

# Communiqué

## International Taxation

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# ITAT Rulings

## Opportunity to Produce Correct-Period Mauritius TRC; Case Sent Back for Fresh Decision

### Facts

The assessee filed its TDS statement in Form 27Q for Quarter 2 of FY 2020–21, showing TDS deducted under Section 195 on a dividend payment of ₹21,15,000 made to its shareholder Basswood Holdings Limited, a company that is a tax resident of Mauritius. This statement was first processed by CPC-TDS under Section 200A on 01.09.2020. Later, CPC-TDS passed a rectification order under Section 154 dated 13.11.2020, and raised a demand of ₹3,26,770 for short deduction of TDS and related interest. The assessee challenged this rectification order before the first appellate authority (Addl. CIT(A)), but the appeal was dismissed through the impugned order. Therefore, the assessee has now filed a second appeal before the Tribunal.

### Ruling

In the present case, The Hon'ble bench held that the the assessee paid dividend to its shareholder who is a resident of Mauritius, and that the shareholder was eligible to claim the benefit of the India–Mauritius DTAA, under which dividend is taxable at 5%. Accordingly, the assessee deducted TDS at 5% on the dividend payment, as provided under Article 10 of the DTAA. The Addl. CIT(A), however, rejected the assessee's claim because the assessee had not placed Form 10F and the shareholder's Tax Residency Certificate (TRC) on record. Before us, the assessee has produced Form 10F and the TRC of Basswood Holdings Limited, but the TRC submitted is valid for 08.10.2021 to 07.10.2022, which does not cover the period relevant to the dividend payment. Since the dividend was paid (and TDS deducted) in Quarter 2 of FY 2020–21, the assessee must furnish Form 10F and the TRC for the period 01.07.2020 to 30.09.2020. Therefore, in the interest of justice, we set aside the matter to the TDS-AO and direct that the assessee be given another opportunity to submit the required documents for the correct period, after which the issue should be decided again as per law. As a result, the appeal is treated as allowed for statistical purposes.

*Source : ITAT, Ahmedabad in the case of Shri Ram Krupa Medicare Pvt. Ltd., Vs DCIT vide [TS-520-ITAT-2026(Ahd)] on April 9, 2026*



## Deletes addition for overlapping period against Kazakh resident, as per tie-breaker under Article 4(2) of DTAA

### Facts

The assessee is an individual who filed his original income tax return for AY 2018–19 on 14/08/2018, declaring income of ₹4,18,44,660. Later, he filed a revised return on 31/03/2019, reducing the declared income to ₹3,42,41,440, and also claiming a refund. The revised return was picked up for scrutiny mainly because of the reduction in income and the refund claim. During assessment, the Assessing Officer (AO) noted that the assessee was a resident in India under Section 6, and therefore had to offer his global income to tax in India. The AO found that in the revised return, the assessee had not shown salary, rent, and dividend income for the period 01/01/2018 to 31/03/2018, and asked for an explanation. The AO ultimately held that the assessee was taxable in India on salary (₹71,60,922), rental income (₹1,26,863), and dividend (₹3,15,436) relating to the above period (when the assessee was in Kazakhstan), and also made an addition of ₹4,03,086 as interest income under “Income from Other Sources.” The AO further held that a person cannot be treated as resident of two countries in the same financial year, and therefore rejected the assessee’s alternative request for Foreign Tax Credit (FTC) of ₹20,20,281; out of the total FTC claim of ₹21,12,009, the AO allowed only ₹91,278. The assessee appealed to the CIT(A), who passed an order on 25/04/2025, and since the assessee remained aggrieved, he has now filed an appeal before the Tribunal.

### Ruling

The Hon’ble bench deleted the ₹71.60 lakh addition made towards salary for the overlapping period, holding that during the time the assessee was working, his personal and economic ties were closer with Kazakhstan. Therefore, by applying the tie-breaker rule under Article 4(2)(a)/(b) of the India–Kazakhstan DTAA, the assessee had to be treated as a tax resident of Kazakhstan for treaty purposes. The Tribunal also explained that the Income-tax Act does not allow “split residency” within the same previous year—residential status is determined for the entire previous year, and there is no provision in the Act to treat a person as resident for only part of that year. It clarified that tie-breaker rules in tax treaties exist precisely to handle cases where a person is regarded as a resident in both countries under domestic laws, because without identifying a single “treaty residence,” allocation of taxing rights between the residence state and the source state becomes unworkable. On facts, the Tribunal noted that the AO had taxed salary for the period when the assessee was employed in Kazakhstan; the assessee (a New Zealand national) had moved from an India assignment to a Kazakhstan assignment, did not have a permanent home in India, was living in Kazakhstan, and even had his payroll shifted to Kazakhstan. The Tribunal further observed that even if the Revenue’s position were assumed to be correct, the Revenue had not even argued taxation under Article 15(2) (the specific employment income rule) of the DTAA. Accordingly, the salary addition for the overlapping period was deleted.



