Indian rupee)	30,000
(4) Interest from scheduled banks	20,000

Sania wishes to know whether he is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.

Solution : (a) Computation of total income

Particulars	Rs	Rs
(a) Income from business:		
(i) Income from profession	1,04,000	
(ii) Share income in partnership firm in country X	40,000	1,44,000
(b) Income from other sources:		
(i) Interest from schedule bank	20,000	
(ii) Commission earned in country Y, assumed from other sources	30,000	50,000
Total income		1,94,000

(b) Computation of tax liability

Particulars	Rs
Tax on total income of Rs 1,94,000	9,300
Add: Surcharge on income tax	Nil
Education cess @ 2%	9,300
SHEC @ 1%	186
	93
	9,579
Less: Double taxation relief : 70,000 × 4.94	3,458
Tax payable	6,121
Rounded off u/s 288B	6,120
Note: (i) Average rate of tax in the foreign country : 20%	
(ii) Average rate of tax in India : $\frac{9579}{194000} \times 100 = 4.94\%$	

7. A is a musician deriving income from foreign concerts performed outside India, Rs 50,000. Tax of Rs 10,000 was deducted at source in the country where the concerts were given. India does not have any agreement with that country for avoidance of double taxation. Assuming that Indian income of A is Rs.2,00,000, what is the relief due to him under Sec. 91 for the assessment year 2009-2010.

Solution :

(a) Computation of total income:	Rs
(i) Indian income	2,00,000
(ii) Foreign income	50,000
Gross total income or total income	2,50,000
(b) Computation of tax liability:	
Income tax on total income at slab rates:	
Add: (i) Surcharge on income tax	24,000
(ii) Education cess @ 2%	480
(iii) SHEC @ 1%	240
	24,720
Less : Double taxation relief under Sec. 91: Rs 50,000 x 9.9%	4,950
Tax payable	19,770

Note: 1. Average rate of Indian income tax: $= \frac{24,720}{2,50,000} \cdot 100 = 9.9\%$

2. Average rate of foreign income tax:

Relief is allowed either at the average rate of Indian income tax or the average rate of foreign income tax,

$$\frac{10,000}{50,000} \cdot 100 = 20\%$$

whichever is lower. Accordingly, the relief has been allowed at the average rate of Indian income tax.

8. A resident assessee, earned foreign exchange of Rs 78,800. The foreign income was also subjected to tax deduction of Rs 8,800 at source in the foreign country with which India had no agreement for avoidance of double taxation. The assessee claimed relief under Sec. 91 of the Income-tax Act in respect of the whole foreign income. Discuss his contention with reference to decided case laws.

Answer: Where any income is taxed outside India as well as in India, a resident assessee is entitled to claim double taxation relief on such doubly taxed income provided such income is not deemed to accrue or arise in India. If any income arising outside India, is not subjected to tax in India, such foreign income does not form part of doubly taxed income for the purposes of Sec. 91. The expression "doubly taxed income" refers to foreign income which also suffered tax in India.

Where any foreign income, taxed outside India, is also eligible to deduction in computing total income in India, double taxation relief would be allowed only on such income as forms part of total income.

Double taxation relief will be allowed on such doubly taxed income either at the average rate of foreign income tax or Indian income tax, whichever is lower out of the two.