

INTERNATIONAL TAX UPDATE

Parameters for Establishing
Non-Resident Status under
the Act



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Facts and Issue of the Case: -

- The assessee, an Indian citizen, shifted his employment and residence to Singapore in February 2019.
- During FY 2019–20, the assessee stayed in India for 141 days and had been present in India for more than 365 days in the preceding four financial years.
- In the relevant year, the assessee earned substantial capital gains from the sale of shares of Flipkart Private Limited (Singapore).
- The assessee claimed exemption from tax in India by treating himself as a non-resident and by invoking the India–Singapore DTAA.

- The Assessing Officer treated the assessee as a resident of India and denied treaty benefits.

Observations of the Hon'ble Tribunal: -

The Tribunal upheld the action of the Assessing Officer and held that: -

- The expression “**being outside India**” in Explanation 1(b) of Section 6 applies only to individuals who are otherwise non-residents and not to persons who were residents in earlier years. The legislative intent, as evident from the Finance Act amendments, was to benefit non-residents visiting India, and not persons who were already residents under the Act. Accordingly, the benefit of Explanation 1 was not available and the assessee was treated as resident.

- On the DTAA issue, the Tribunal held that even under the **tie-breaker test** in Article 4(2) of the India-Singapore Tax Treaty, the assessee's **permanent home, centre of vital interests, and habitual abode** were closer to India during the relevant year, for the following reasons:
 - a) The distinction cannot be made with respect to more permanence such as own house property in India compared to a rented premises. Thus, assessee shall be deemed to be a resident of the state of India and Singapore both in view of permanent home available to him at both the places.
 - b) The centre of vital interests is determined by examining the individual's personal and

economic relations. Although the assessee relocated to Singapore along with his family, it was noted that neither the assessee nor his family owned or maintained a permanent home in Singapore. On the other hand, the assessee continued to hold substantial economic interests and investments, which outweighed the claimed personal nexus with Singapore.

c) With respect to the habitual abode, it is apparent that he stayed in India for 141 days in India and balance days in other countries. Thus, the assessee worked only for the part of the year in Singapore and also lived in India for part of the year. Thus, in that case, the assessee will have a habitual abode in both India and Singapore.

d) Undisputedly, assessee is an Indian national.

In view of the foregoing observations, it is evident that even on application of the tie-breaker tests, the assessee is liable to be regarded as a resident of India.

For complete details, please refer to the ITAT order dated 09.01.2026 passed in the case of ***Shri Binny Bansal Vs. The Deputy Commissioner of Income Tax; IT(IT)A No. 571/Bang/2023.***

<https://itat.gov.in/public/files/upload/1767950841-Snxkrn-1-TO.pdf>

*DISCLAIMER: - The summary information herein is based on ITAT's ruling in the case of **Shri Binny Bansal Vs. The Deputy Commissioner of Income Tax; IT(IT)A No.571/Bang/2023** dated 09.01.2026. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*