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The Burden of Tax Over Sporting Income – An Analysis

Ishan Rana

ABSTRACT

Section 115BBA of the Income Tax Act provides a tax regime in case of income arising out of sports persons who are non-citizen and non-resident. The provision talks about income received by way of participation in any game or sport, advertising or contribution of article in any newspaper etc. The same regime is also available to sports association or institution which is a non-resident association or institution, for guarantee money payable to such institution in relation to any game or sport played in India. The paper's main motive is to get a clear cut picture on how, when and why taxes are imposed on sportspersons and sport organisations. The paper will also try to answer the question on what basis the sports person are charged with tax in the country with relation to the provisions of Indian Income Tax Act 1961. The paper at the end will also see how Double Tax Avoidance Agreement (DTAA) looks in the same scenario.

Keywords: sportsperson, section 115BBA, income tax, sports, advertising, newspaper article, DTTA.

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CHAPTER I

1. INTRODUCTION

1.1 OVERVIEW

The Income Tax Act 1961 provides a concessionary tax regime in the case of income of sports persons who are non-citizen and non-resident under section 115BBA. Income which is received by way of participation in any game or sport, advertising or contribution of article in any newspaper etc is covered under this provision. The salary income of such sportsmen is burdened with tax @ 10% of the gross receipts. The same regime also applies to a non-resident sports institution or association for guarantee money payable to such institution in relation to any sports or game played in the country India.

There is uniformity between a non-resident sportsman and a non-resident entertainer under the Double Tax Avoidance Agreement (DTAA's). A similar tax regime which can be said - taxation on basis of gross receipts rather than net income which would simplify the process of taxation in the case of entertainer. The unique treatment in regard of entertainer is required as the determination of deductible expenses for performance is complicated, especially when the production expenses of an international tour need to be allocated across performances in various countries.

Similarly, international tax rates exist for both sportsperson and entertainer. International comparisons also tells that the rate of tax ranges between 10% to 30% in case of sportsperson and entertainer. Therefore, the rate of 20% on gross receipts is a quite reasonable rate of tax in the case of non-resident, non-citizen entertainer. The rate of tax in case of non-resident, noncitizen sportspersons and non-resident sports industries or associations also needs to be raised to a level of 20%.

1.2 RESEARCH PROBLEM

To give support to sports in India and to promote sporting attempts, the income tax act provides that incomes emerging from any sports or sporting event, held in India to any individual or person can be completely excluded or exempted from Income tax. This can be accomplished based on endorsements by the central government utilizing the provisions of the Income Tax act 1961. Practically all international sports or sporting events organised in India are

tax-exempt because of this provision. The sportsperson's and the coordinators income from other sources which doesn't not covered the exemption notification, follow the general law of taxation and are taxed normally. The question here is what is to be taxed and what to be not for a sportsperson.

1.3 EXESTING LEGAL SITUATION

It was proposed to amend section 115BBA to provide that income arising to a non-citizen, non-resident entertainer (radio or television artists and musicians, such as theatre,) from their performance in India shall be taxable @ 20% of the gross receipts. The taxation rate was also proposed to be increased in case of non-citizen, non-resident sportsmen and non-resident sports association, from 10% to 20% of the gross receipts.

This amendment had taken effect from 1st April, 2013 and has, accordingly, applied in relation to the assessment year 2013-14 and subsequent assessment years. An amendment was proposed under section 194E to provide for withholding of tax at the rate of 20% from income payable to non-resident, non-citizen, entertainer, or sportsmen or sports association or institution. This amendment took effect from 1st July, 2012.

