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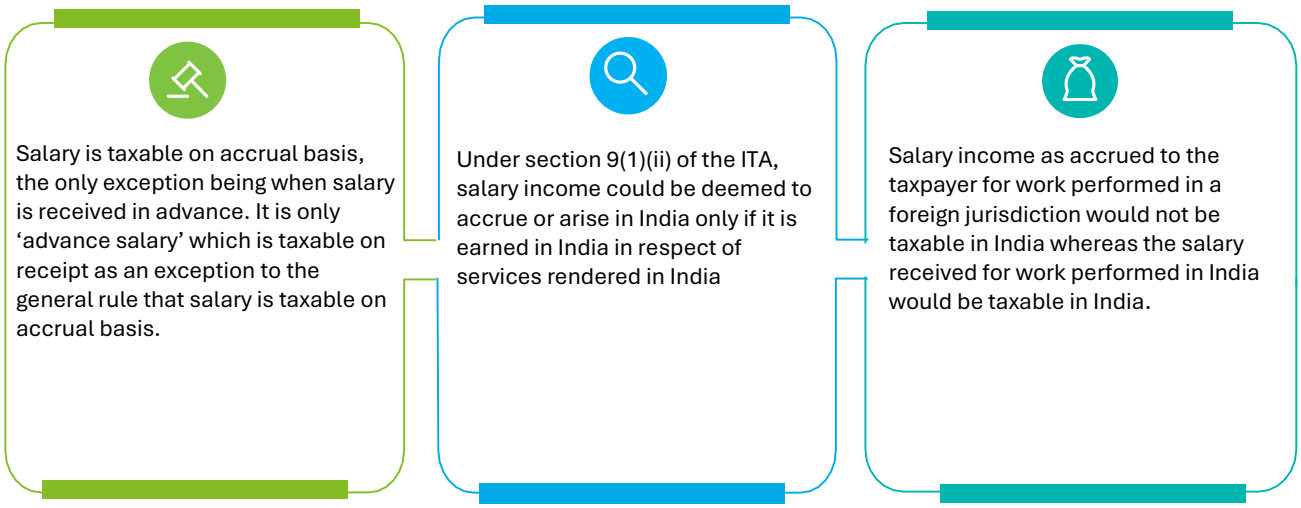
# Tax alert: Salary received in India for services rendered in China by a non-resident, not taxable

**11 September 2025**

The Chennai Bench of the Income-tax Appellate Tribunal (ITAT) has held that salary received in India, for administrative convenience, by a non-resident employee, in respect of services rendered in China is not taxable in India under Article 15 of India-China tax treaty.

## In a nutshell

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**Background:**

- The taxpayer[1], an employee of an Indian company (I Co), was on an assignment/secondment to a Chinese group company (F Co) during the financial year (FY) 2021-22 relevant to the Assessment year (AY) 2022-23.

  He rendered services/exercised employment with F Co in China during this period. While on an international assignment with F Co, he was based in China and was physically present in China and was rendering services in China during the FY 2021-22.

- The taxpayer was in India for less than 60 days during the FY 2021-22 and qualified as a non-resident in India under section 6(1) of the Income-tax Act, 1961 (ITA) [related to residency status of taxpayer]. He qualified as a non-resident of India and as a tax resident of China for the Calendar Year 2021 and 2022.

- During the period of assignment, taxpayer's payroll remained in India for administrative convenience and taxes were duly withheld at source by the I Co in respect of salary received by him in India for employment exercised/services rendered in China.

- The taxpayer was also duly taxed in China in respect of the salary and benefits paid to him in India and related to employment exercised/services rendered in China to F Co.

- The taxpayer in the return of income, claimed exemption under Article 15(1) of the India-China tax treaty [related to dependent personal services] with respect to salary received in India for services rendered in China on the basis that he exercised employment/rendered services with F Co.

  As per Article 15(1) of the India-China tax treaty:

  *"(1) Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment* ***shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State.*** *If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State."*

- During the course of audit proceedings, the Assessing Officer (AO) in his final assessment order and the Dispute Resolution Panel (DRP) in the directions issued, disallowed the exemption claimed, *inter alia*, on the basis that the salary was credited by I Co into the taxpayer's account in India from the payroll account of India.

- Aggrieved, the taxpayer filed an appeal before the Chennai bench of the Income-tax Appellate Tribunal (ITAT). The taxpayer contented the following before the ITAT:

  - Salary and benefits were received in India as his payroll remained in India for administrative convenience during his assignment in China in addition to certain benefits paid in China.
  - Exemption was claimed under Article 15(1) of the India-China tax treaty read with section 90 of the ITA, being salary received in India for services rendered/employment exercised in China with F Co as he qualified as a resident of China during this period.

