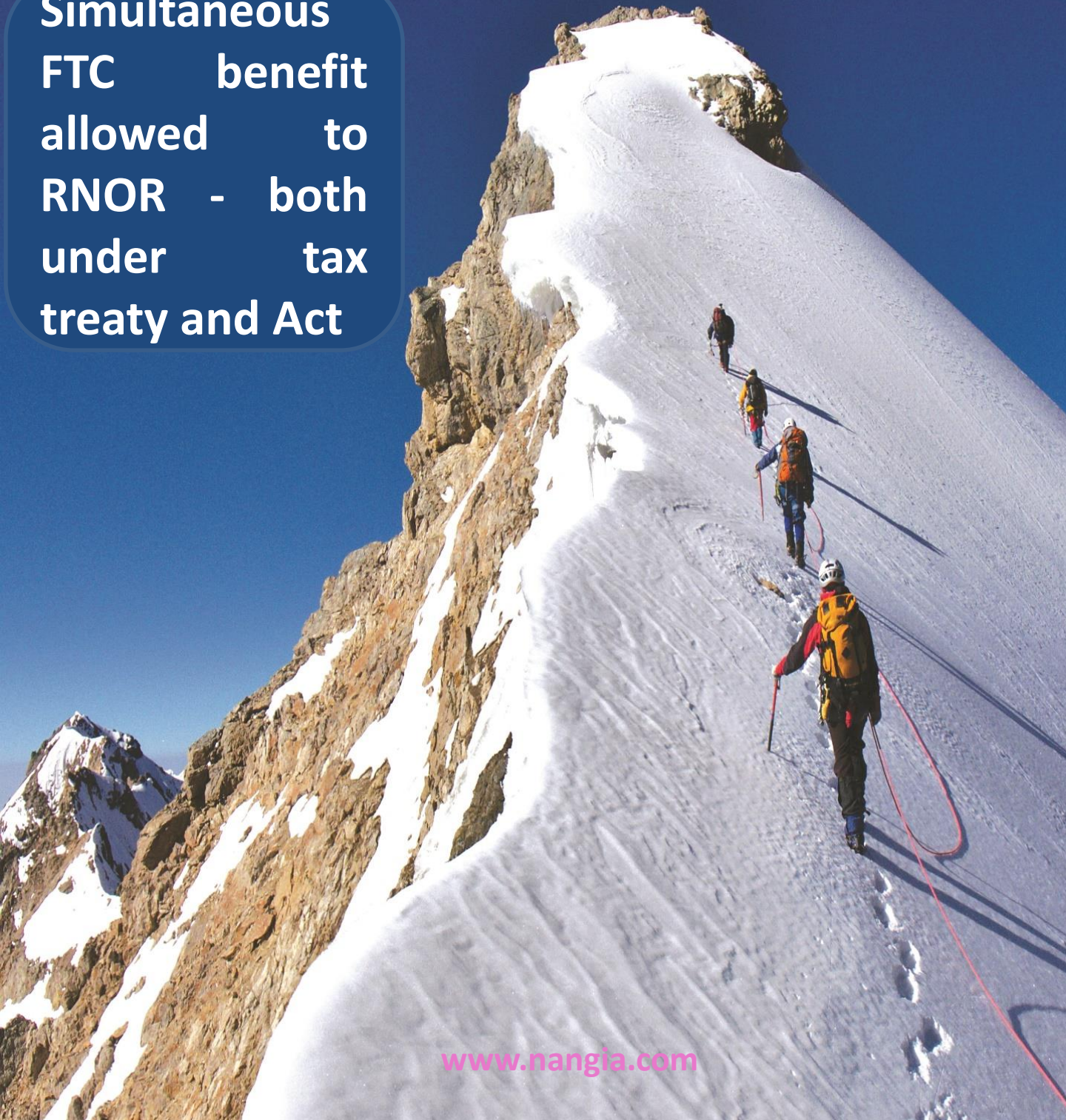


# NEWSFLASH

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Simultaneous  
FTC benefit  
allowed to  
RNOR - both  
under tax  
treaty and Act



