

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
डॉ मनीष बोरड, लेखक सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष
[Before Dr. Manish Borad, Accountant Member & Shri Anikesh Banerjee, Judicial Member]

I.T.A. No. 24/Kol/2023
Assessment Year: 2014-15

Debarghya Chattopadhaya (PAN: ACMPC 3020 G)	Vs.	DCIT, International Taxation, Circle-1(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	31.01.2024
Date of Pronouncement/ आदेश उद्घोषण की तिथि	09.02.2024
For the Appellant/ निर्धारिती की ओर से	Shri Nageswar Rao, A.R
For the Respondent/ राजस्व की ओर से	Shri Kiran Chatrapoty, JCIT, Sr. D.R

ORDER / आदेश

Per Manish Borad, Accountant Member:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-22, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 21.11.2022 for the AY 2014-15.

2. The assessee has raised following Grounds of appeal:

1. For that on the facts of the case the Ld. CIT(A) was not legally justified in sustaining the addition of Rs. 50,75,797/-, as salary income (taxable in India), when the entire income has been subjected to taxation in UK, and the appellant was an NRI and has claimed relief under DTAA supported by Tax Residency Certificate, and appellant has already paid the due taxes thereon in UK, the addition wrongly made may please be deleted.

2. For that on the facts of case the remand report and the tax residency certificate issued by UK authorities, has been ignored and the claim of the appellant has been disallowed, without considering the assessment records of earlier years, wherein identical situation the relief under DTAA, has been allowed in full.

3. For that the appellant craves leave to add, alter, amend any further grounds of appeal before or at the time of hearing.

3. At the outset, the Ld. Counsel for the assessee submitted that the assessee is a non-resident Indian and claimed relief under DTAA. Due to non filing of tax residency certificate before the AO, the salary income of Rs. 50,53,221/- and interest income of Rs. 22,576/- has been held to be taxable. He further submitted that the Ld. CIT(A) also did not consider the tax residency certificate furnished before him and confirmed the view taken by the AO.

4. On the other hand, the Ld. D.R supported the order of lower authorities.

5. We have heard the rival contentions and perused the records placed before us. We note that the assessee is admittedly a non-resident Indian and received salary from IBM India Pvt. Ltd. while working in United Kingdom. The appellant is a tax resident in United Kingdom. Income at Rs. Nil declared in the e-return for AY 2014-15 electronically furnished on 21.07.2014. After the

case was selected for scrutiny through CASS and notice was issued u/s 143(2) and 143(1) of the Act. The Ld. AO called for various details about the income earned during the year. We notice that the assessee received salary of Rs. 50,53,721/- from IBM India Pvt. Ltd. he was sent to United Kingdom for short term foreign assignment. The salary income of Rs. 50,53,221/- and interest income of Rs. 22,576/- was not offered to tax in India on the ground that the assessee is a non-resident Indian and taxed on his total income in the country of residence. The ld. AO denied the claim because the assessee failed to furnish a tax residency certificate from United Kingdom which is required in order to claim DTAA benefit u/s 90 of the Act. Further we notice that the assessee carried the matter before the Ld. CIT(A) and placed the copy of tax residency certificate of United Kingdom. Since this document was filed for the first time the Ld. CIT(A) called for a remand report. In the remand report dated 17.08.2022, the AO accepted that copy of tax residency certificate has been received on 31.08.2017 and the same was issued by HM Revenue and Customs, UK in which it was declared that the assessee was a resident of the UK during the period from 06.04.2013 to 05.04.2014. The Ld. AO also stated in the remand report that claim of DTAA benefit of the assessee is valid and therefore the salary income received for the work during stay at United Kingdom is exempt. The Ld. CIT(A) called for a report from Ld. CIT(A)-OSD(IT) Range-2, Kolkata but the fact mentioned by the AO in the remand report stood

uncontroverted. Surprisingly Ld. CIT(A) has still not allowed the ground of appeal. Before us, the Ld. Counsel for the assessee has placed reliance on the evidences and after considering the same and also the remand report issued by the AO , we are inclined to hold that the assessee possesses tax residency certificate of United kingdom for a period from 06.04.2013 to 05.04.2014 and the instant year under the appeal pertains to FY 2013-14 and therefore since the assessee has offered to tax for the year in United kingdom, assessee deserves DTAA benefit u/s 90 of the Act. Thus the claim made by the assessee is found to be correct. We therefore set aside the finding of Ld. CIT(A) and delete the addition of Rs. 50,53,221/-. Accordingly ground of appeal raised by the assessee are allowed.

4. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 9th February, 2024

Sd/-
(Anikesh Banerjee/ अनिकेश बनर्जी)
Judicial Member/ न्यायिक सदस्य

Sd/-
(Dr. Manish Borad/डॉ मनीष बोरड)
Accountant Member/ लेखक सदस्य

Dated: 9th February, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Debarghya Chattopadhaya, Flat A5, Jaya Jayanti, Saurab Abasan, AJ-15, Salt Lake, Sector-II, Kolkata
2. Respondent – DCIT, Circle-1(1), International Taxation, Kolkata
3. Ld. CIT(A)- 22, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata