



## 6<sup>TH</sup> THE DASTUR NATIONAL MOOT COURT COMPETITION, 2023

*Organized jointly by Government Law College, Mumbai  
and The Chamber of Tax Consultants*

**27<sup>th</sup> May and 10<sup>th</sup> June, 2023**

### **MOOT PROPOSITION**

#### **Background and facts:**

1. Abhay Bansal is a software engineer from IIT Bombay and is residing in Thane, Maharashtra.
2. Until 25<sup>th</sup> November 2022 he was employed in India by a large IT MNC.
3. On 1<sup>st</sup> December 2022, Abhay re-located to Singapore for employment with another company.
4. The salary earned by Abhay in and outside India during the Financial Year 2022-23 are as under:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Salary earned in India	Rs. 80,00,000
2.	Salary earned in Singapore	SGD equivalent of Rs. 75,00,000

5. In addition to being a highly qualified professional, Abhay is an avid player of online games. He earned a sum of Rs. 5,00,000 from online games whilst he resided in India until 30<sup>th</sup> November 2022 and SGD equivalent of Rs. 1,50,000 when he resided in Singapore.

6. During his residence in India, Abhay also won 5 Bitcoins as a reward from the International e-Poker League ('IePL') held in Geneva as well as 5 tickets to the finals of the World Test Championship 2023 set to be played between India and Pakistan at Lords in England.
7. Further, Abhay received Rs. 10,00,000 from an out-of-court settlement in relation to a dispute pertaining to a joint family property before the District Court for the past 10 years. Abhay also surrendered his right to further litigate as a consequence of the settlement.
8. For the Financial Year 2022-23 relevant to Assessment Year 2023-24, Abhay filed his return of income on 30<sup>th</sup> April 2023 under the status of 'non-resident' and offered the following to tax in India:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1.	Indian Salary Income	80,00,000
2.	Winnings from online games	5,00,000

Rs. 10,00,000, being received on account of an out-of-court settlement in relation to pending litigation, was claimed as a capital receipt and therefore, not liable to be taxed.

9. Abhay also filed a letter with his jurisdictional assessing officer requesting for a transfer of his Permanent Account Number ('PAN') to the international tax range.

Assessment and Appellate Proceedings:

10. On 25<sup>th</sup> May 2023, Abhay was in receipt of a notice under section 143(2) of the Act issued by the Assistant Commissioner of Income-Tax (NaFAC) – 1(1)(3) informing him that his return of income for the Assessment Year 2023-24 has been selected for scrutiny under CASS for the following reasons:
  - a. Transactions in cryptocurrency;
  - b. Transactions in relation to online gaming; and
  - c. Transactions in relation to winnings from the lottery.
11. In reply to the notice under section 143(2) of the Act, Abhay's authorized representative submitted an online response intimating that he was a non-resident and therefore should be assessed by an officer from the International Taxation Range. Further, it was stated that since the notice under section 143(2) of the Act had been issued by an officer from the NFAC who does not have requisite jurisdiction over the assessee, the scrutiny proceedings are void-ab-initio and ought to be quashed.
12. In reply, Abhay received communication from the Deputy Commissioner of Income-Tax (International Taxation) – 2(1) stating that the provisions of section 143(2) of the Act empowers the assessing officer and the prescribed authority to issue notices. Further, the Central Board of Direct Taxes vide Notification No. 25/2021/F.

No.187/3/2020-ITA-I dated 31<sup>st</sup> March 2021 has authorized the Assistant Commissioner of Income-tax (NaFAC)/ Deputy Commissioner of Income-tax (NaFAC) to act as prescribed authorities for the purposes of section 143(2) of the Act. Accordingly, the impugned notice under section 143(2) of the Act and consequently, the scrutiny proceedings are valid and within the framework of law. Abhay did not file any submission in response to the aforesaid communication.