1.4 REVIEW OF LITERATURE

Wladimir Andreff in his paper of 'The correlation between economic underdevelopment and sport' said that the degree of Investments in sports in developing countries is extraordinarily less when contrasted with developed countries. It is in this manner nothing unexpected that recreational exercises, he also gives examples such as, sports would not lie high on the rundown of needs of a nation, for example, India. A solid relationship between the degree of financial improvement and sporting advancement in a nation has been exhibited by a few reported studies. It has been likewise been shown utilizing factual inspecting that the likelihood of a nation's competitors winning gold medals at the Olympics increases in the direct extent to increase in per capita GDP and population.¹

¹ Wladimir Andreff, 'The correlation between economic underdevelopment and sport' <<http://www.tandfonline.com/doi/abs/10.1080/16184740108721902#.Vafnck0w-Uk>> Accessed 28th September 2019

If one says that earning from sporting income is less or not to be counted then I must say they are wrong. Gaurav Laghate, in his article on “IPL’s TV ratings on sticky wicket but advertisers unfaced”, in brief said that India's best professional athletics and the most successful professional sports league, the IPL acquires several crores in benefit on a yearly premise. The accomplishment of the league can be exhibited by the way that the group earned an overflow of Rs 237 crores in its fifth edition.² Again the Economic Times in their article on IPL portaited accomplishment of the IPL which has prompted an expansion of enthusiasm for the production of sporting leagues and yearly occasions in different sports too. The inaugural edition of the Indian Soccer League or the ISL, for instance, piled on right around 429 million viewers to develop as an intense TV property.³

Further, Débora Montesinos, in his article “FIFA to reap US \$1.4 billion in sponsorship revenues from Brazil 2014” talks about the income earned by FIFA which is nearly \$1.4 Billion by way of sponsorships during the 2014 world cup Brazil.⁴

E.J. Schultz, ‘How to get the most out of your sports sponsorship’ talks about advertisers who spends nearly \$14.35 billion on games sponsorship, according to a few reports sports takes up practically 70% of all sponsorship business overall. He also says that in Indian setting brands spent around Rs 4100 crore on different games sponsorships in a year.⁵

According to Professor Klaus Vogel on the Double Taxation Convention, the meaning of the words “Sportsman (including athlete)” should be interpreted broadly as it should cover the sportswomen also. Thus on similar analogy, the conclusion can be drawn that the words “Sportsman (including athlete)” should cover sportswomen also u/s 115BBA.⁶

Wipo on ‘Broadcasting & Media Rights in Sport’ saw the sovereignties that telecasters gain from offering their elite film to other news sources empower them to put resources into the exorbitant hierarchical and specialized endeavour engaged with broadcasting games to a large number of

² Gaurav Laghate, “IPL’s TV ratings on sticky wicket but advertisers unfaced”, <https://www.business-standard.com/article/specials/ipl-s-tv-ratings-on-sticky-wicket-but-advertisers-unfaced-113032700175_1.html,> Accessed 28th September 2019

³ Ibid.

⁴ Débora Montesinos, “FIFA to reap US \$1.4 billion in sponsorship revenues from Brazil 2014,” <<https://www.portada-online.com/category/latin-america/>> Accessed 28th September 2019

⁵ E.J. Schultz, ‘How to get the most out of your sports sponsorship’ <<http://adage.com/article/special-report-2014-sports-sponsorship/291159/>> Accessed 28th September 2019

⁶ Klaus Vogel on Double Taxation Convention <<https://lrus.wolterskluwer.com/store/product/klaus-vogel-on-double-taxation-conventions-fourth-edition/>> Accessed 18th October 2019

fans everywhere throughout the world. Along these lines Beijing Olympic Broadcasting, which as host telecaster for the Beijing Games provided Television signals from all the Olympic scenes, conveyed 6,000 staff, 1,000 cameras, 575 advanced video recording devices, 350 communicate trailers and 62 outside communicate vans.⁷

Further in the case of Agassi v. Robinson⁸ it was held that endorsement incomes paid by non-resident organizations which are received by a non-resident sportsperson for explicit performance in the UK shall be relatively subject to taxation in the United Kingdom to the degree that such payments relate to the performance in the United Kingdom. In this way, any incomes earned by a sportsperson for endorsement and so on for a non-resident entity can be taxed in the nation where such exercises are performed.

1.5 SCOPE AND OBJECTIVES

The scope of the present study is mainly focused on the framework of the legislation of tax laws regarding sports and sporting activities. The main objective of the paper is to see is there any tax law or provision which govern the sporting activities and the income arising out of it and if any then the researcher will try to analysis it.

1.6 RESEARCH QUESTION

- Can sporting incomes be assessed under a tax?
- What are the provisions related to such a taxation and what are their weightage?

1.7 HYPOTHESIS

- The income of a sportsperson, arising out of sports is liable to Tax assessment.
- There are certain provisions related to taxation of sportsperson/entertainer.

1.6 RESEARCH METHODOLOGY

Considering the objective of the paper the 'qualitative research method' is applied. Qualitative research is generally more explorative, that is dependent on the collection of verbal, behavioural or observational data that can be interpreted in a subjective manner.

⁷ Ibid.

⁸ Ibid.

CHAPTER II

2.1 THE SPORTS AGE IN INDIA

Before we talk about the Taxation of Sports and sporting income in India, it is critical to comprehend the setting behind the ascent of sports as a past-time in India. The degree of Investments in sports in developing countries is extraordinarily less when contrasted with developed countries. It is in this manner nothing unexpected that recreational exercises, for example, sports would not lie high on the rundown of needs of a nation, for example, India. A solid relationship between the degree of financial improvement and sporting advancement in a nation has been exhibited by a few reported studies. It has been likewise been shown utilizing factual inspecting that the likelihood of a nation's competitors winning gold medals at the Olympics increases in the direct extent to increase in per capita GDP and population.⁹

In this setting, it ought to be a given that with monetary thriving, rising salary levels, and expanding mindfulness among the people, sports and sporting events would discover expanding support with the Indian masses not similarly as a trial of ability and quality yet additionally as an excitement and recreational occasion. A characteristic result of such increment in sporting activity would be the convergence of business interests and money to such occasions, and competitors by method for sponsorship, prompting an expansion in livelihoods of donning bodies and an ascent in prize satchels, appearance expenses for the games people included.

Of the considerable number of sports in India, true to form Cricket by a long shot still remains the most famous game, earning a lot of sponsorship cash just as watcher premium, however, on account of the endeavours of star competitors, for example, Saina Nehwal, Leander Paes, Narain Karthikeyan, Sunil Chetri and others, the profiles and popularity of different games like badminton, tennis, F1, and football has additionally expanded.

2.2 THE NEW MODELS FOR EARNING REVENUES IN SPORTS

⁹ *Wladimir Andreff*, 'The correlation between economic underdevelopment and sport'
<<http://www.tandfonline.com/doi/abs/10.1080/16184740108721902#.Vafnck0w-Uk>> Accessed 28th September 2019

India's best professional athletics and the most successful professional sports league, the IPL acquires several crores in benefit on a yearly premise. The accomplishment of the league can be exhibited by the way that the group earned an overflow of Rs 237 crores in its fifth edition.¹⁰ The accomplishment of the IPL has prompted an expansion of enthusiasm for the production of sporting leagues and yearly occasions in different sports too. The inaugural edition of the Indian Soccer League or the ISL, for instance, piled on right around 429 million viewers¹¹ to develop as an intense TV property. The adaptation of such viewer intrigue is frequently basic for the proceeded with the presence of such leagues and sporting games. This has prompted reception of demonstrated income models as common in different nations (fundamentally the United States of America, a pioneer in elite athletics alliances) and different cases production of new plans of action.

The main sources of income for professional sporting events include:

2.2.1 MEDIA RIGHTS

Media/Broadcast rights incorporate or includes the privilege to convey and show the respective sports events and games on traditional as well as new media, for example, TV, theatres, radio, and the web.

The sale of broadcasting and media rights is currently the greatest wellspring of income for most sports associations, creating the assets expected to back major games, restore sports stadia, and add to the improvement of the game at the grassroots level. Of the evaluated \$1.7 billion paid by supporters for selective rights to communicate the 2008 Beijing Olympic Games, about half went to the sorting out the organizing committee for the Games and the other half to the more extensive Olympic development, including National Olympic Committees and the global organizations for the different Olympic sports.

In the meantime, the sovereignties that telecasters gain from offering their elite film to other news sources empower them to put resources into the exorbitant hierarchical and specialized endeavour engaged with broadcasting games to a large number of fans everywhere throughout

¹⁰ Gaurav Laghate, "IPL's TV ratings on sticky wicket but advertisers unfazed", <https://www.business-standard.com/article/specials/ipl-s-tv-ratings-on-sticky-wicket-but-advertisers-unfazed-113032700175_1.html> Accessed 28th September 2019

¹¹ Economic Times <http://articles.economictimes.indiatimes.com/2014-12-31/news/57558204_1_atletico-de-kolkata-indian-super-league-hero-isl> Accessed 28th September 2019

the world. Along these lines Beijing Olympic Broadcasting, which as host telecaster for the Beijing Games provided Television signals from all the Olympic scenes, conveyed 6,000 staff, 1,000 cameras, 575 advanced video recording devices, 350 communicate trailers and 62 outside communicate vans.¹² Television rights relate to the broadcast of shows through earthly or satellite television, regardless of whether in one nation or crosswise over various nations. Television rights are frequently extremely worthwhile, both for the coordinators and the broadcasters. Television rights are considered 60% of the pay of the Tour de France, which is communicated in more than 180 nations. The English Premier League, whose matches are communicated in 212 nations, sold local and worldwide Television rights for the three seasons 2010-2013 for a surprising figure of £3.2 billion.¹³

Theatrical or dramatic rights, just as rights to communicate sports over radio are a portion of the other important properties in the business of sports. In the web time or internet era, rights to distribute content and pictures online have likewise turned into an extra income stream for sports franchises. The significance of these new mediums can be measured by the way that even occasional updates and the privilege to highlight live score feeds of cricket matches have turned out to be fervently challenge properties in India.

2.2.2 SPONSORSHIPS

It is broadly estimated that FIFA earned nearly \$1.4 Billion by method for sponsorship bargains during the 2014 world cup in Brazil¹⁴. Everywhere throughout the world advertisers spent nearly \$14.35 billion on games sponsorship, according to a few reports sports takes up practically 70% of all sponsorship business overall¹⁵. In the Indian setting brands spent around Rs 4100 crore on different games sponsorships in the year 2013¹⁶. Sponsorships give a steady wellspring of income for the organization, association, establishment and competitor and simultaneously give another road to brands to connect with potential clients and customers.

¹² Wipo 'Broadcasting & Media Rights in Sport' <<http://www.wipo.int/ip-sport/en/broadcasting.html>> Accessed 28th September 2019

¹³ Ibid.

¹⁴ Débora Montesinos, "FIFA to reap US \$1.4 billion in sponsorship revenues from Brazil 2014," <<https://www.portada-online.com/category/latin-america/>> Accessed 28th September 2019

¹⁵ E.J. Schultz, 'How to get the most out of your sports sponsorship' <<http://adage.com/article/special-report-2014-sports/sports-sponsorship/291159/>> Accessed 28th September 2019

¹⁶ Ibid.

2.2.3 TICKET FEE AND OTHER SOURCES

Professional sporting leagues additionally make a profit through franchise fee's which are aggregates paid by invested individuals to tie down rights to operate a franchise in such league, other authorized occasions, for example, the cricket world cup, Olympic games procure incomes for the coordinators through entryway incomes or ticket charge. Other nearby wellsprings of income incorporate snack bars, eateries worked by groups in their arenas, stock deals and participation's bundles offered by them to their supporters.

2.3 TAX ASSESSMENT OF SPORTING INCOMES

Tax assessment of income in India is represented by the Income Tax Act, 1961 ("act") which provides explicit provisions for arrangements for the tax collection of income earned from sporting interests and performance.

2.3.1 SPORTING EVENTS

To give support to sports in India and to promote sporting attempts, the Income Tax act provides that incomes emerging from any sports or sporting event, held in India to any individual or person can be completely excluded or exempted from Income tax. This can be accomplished based on endorsements by the central government utilizing the provisions in section 10(39) of the Income Tax act 1961.