**Relevant provisions in brief:**

**Section 5(2) of the ITA**

*"...Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which-*

*(a) is received or is deemed to be received in India in such year by or on behalf of such person; or*

*(b) accrues or arises or is deemed to accrue or arise to him in India during such year....."*

[1] Sivakarthick Raman vs. ACIT, International Taxation [2025] 176 taxmann.com 491 (Chennai - Trib.)

**Decision of the ITAT:**

The ITAT noted/observed the following:

- As per section 5(2) of the ITA, the income of an individual who qualifies as a non-resident in India is taxable in India only to the extent it is accrued, deemed to accrue, received or deemed to be received in India.

  Further, the provisions of section 5(2) of the ITA are subject to other provisions of the ITA and would have an overriding effect. If the charging provisions of the ITA do not consider such receipts as taxable, it shall not be taxable under section 5(2) of the ITA.

- Under section 9(1)(ii) of the ITA, income under the head '**Salaries**' shall be **deemed to accrue or arise in India if it is earned in India**. Further, as per Explanation to Section 9(1)(ii) of the ITA, services rendered in India are regarded as income earned in India.

- Section 15 of the ITA provides for the chargeability of income under the head 'Salaries'. Accordingly, in arriving at the total income of a non-resident, the provisions of section 15 of the ITA need to be considered which contemplates chargeability of salary accrued to an employee, irrespective of whether it is received or not.

  However, where salary is received in advance, the same is taxable on receipt basis. Hence salary is taxable on accrual basis, the only exception being when salary is received in advance. It is only 'advance salary' which is taxable on receipt as an exception to the general rule that salary is taxable on accrual basis.

- In taxpayer's own case for earlier AYs along with another case[2], the ITAT had held that:
  - The taxpayer being tax resident of China, the salary income was taxable in China only. Salary received for the employment exercised in China was taxable in China under Article 15(1) of the India-China tax treaty.

- In an identical issue in another ruling[3], it was held as follows:
  - As per the provisions of section 9(1)(ii) of the ITA, salary income could be deemed to accrue or arise in India only if it is earned in India in respect of services rendered in India.
  - Tax treaty benefit shall be applicable to persons who are residents of both India as well as Australia. Therefore, the contention that the taxpayer being a non-resident and hence treaty benefit cannot be extended to taxpayer, was incorrect.
  - Accordingly, it was held that the salary so earned for work performed in Australia would be taxable in Australia.

- In another earlier ruling[4], it was held that salary income as accrued to the taxpayer for work performed in a foreign jurisdiction would not be taxable in India whereas the salary received for work performed in India would be taxable in India.

In view of the earlier rulings including in taxpayer's own case, the ITAT held that the salary income for services rendered in China was taxable in China under Article 15(1) of the India-China tax treaty.

**Comments:**

Mobile employees may travel outside India for foreign assignments. In case of long-term foreign assignments, the taxpayer individual may qualify as a non-resident of India. In such cases a question arises, whether the salary for services rendered and employment exercised outside India but credited in India (for administrative

[2] Nanthakumar Murugesan and Sivakarthick Raman [2024] 165 taxmann.com 304 (Chennai - Trib.)

[3] Shri Paul Xavier Antonysamy V/s ITO (ITA No.2233/Chny/2018

[4] Shri Ramesh Kumar AE Vs ITO for AY 2015-16 in IT(TP)A 51/Chny/2018

convenience) would be taxable in India. This ruling while holding that the salary income for services rendered in China was taxable in China under Article 15(1) of the India-China tax treaty, has upheld the following principles:

- Salary is taxable on accrual basis, the only exception being when salary is received in advance. It is only 'advance salary' which is taxable on receipt as an exception to the general rule that salary is taxable on accrual basis.
- Under section 9(1)(ii) of the ITA, salary income could be deemed to accrue or arise in India only if it is earned in India in respect of services rendered in India.
- Salary income as accrued to the taxpayer for work performed in a foreign jurisdiction would not be taxable in India whereas the salary received for work performed in India would be taxable in India.

Recently, there have been similar rulings[5] by ITAT holding that salary received in India by a non-resident employee for services rendered and employment exercised outside India, would be exempt under relevant tax treaties.

Taxpayers may evaluate the impact of this ruling to the specific facts of cases.

[5] Arumugam Rajasekar v ITO (2025) IT(IT)A No. 1/Chny/2025 (Chennai-Trib.) and Mridula Jha Jena v. International tax ward 3(1)(1), Mumbai (2025) ITA No. 4844/Mum/2024

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