13. Subsequently, Abhay was required to show cause as to why he should not be assessed as a resident of India under section 6 of the Act since he has stayed in India physically for more than 182 days during the Financial Year 2022-23 and consequently, tax his worldwide income in India.
14. In reply, Abhay submitted the Tax Residency Certificate issued by the Tax Authorities in Singapore for the calendar year 2023 and stated that since he holds tax residency of two countries during the period 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023, the tie-breaker rule needs to be applied to determine the country of his tax residency. To support his claim for tax residency in Singapore, it was submitted as under:
  - a. Permanent Home Test – Abhay owns a house in India where his family resides. He owns a residence in Singapore where he resides. Permanence of home can be determined on qualitative and quantitative basis and since he owns homes in India and Singapore, the Permanent Home Test weighs in favour of Singapore since he is employed there.
  - b. Centre of Vital Interest Test – Abhay is employed in Singapore where he has investments in form of a residence, social security contribution and savings in bank account and therefore, the Centre of Vital Interest Test too weighs in favour of Singapore.
  - c. Habitual Abode Test - Habitual abode does not mean the place of permanent residence, but in fact it means the place where one normally resides. Since Abhay resides in Singapore for employment purposes, the Habitual Abode Test also favours Singapore.
  - d. Copies of the Singapore Driving License and Overseas Bank Account along with official forms showing Singapore as his country of residence were also submitted.
15. However, the assessing officer not being satisfied with the submission, assessed Abhay as a resident of India based on the following premise:
  - a. Abhay has physically stayed in India for more than 182 days during the relevant year and therefore is a resident in terms of section 6 of the Act;
  - b. Permanent Home Test is neutral since Abhay has a permanent house available to him in India and Singapore;
  - c. Centre of Vital Interest Test favours India since Abhay's family resides in India;
  - d. Since Centre of Vital Interest Test favours India, Habitual Abode Test need not be applied; and

- e. Singapore Driving License, Overseas Bank Account and official forms showing Singapore cannot be relied on to prove tax residency;

16. Accordingly, the following additions were made to Abhay's returned income:

Sr. No.	Particulars	Amount	Rationale
1.	Singapore Salary Income	75,00,000	
2.	Winnings from online games	1,50,000	
3.	Winnings from online games - Bitcoins	1,10,00,000	The assessing officer valued each Bitcoin at Rs. 22,00,000 on the premise that the price of Bitcoins on various crypto exchanges in India hovered around Rs.22,00,000 during the period 28 <sup>th</sup> March 2022 to 31 <sup>st</sup> March 2022.  The Bitcoins were received in a wallet maintained by TTX Singapore and the average price of a Bitcoin during the period 1 <sup>st</sup> April 2022 to 31 <sup>st</sup> March 2023 on TTX Singapore was equivalent to Rs. 18,00,000.
4.	Winnings from online games – Tickets to World Test Championship Final	5,00,000	The assessing officer valued each ticket at Rs. 1,00,000 being average of multiple quotes on Indian websites such as OLX, Quiker, etc. a week before the finals.  Tickets for the finals are officially sold only on the ICC's website for GBP 200 (GBP 1 = Rs. 95).
5.	Out-of-court settlement	10,00,000	Invoking the provisions of section 55(3) of the Act, the assessing officer held that the entire Rs. 10,00,000 shall be taxable as Short Term Capital Gains.

17. During appellate proceedings, the assessment order was sustained by the Commissioner of Income-Tax (National Faceless Appeals Centre) and the Hon'ble Income-Tax Appellate Tribunal in toto.

Appeal before the Hon'ble High Court of Judicature at Bombay:

18. Accordingly, based on legal advice, Abhay filed an appeal before the Hon'ble High Court of Judicature at Bombay which was admitted on the following grounds:

1. Whether the Tribunal was correct in upholding the validity of the notice under section 143(2) of the Act dated 25<sup>th</sup> May 2023?
2. Whether the Tribunal was correct in upholding the action of the assessing officer treating the Appellant as a 'Resident' instead of a 'Non-Resident' for income-tax purposes and taxing his worldwide income in India?
3. Whether the Tribunal was correct in upholding ad-hoc computation of additions made in respect of winnings from online games – Bitcoins and Tickets to the World Test Championship Final?
4. Whether the Tribunal was correct in upholding the taxability of proceeds received on account of the out-of-court settlement?
5. Whether if the answer to ground of appeal no. 4 is in affirmative, the Tribunal ought to have considered that right to sue comes into existence from the time the dispute took place (10 years ago) and therefore, ought to have been taxed as Long Terms Capital Gains.

All the above grounds are without prejudice to each other.

19. Upon hearing the brief facts of the case on the first date of hearing and considering Revenue's contentions, the Court adjourned the matter to another date for final disposal.