As per the section, a specific or explicit income emerging can be exempted given:

1. Such an occasion is authorized/endorsed by the international body directing such sports
2. The event has the participation of multiple nations
3. The event has been notified by the central government in the official gazette for this reason

This exception shall stretch out just to income earned explicitly from such events and to no to any other incomes earned by the coordinators of such games or sporting events. Incomes exempted may include sponsorship money, gate revenues, etc.

Practically all international sports or sporting events organised in India are tax-exempt because of this provision. The sportsperson's and the coordinators income from other sources which

doesn't not covered the exemption notification, follow the general law of taxation and are taxed normally.

2.3.2 FOR LEAGUES/ORGANIZERS

Professional sports leagues, for example, the IPL and other "premier" leagues that have risen lately in the recent years are for-profit ventures and are in this way, reasonably, not generally concurred exempted by the government. The absence of such acknowledgement from the government often forces such leagues to embrace different entangled or complicated structures including numerous layered elements, both offshore as well as local, this builds the costs of consistency yet cuts down the all-out tax liability.

Different sports bodies, such as, various sports federations work without benefit thought processes or profit motive, are sorted out as non-profit entities in the form of trusts that have exempt status as of Section 12A registration under the income tax act.

2.3.3 FOR SPORTSPERSONS

The growth in sporting events and the creating of sporting leagues has brought with it an expansion in income for sportspersons, while there exist numerous, one of a kind tools that can be utilized to deal with the tax incidence on such income we have endeavoured to explain the essential principles of taxation for individual sportspersons. There are different provisions set up in a place that govern the taxation of a resident, and non-resident sportspersons these have been addressed respectively below.

2.3.4 INDIAN RESIDENTS

Indian tax law stipulates for the taxation in India of all incomes earned by residents regardless of where such income was earned (read tax taxation of non-residents). There exist a few potential situations which would influence the powerful tax rates of Incomes earned by sportspersons. Depending upon the conditions, it can be either delegated to income from Business and profession, salaries, or income from other sources. Such classification is significant as expenses can be taken as deductions from income earned from business and profession while no such deduction is permitted under other heads. Salaries take into account explicit structuring that

empowers the reduction of the inevitable tax burden while no additional deductions are available for incomes from other sources. In this way, this classification is controversial and has been the subject of several litigations.

In accordance with prevailing law, every foreign income earned by resident sportspersons is also taxable in India, whether repatriated to India or not. This can be best represented by method for an illustration:

Mr. ABC a star golf player is an resident of India and lives in the nation for over 182 days in the calendar year. ABC travels around the world participating in golf competitions, and earns the accompanying sums during the year:

- Sponsorship amount from his sponsors situated in the United States
- Appearance charge received from the coordinators of golf competitions in Australia and China
- Prize amount from a golf competition that he wins in Canada.
- Fee for acting in an advertisement for an organization arranged in India

Since he is an resident in India, the sum total of his worldwide income will be viewed as taxable in India. While the sponsorship charge, prize cash and appearance fee might be viewed as taxable as profit and gains from business and profession (PGBP) and costs or expenses permitted to be deducted from such incomes, the department may take a view that fee for acting in the advertisement is income from other sources and no expenses might be taken into account for the same.

2.3.5 NON RESIDENTS

Incomes earned in India by non-resident sportspersons, who are additionally not a citizen of the nation, are burdened with tax as per the arrangements of provision 115BBA of the Income Tax act 1961. Section 115BBA accommodates the tax assessment of earnings earned by method for interest in India in-game, advertisement or commitment of articles in papers, magazines, journals and so on by any sportsperson who is neither a citizen of India nor a resident of the nation. The section likewise also applies to non-resident sports associations or institutions and entertainers who earn money from their performances in India.

As per the section, incomes earned by the previously mentioned category of assesses will be liable for tax at a flat rate of 20% in India with no deductions in regard of any expenditure of allowances under any other section.

On account of non-residents it is likewise worth analysing the provisions of the relevant Double Taxation Avoidance Agreements (DTAA) since such provisions apply according to section 90(2) of the Income Tax act wherever they are more beneficial.

