TAXATION, THEORY, PRACTICE & LAW

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Case Study 1: Residence of the taxpayers and the source of the taxes

The new regime of Australia has ensured the state to make financial gains from the foreign residents residing in Australia and do not get an escape from the taxation system (Taxsuperandyou.gov.au, 2016). By imposing new obligations on the foreigner, the nation earns taxes on the assets that are directly or indirectly taxable real property interest to Australia. Though Fred is a foreigner in this country, but he will be considered as a resident of Australia for the purpose of taxation. Fred’s stay in Melbourne for 12 months made him liable to follow the rules of the Australian tax structure. Although, he leased a residence for 12 months, but due to ill health he returns to the UK in 11 months.

The non-resident individual during the income year, receiving the Australian-scored bank interest is required to pay tax at the rates of the non-resident on any income that is received by the individual. As Fred serves as residents in Australia in terms of the taxation purpose, therefore any capital gains and incomes that he earns overseas in taxable in Australia. Hence, Fred has to declare all his interests that he earns from the property he had in France to the Australian Government for the purpose of the better operations of his business. Fred needs a business visa that will allow him to work in Australia. Fred has to declare the income that he is earning from any corner of the world.

This will also provide Fred to facilitate to claim the benefits of the Australian tax system. Fred is also bound to make the report about the bank accounts that he has in the other countries and information regarding the income and interest earned from these financial accounts to the Australian income tax return. Fred has to satisfy the terms of the International Tax Agreements Act 1953. Australia levies the tax based on the geographical source and based on the fiscal residence of the individual carrying out the transaction (Ato.gov.au, 2016). Australia’s domestic tax makes every income liable, whichever is having an Australian source of income to come under the Australian taxation regardless of the geographical residence of the taxpayer.

The section 6-5(3) of the ITAA 1997 declares that the ordinary income that Fred is directly or indirectly deriving from all the sources of Australia during his income year comes under the assessable. Other ordinary incomes also come under the assessable income of the non-residents (Atotaxcalculator.com.au, 2016).

Case Study 2:

I. Californian Copper Syndicate Ltd v Harris (Surveyor of Taxes) (1904) 5 TC 159:

This very case considered the issue of the realisation of a capital asset. Lord Justice Clerk has articulated the principle that guided the decisions of the court in the taxation law. This very principle is quite well framed one that allows the owners of the ordinary investment to choose in order to realise it and to obtain a greater amount of price. This will make an enhancement in the price but will not make the profit in the terms of assessable to the income tax. This is a case, where a person or an association of persons will buy and sell lands or securities in order to earn the remarkable profit, which will also deal the investments. Lord Justice Clerk in California Copper Syndicate v Harris begins with a citation of the truism, which gives out a Delphic significance. Not everything, which is received by the taxpayer, is essential to be identified as the principle of the Californian Copper (Epublications.bond.edu.au, 2016).

II. Scottish Australian Mining Co. Ltd v FC of T (1950) 81 CLR 188:

The taxpayer, who had 1,771 acres of purchased land between the year 1863 and 1865. Within 1924, the coalmine was exhausted and the taxpayer, later on, had to decide to sell the land. To get an attractive sale tag of the price the company had to incur substantial expenditure in the sub-division of the land, construction of the roads and also providing land for the establishment of the public institutions like schools, colleges and churches. The company also had to build parks and railway station for the purpose of the necessary development. The Taxation Commissioner assessed the amount of the profit from the developmental structures as the assessable income. The High Court gave out the judgement that the company would engage itself in the subdivision and with various other activities that could be considered as the essential steps for the purpose of realisation that the land is a factor of advantage and therefore the profit is not assessable (Eresources.hcourt.gov.au, 2016). The decision was held for long by the authority for the proposition that the realisation of the asset in profit making organisation was on the account of the capital.

III. FC of T v Whitfords Beach Pty Ltd (1982) 150 CLR:

The judicial terrain which made a radical alteration by following the High Court's decision in the Whitfords Beach Case in the year 1982, made the application of the Scottish Australian Mining Case limited. Gibbs CJ stated that if any taxpayer does not establish any more than just realising the asset, then the profits would not serve the purpose of the taxes. Wilson J gave out the same importance on the changes in the shareholding of the company that made the profit was an ordinary income. He holds up a view that in these kinds of land development cases, every case needs to depend on their own grounds. In the ownership of the company, In the activity of the taxpayer in the case of the Whitfords Beach, Mason J noticed that it was more than just a mere realisation of the assets. While in the case of the Scottish Australian Mining, the judgement of Gibbs CJ was only limited the future application, whereas, the case of Whitford Beach expanded the scope in the Stevenson's case, where the involvement of the personal issues of the taxpayer directly affects the sub-division, served as a crucial factor.