**Source :** *ITAT, Bangalore in the case of Pradeep Narasimhan vs ITO vide [TS-451-ITAT-2026(Bang)] on April 1, 2026*

## Restores issue of DTAA 'tie-break' rule citing inadequate factors for determining centre of vital interest

### Facts

The assessee is a US citizen who was on an international assignment in India from May 2011 to February 2020. Under the Indian Income-tax Act, he qualifies as a Resident and Ordinarily Resident (ROR) as per Section 6. At the same time, he is also treated as a resident of the US for the calendar year 2019–20. Because of this dual residency, the assessee relied on the tie-breaker rule in Article 4(2) of the India–US DTAA to determine his treaty residency for the relevant assessment year. He filed his return of income declaring a total income of ₹21,46,19,810, and claimed that his US income of ₹4,62,85,467 should be exempt in India, arguing that under the DTAA he should be treated as a treaty non-resident of India. However, the Assessing Officer (AO) did not accept this claim and treated him as an Indian ROR, and therefore taxed the US income in India as well. The AO relied on factors such as (i) the assessee being born in India and working here for many years, (ii) being a director in three Indian companies, and (iii) earning his major income from India, to conclude that his ties were strong with India and hence the US income was taxable in India. The assessee appealed to the CIT(A) but was unsuccessful there too. He has now approached the ITAT, challenging the orders of the lower authorities and arguing that his personal and economic ties are stronger in the US than in India.

### Ruling

In the present case, The Delhi ITAT sent the matter back for a fresh decision on the assessee's treaty residential status under the DTAA tie-breaker rule, because the record did not contain enough important facts to decide whether the assessee's centre of vital interests was in the US or India. The Tribunal noted that the assessee, though a US citizen, was posted in India from May 2011 to February 2020, and was treated as ROR in India under Section 6, while also being a US resident for calendar year 2019–20—so the tie-breaker was necessary to determine where his global income should be taxed. However, when the assessee claimed that his personal and economic ties were stronger in the US, he did not support this with key evidence (such as passport/relocation details of family members and other supporting documents). Even when the Bench asked for a clear break-up of the spouse's income shown in the US return, the assessee could not provide exact figures, and the Tribunal observed that it could not rely on mere oral statements without proper quantification. Referring to earlier guidance on factors relevant to determining the "centre of vital interests" (including principles discussed in the Ashok Kumar Pandey decision), the ITAT held that those decisive factors had not been properly brought on record. Therefore, it restored/remanded the issue to be reconsidered after collecting and examining the necessary facts and evidence.

*Source : ITAT, Delhi in the case of Vishal K Wanchoo vs ITO, vide [TS-559-ITAT-2026(DEL)] on April 17, 2026*



## No Make-Available, No FTS: Project Design Fees Outside TDS Net

### Facts

The brief facts are that the assessee, an Indian real estate company, developed a residential project “Serendipity” at BKC during FY 2014–15 (AY 2015–16) and paid ₹1.84 crore to two Singapore entities—₹1.15 crore to Arc Studio for architectural drawings/design and ₹69.64 lakh to Web Structures for GFC drawings/design. During assessment, the AO held that these payments were FTS/consultancy and, since no TDS u/s 195 was deducted, disallowed the entire amount u/s 40(a)(i). The assessee argued that under Article 12(4) of the India–Singapore DTAA, the services were project-specific and did not “make available” any technical knowledge or skill for independent use later, so they were not FTS and no TDS was required. The AO rejected this, but on appeal, the First Appellate Authority accepted the assessee’s DTAA argument and deleted the disallowance, holding the payments were not FTS due to the absence of the “make available” element.

### Ruling

The Hon’ble Tribunal held that the payments made to the Singapore entities for project-specific architectural and consultancy services could not be treated as Fees for Technical Services (FTS) under Article 12(4) of the India–Singapore DTAA because the essential “make available” condition was not satisfied. It relied on a coordinate bench decision in the assessee’s own case for AY 2015–16, where—under the same agreement—it was already held that the services did not “make available” any technical knowledge or skill and therefore could not be characterised as FTS. The Tribunal noted that the nature of services, contractual terms, and facts remained unchanged, showing full parity with the earlier year: the architectural designs and consultancy were confined to the specific project and were not capable of independent use by the assessee for future projects without the service provider’s assistance. The ITAT further observed that the Revenue did not bring any material on record to prove that any technical knowledge, experience, skill, or know-how was actually transferred to the assessee in a manner that enabled independent application, which is a requirement under Article 12(4). The Tribunal reiterated that it is not enough that services are technical/consultancy in nature; they must also result in making available technical knowledge to the recipient. Since this condition was not met, the payments were not taxable as FTS, and therefore no TDS obligation arose under Section 195; consequently, the disallowance under Section 40(a)(i) was held to be unsustainable, and the Revenue’s appeal was dismissed.



*Source : ITAT, Mumbai in the case of ACIT vs Forum Homes Pvt Ltd, vide [TS-464-ITAT-2026(Mum)] on April 4, 2026*

# Let's Connect

+91.135.2743283, +91.135.2747084

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3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

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E: [info@vkalra.com](mailto:info@vkalra.com) | W: [vkalra.com](http://vkalra.com)

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our team at [kmt@vkalra.com](mailto:kmt@vkalra.com)**

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