DTAAs, for the most part, determine a different article (article 17 according to the model convention) that manages entertainers and sportspersons who perform internationally. The model convention, as well as the most DTAAs, entered into by India provide tax collection of income earned at the nation of source, which forms the reasons for this examination is India. According to the provisions of Article 17(1), other incomes earned by the sportspersons by way of consideration for interviews, articles, press conferences and so on will likewise be considered to be intently connected with the performance of the sportspersons and will be subject to tax in the nation of source.

Further, income or earnings earned by operators, star companies, and different systems in the interest of the sportspersons are likewise subject to tax in the nation of source per the articles. Despite the fact that their very own incomes stay outside the scope of both 115BBA of the domestic statute as well as of article 17. With reference to star organizations, where any sportsperson is paid a salary rather than payments for a separate performance, then the proportionate amount of salary earned for performance in the source nation (India) will liable to be imposed tax on in India.

Star organizations, or entities framed in low tax jurisdictions to avoid taxes by way of a redirecting the incomes from the sportspersons themselves and tax them in the hands of such entities instead of the sportspersons have been addressed by way of clause 17(2) of the model convention which stipulates that the incomes of such organizations be taxed in the nation of source. Clause 17(2) can further be utilized as a condition of the source to tax at the level of the team the bit of the performance income which can't be taxed in the hands of the individual entertainers, paying little respect to whether the team has a permanent foundation in that nation.

A reference may likewise be made to the landmark instance of *Agassi Vs Robinson*¹⁷ where it was held that endorsement incomes paid by non-resident organizations which are received by a non-resident sportsperson for explicit performance in the UK shall be relatively subject to taxation in the United Kingdom to the degree that such payments relate to the performance in the United Kingdom. In this way, any incomes earned by a sportsperson for endorsement and so on for a non-resident entity can be taxed in the nation where such exercises are performed.

Notwithstanding the previously mentioned articles 17(1) and 17(2) most tax treaties signed by India additionally incorporate article 17(3) by virtue of which India maintains all authority to exclude from the purview of articles 17(1) and 17(2) any professional income earned by sportspersons for performance that are considerably upheld by public fund. In such conditions, the privilege to tax will lie with the nation of residence and not the nation of source.

¹⁷ *Agassi v. Robinson* [2005] EWCA Civ 1507

CHAPTER III

3.1 COMPLIANCES FOR NONRESIDENT SPORTSPERSONS

Sportspersons who are non-resident and are acquiring incomes from Indian sources should hold a permanent account number (PAN) which takes into consideration the deductions made from their incomes to be connected to their names. While there is no requirement for the filing of income tax returns where just incomes subject to section 115BBA have been earned appropriate tax has been deducted thereon.

On the other hand, sportspersons are encouraged to acquire a tax clearance certificate from the relevant tax authorities before their departure from India in similarity with section 230 of the Income Tax act.¹⁸

3.2 RELATED PROVISIONS

Indian Income Tax act governs the taxability of any non-resident Indian and Provisions of DTAA, whichever is more beneficial. If there should be an occurrence of taxability of Non Resident Sportsperson/Entertainer/Sports Association, inter-play of following provisions are analysed herein.¹⁹

1. Section 9 – Income Tax Act
2. Section 115BBA – Income Tax Act
3. Article 17 – United Nation Model Double Taxation Convention, (UN Model)
4. Article 14 – United Nation Model
5. Article 15 – United Nation Model

Section 115BBA gives us a special rate of 20% (+ surcharge and EC) on the income accruing to Non Resident Sportsman/Entertainer/Sports Association. No deduction for any expenditure and allowance is allowed to such assesses u/s 115BBA. The