## Simultaneous FTC benefit allowed to RNOR - both under tax treaty and Act

### Brief facts

- ❑ Aditya Khanna ('Assessee') is a resident but not ordinarily resident individual ("RNOR") in India employed with an entity in USA.
- ❑ Assessee filed his tax return in India, declaring salary income proportionate to the period of his stay in India and claiming proportionate foreign tax credit ("FTC") of both US Federal Taxes and US State Taxes.
- ❑ The tax officer ("AO") accepted the claim of the Assessee with respect to credit of US Federal Taxes under section 90 of Income Tax Act, 1961 ("Act") read with Article 2 of Double Taxation Avoidance Agreement ("DTAA") between India and USA. However, claim of FTC arising on account of 'US State Income Taxes' was disallowed on the ground that sections 90 and 91 of the Act deal with varying situations and provisions of one section cannot be read into the other section.
- ❑ Against the above findings, Assessee filed an appeal before CIT(A) and upheld the decision of the AO on the following grounds: -
  - a) Provisions of section 91(1) of the Act apply only in case of a 'resident' person and not in case of 'RNOR';
  - b) Assessee's reliance on Mumbai ITAT decision in the case of Tata Sons Ltd.<sup>1</sup> was also held to be misplaced as the ruling was rendered in case of a resident taxpayer;
  - c) Section 91 of the Act apply only in case of country with which India does not have a DTAA as notified under section 90 of the Act.

- ❑ CIT(A) also rejected Assessee's claim to allow deduction of US State Taxes while determining 'salary income' as the 'US State Taxes' are 'application of Income'.
- ❑ Aggrieved, the Assessee preferred an appeal before Income Tax Appellate Tribunal, Delhi ("ITAT").

### Assessee's Contentions

- ❑ In support of his contention for credit of US State Taxes under section 91 of the Act, Assessee placed reliance on the judgments of Karnataka High Court in the case of Wipro Ltd.<sup>2</sup> and Ahmedabad ITAT Decision in the case of Dr. Rajeev I Modi,<sup>3</sup>
- ❑ Rebutting order of the CIT(A), Assessee submitted that on a conjoint reading of section 2(30) of the Act (defining non-resident) and section 6 of the Act (defining Resident), the term resident as referred to under section 91 of the Act, would include a 'RNOR' individual as well.

### Revenue's Submissions

- ❑ Apart from placing reliance on the orders of the revenue authorities, revenue's counsel also contended that the definitions of resident, 'RNOR' and non-resident have different meanings and cannot be clubbed together.

### Income Tax Appellate Tribunal ruling

- ❑ Relying on the judgments in the case of Wipro Ltd. and Dr. Rajeev I Modi (supra), Hon'ble Tribunal held that the term 'income tax' as referred to in section 91 of the Act would include both federal and state taxes. Therefore, Assessee's claim of FTC with respect to state taxes be allowed under section 91 of the Act.

<sup>1</sup>CIT vs Tata Sons Ltd. [(2011) 135 TTJ 1 (Mumbai)]

<sup>2</sup>Wipro Ltd. vs DCIT [(2016) 382 ITR 179 (Karnataka)]

<sup>3</sup>D. Rajeev I Modi vs DCIT [ITA 1285/ AHD/ 2014]

- ❑ Section 6 of the Act qualifies various categories/ instances when an individual will be termed as 'Resident'. Provisions of section 6(6) of the Act, defining RNOR, also fall under the category of a resident. Therefore, a RNOR individual would also be entitled to claim benefit of the provisions of section 91 of the Act.

***Aditya Khanna Vs. ITO (ITA Nos. 6668/ Del/ 2015)***

## **NANGIA'S TAKE**

***It is a welcome judgement, benchmarking itself as a breakthrough precedent so far as the issue of FTC is concerned, thereby enabling a taxpayer to:***

- a) Make claim for credit of FTC simultaneously both under the provisions of the tax treaty (section 90 of the Act) and the domestic tax laws (section 91 of the Act);***
- b) Claim FTC even if he is a RNOR.***

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