Double Taxation Relief.

Kiranty

Relief.

Bilateral (90 & 90A)
Both Countries enter into agreement for providing relief.

- exemption method
  - Income is taxable in only one country
- Tax relief method.
  - Taxable in both countries and country of residence allows credit for tax charged in country of source

91 → Unilateral
No mutual agreement between countries
Even then home country provides some kind of relief.

→ Sec 90(1):-

Central govt may enter into an agreement with other countries outside India or specified territories outside India for following purpose:-

- Avoidance of double taxation
- Providing relief
- Exchange of information
- Recovery of tax

→ Sec 90(2):-

IT act or DTAA whichever is more beneficial to assessee shall apply.

* DTAA rates are without surcharge.

→ Sec 90(3):-

for meanings of the terms used which are not determined in the Act refer to the notification issued by central government. This notification shall have effect from the date of agreement not from the date of notification

→ **Sec 90(4) :-**

To claim relief under DTAA, Tax residency certificate shall be provided.

Tax residency certificate is a sufficient evidence and conclusive proof. AO has no power to further investigate on TRC.

→ **Sec 90(5) :-**

- Assessee shall provide other prescribed documents and information.

* Explanation to sec 90 :- The charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

→ **Sec 91 : Unilateral relief :-**

The following all conditions shall be fulfilled :-

- Assessee is a resident
- Income accrues or arises outside India
- Income not deemed to accrue or arise in India
- Such income is taxed outside India
- Tax is paid outside India
- There is no DTAA between countries
- Then such assessee is entitled to unilateral relief u/s 91.

Relief = Double taxed Income × Rate of relief

Rate of relief ↓
Avg rate of tax in India
Avg rate of tax in foreign
} lower

$$\text{Avg rate} = \frac{\text{Gross tax}}{\text{NTI}} \times 100$$
India

$$\text{Avg rate} = \text{findout rate} \Rightarrow \frac{\text{Tax paid/Payable}}{\text{Income}} \times 100$$

Date ....
Page ....

** → Business connection / permanent establishment

sec 9(1)(i)
If there is a business connection, such income taxable in India

DTAA
If there is a PE then only such income is taxable in India.

- As per DTAA, if there is no PE, such income cannot be taxed in India due to business connection u/s 9(1)(i)
- for cases not covered by DTAA, sec 9(1)(i) applies.

→ In case of any conflict between the provisions of the double taxation Avoidance agreement and Income tax act 1961, the provisions of DTAA would prevail over those of Income tax 1961

Case law :- CIT vs P.V.A.L Kulandagan Chettiar 2004