¹⁸ Income Tax Act 1961, Section 230

¹⁹ Income Tax Act 1961, Section 9

Income Tax Act 1961, Section 115BBA

United Nation Model Double Taxation Convention, Article 14

United Nation Model Double Taxation Convention, Article 15

United Nation Model Double Taxation Convention, Article 17

Provision of section 115BBA is explained as under:-

ASSESSEE	NATURE OF INCOME			
	Income or gain from participation in India in any game or sports /Performance in India	Income or gain from Advertisement	Income or gain from Contribution of Articles in Newspaper, magazines etc.	Other Income or gain
Sportsman (including athlete), who is non-resident and also not a citizen of India	Tax @ 20% u/s 115BBA	Tax @ 20% u/s 115BBA	Tax @ 20% u/s 115BBA	Normal Provisions
Sports industries, which are non-resident	Tax @ 20% u/s 115BBA	N.A	N.A	Normal Provisions
Entertainer, who is a non-resident and also not a citizen of India	Tax @ 20% u/s 115BBA	Appears to be Tax @ 20% u/s 115BBA	Normal Provisions	Normal Provisions

3.2.1 OBSERVATIONS:

1. Section 115BBA doesn't speak about sportsman & entertainer. Other relevant sections of Income Tax Act are also silent.
2. The question of taxability of members like Coach, Manager, musicians etc, are covered by provisions of section 115BBA. But the team members are not covered by section 115BBA, in connection with their performance, which will be governed by the normal provisions of IT Act.
3. The wordings of section 115BBA are quite similar to the one which are used in Article 17 of the United Nation model convention, which is also on the same lines as adopted in the OECD model Double taxation convention. According to the treatise on the convention of double taxation by Professor Klaus Vogel, the meaning of the words "Sportsman (including athlete)" should be interpreted broadly as it should cover the sportswomen also. Thus on similar analogy,

the conclusion can be drawn that the words “Sportsman (including athlete)” should cover sportswomen also u/s 115BBA.²⁰

4. Section 115BBA of the act does not covers winnings from games specified in section 115BB²¹ like - crossword puzzles, winnings from lotteries, card games, horse races, gambling or betting.

Section 9(1)(ii), Salary shall be deemed to accrue in India, if it is earned in India i.e employment is exercised in India.

3.2.2 DTAA PROVISIONS –AS PER THE UN MODEL

DTAA provisions allocate the taxability right of different types of Income among the contracting states involved and then their taxability is left to the respective state Article 17 which, deals with Income of Sportsman & Entertainer, grant both contracting states the right to tax income of sportsman/entertainer. The main feature of Article 17 is as under:

1. The Article overrides the provisions of Article 14 (Independent Personal Service) & Article 15 (Dependent Personal Services)
2. The Income covered is those which are derived directly or indirectly from performance in India by a resident of a foreign state.
3. The Article says, when a performance is based in India, the income which accrues is not to the sportsperson or entertainer, but to the other people (organisation/association). India too gets a right to tax such income, overriding the provisions of Article 7 that is irrespective of whether such organisation/association is having PE in India or not.²²

3.2.3 CRITICAL OBSERVATIONS

1. Article 14 talks about the distribution of taxability right of income when a foreign resident performs a professional service or any other activity of an independent character in India. India gets the right to impose tax only when either of the following two conditions is met:-

²⁰ Klaus Vogel on Double Taxation Convention <<https://rus.wolterskluwer.com/store/product/klaus-vogel-on-double-taxation-conventions-fourth-edition/>> Accessed 18th October 2019

²¹ Income Tax Act 1961, Section 115BB

²² United Nation Model Double Taxation Convention, Article 7

- a. A resident of Foreign state has a fixed base available to him in India for performing his activities;
- b. Stay of a resident of Foreign state in India exceed the prescribed period.

Gist- Fixed base or stay for a prescribed period in India is essential for India to get taxability right on the income of nature specified under Article 14.

2. Article 15 talks about the distribution of taxability right of wages, salaries & other remuneration in the case when an employee is a foreign resident and exercise employment in India. India does not get right to tax remuneration from the employment of resident of Foreign state if the following conditions are met:-

- a. The recipient (resident of Foreign state) is not present in India for the prescribed period and
- b. The employer is not a resident of India and
- c. The remuneration is not borne by PE or fixed based, which his employer in India.

Gist – For a country like India to receive a taxability right on salary a foreign resident employed in India, the employee shall stay in India for a prescribed period, which is one of the essential condition.