IV. Statham & Anor v FC of T 89 ATC 4070:

Mr Murphy distinguished the facts of this case from the elements of the cases of Stevenson and relied on the decisions in this very case. The first of these cases was a decision of the Full Federal Court, which was appealed, based on the decision of this tribunal and the second decision of Ryan J on the appeal based on the decision of the respondent. In both the cases, the court considered that the sale, which made by the subdivision of farming land mainly consisted a realisation of the assets and not the proceedings of the business. The tribunal had to determine regarding the subdivision of the land. Whether it is the mere advantageous and enterprising realisation regarding the capital asset or a business to develop the land, which is to be carried on by the owners in order to make remarkable profits in the business. The matters, which were significant, in this case were:

(a) First, the owners were to sell the land but as a single parcel.

(b) no money was borrowed by them.

(c) limited earthworks and were involved and limited clearing.

(d) The owners depended on the Kingaroy Shire Council to carry out effective roadworks, electricity, sewerage, which are highly required to be done.

(e) The owners did not make an advertisement for the selling purpose of their land.

(f) The land was sold with the help of the real local agents

The above matters state that the owners were not conducting a business or engaged in a money making the scheme.

V. Casimaty v FC of T 97 ATC 5135:

The taxpayer has gifted a farm, which was known as the Action view from his dad in the year 1955. Therefore, he was able to carry out various tools for the purpose of the primary production activities, which included a dairy operation, which later expanded to the beef rising and sheep wool growing, and some cropping. Not all these activities were considered as profitable but by the beginning of the 1970, the taxpayers started to accumulate debt that also in a significant amount. Despite the bad financial condition, the taxpayer continued to make carry on the farming activities. During this period, the condition of the taxpayer deteriorated badly. The taxpayer had no options left with him than to sell his portions of the land, to reduce his amount of debt. From 1975 to 1995, the lands were progressively disposed of the subdivisions. Each subdivision was effected to make the farm remain viable. Throughout the subdivision process, the taxpayer had to work actively in his business of farming. The sales of the land to the non-family members arise to the traditional estate agent. The commissioner assured the profits that are derived from the taxpayers regarding the sales of the subdivided blocks. This is under the law section 25(1) of the ITAA (1936), on the ground of the income, which is derived by the taxpayer from proceeding on the business of the land selling and subdividing.

VI. Moana Sand Pty Ltd v FC of T ATC 4897:

The Moana Sand was involved in the purchasing of land for the selling of sand on such kinds of land. It was about that if once the sand is exhausted, then the land was left behind until it was ready for sub-division. The Federal court that held the profit in a consequent manner was taxable under the section 25(1) and 26(a). The rejection for the purpose of dominant profit making by the reselling the land for the operation of the 26(a) is also considered here. However, the court did not consider it as a necessary one. Thus, Moana Sand does support the stance of the commissioner and does not provide a concrete authority for the proposition. Moana Sand is often considered as a dominant profit-making intention for the purpose of the application. He concluded that neither the sole nor the dominant purpose to enter the scheme is needed to be profit-making (Epublications.bond.edu.au,2016).

VII. Crow v FC of T 88 ATC 4620:

It was held for the purpose of the purchase of the different properties and make subsequent divisions and the sales of the land, which involved necessary transactions, that were repetitive and systematic, and make noticeable features make the business run. The activities of the taxpayers have made developments in the areas of properties, which also contributed to the development of the land. This made the taxpayer enter into the profit making transactions. The losses of the transaction were incurred by the assessable income, which was gained or produced as both of them were essential and sufficient. Two sorts of profit making would be application under this: a profit of the transaction, that itself served as a part of the business of a taxpayer. A profit of the transaction that is often considered as an ordinary incident of the business activity by the taxpayer, it might not have served as a transaction that entered into the business activity.

VIII. McCurry & Anor v FC of T 98 ATC 4487:

Bradley and Brett McCurry were two brothers. They grew up in the Warilla. They decided to purchase land and have the intention to construct townhouses on the land. They removed the old house from the land and got the loan from the commonwealth bank, which enabled them to construct three houses. Mc Curry arranged to make the noticeable advertisement for the units for sale, but it was of no use. The news agency of Warilla was purchased to provide the finance and the family members worked hard. Again, the news agency was resold. On July 27, 1988, both the brothers authorise Paynes Real Estate to sell the units at the Addison Avenue. Sales resulted into huge profit to the brothers. Therefore, this could be said that property might be acquired as an investment in order to provide effective income tax returns, which could be considered as the foreseen events against the economic inflation. The retention of the property in the terms of expectation will make an increase in the value in a justifiable form of investment.

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