3. Article 17 overrides Article 14 & 15. Following consequences prevails:

- a. Irrespective of a resident of the foreign state having Fixed base or prescribed stay in India, by, India gets taxability right on income accrues to such resident due to performance in India in independent character.
- b. Where sportsperson/entertainer is an employee of an institution or organisation and the income from their performance or activity in India accrue to an institution or organisation, then irrespective of performer stays in India or not, salary or income due to such a performer for the time period during which the performance was carried out in India, India get right to tax on such proportionate salary.

Article 17 of the UN model convention is similar to the corresponding Article in the OECD Model Convention. Thus the OECD commentary on the said Article is equally applicable to

Article 17 of the UN model Convention. Article 17 also deals with Income derive by resident either directly from performance in Another contracting state. As per the OECD commentary, Article 17 will also apply to incomes from Advertisement or sponsorship which is related directly to the performance in another contracting state.

As a corollary, the following income will not be governed by Article 17, which will be dealt by either Article 7, 14 or 12.²³

- a. Advertisement income, which is not linked to performance on another contracting state
- b. Journalism income (Contribution of an article in newspaper etc.), which is not linked to performance in another contracting state
- c. Royalty income from the exploitation of Intellectual right of performance in India

The income of team members- As per OCED commentary on OECD model double taxation convention, Article 17 does not extend to support staff (e.g cameramen for a film, producers, choreographers, film directors, technical staff, road crew for a pop group etc).

Taxability of Non-resident and not being a citizen of India sportsman/entertainer in India-

A sportsperson/entertainment can earn income in the following ways (also discussed earlier):-

- a. By performing in an independent capacity
- b. As an employee of an association.
- c. Other means- Advertisement, Journalism, royalty.

3.2.4 PERFORMANCE IN INDIA IN INDEPENDENT CAPACITY

By a visit to India, an sportsperson or entertainer can earn income from various acts such as;-

- a. Direct performance of their skills
- b. By advertisement, (either linked or not linked to performance of their skill, in India)
- c. By Contribution of an article in a Newspaper or Journal etc (linked or not linked to performance of their skill, in India).

²³ United Nation Model Double Taxation Convention, Article 12

d. By Royalty i.e, on use by other person of copyright over the performance in India.

An interplay between Section 115BBA and Article 17 of DTAA is explained with the view of taxability :-

Sl.No	ACTIVITY	TAXABILITY
1.	Direct Performance	<ol style="list-style-type: none"> Article 17 gives power to a performing state to tax an income, irrespective of period of stay of the performer or performance in India as such. Section 115BBA tax such income @ 20%
2.	Advertisement/Journalism linked with performance in India	Same as applicable in the context of Direct Performance of personal skills at Sl.No (1)
3.	Advertisement/Journalism not linked with any performance in India	<ol style="list-style-type: none"> Article 17 will not be applicable to the said income Article 14 or Article 7 will be applicable. Under this article, income arising from India will not be taxable in India, unless non-resident has PE or fixed based in India. Income arising from one time activity in India is not taxable in India. Unless entertainer has a fixed based in India or PE, advertisement income is not taxable in India
4.	Royalty	<ol style="list-style-type: none"> Article 17 will not be applicable to the said income Article 12 will be applicable to the said income, which gives the payer state i.e. India, to tax royalty. Royalty will be taxable in India u/s 115A @ 25%.

CONCLUSION

Sporting income in India, is critical to comprehend the setting behind the ascent of sports as a past-time in India. The degree of Investments in sports in developing countries is extraordinarily less when contrasted with developed countries. The Income Tax Act 1961 provides a concessionary tax regime in the case of income of sports persons who are non-citizen and non-resident under section 115BBA. Income which is received by way of participation in any game or sport, advertising or contribution of article in any newspaper etc is covered under this provision.

Where any income referred to in section 115BBA is payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of twenty per cent.²⁴

So, that is how it is. Our Income Tax Law spares no one, not even the sports persons who we all love to watch when they perform.

²⁴ Krityanshu, "Tax on non-resident sports person or sports association"

<<https://www.finacleclub.com/articles/tax-on-non-resident-sports-person-or-sports-association>> Accessed 21st October 2019

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