आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
366/Hyd/2022	2018-19	Tadimarri Prasanth Reddy, [PAN No. AROPP4799G]	Income Tax Officer, (Int. Taxation)-2, Hyderabad
367/Hyd/2022	2018-19	Saidi Reddy Lokasani, [PAN No. ACVPL4052E]	Income Tax Officer, (Int. Taxation)-1, Hyderabad
368/Hyd/2022	2018-19	Pammina Dilip Kumar Rao, [PAN No. AUWPK9174F]	Income Tax Officer, (Int. Taxation)-1, Hyderabad
371/Hyd/2022	2018-19	Kothapalli Thirumala Venkataradha Krishnam Raju, [PAN No. ATPPK5890G]	Income Tax Officer, (Int. Taxation)-1, Hyderabad
387/Hyd/2022	2018-19	Abraham Juby, [PAN No. AGWPJ1441L]	Income Tax Officer, (Int. Taxation)-1, Hyderabad

निर्धारिती द्वारा/Assessee by: Shri Nageswar Rao, AR
राजस्व द्वारा/Revenue by: Shri KPRR Murthy and
Shri Kumar Aditya, DRs

सुनवाई की तारीख/Date of hearing: 14/06/2023
घोषणा की तारीख/Pronouncement on: 28/06/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax (Appeals)-10, Hyderabad ("Ld. CIT(A)") for the assessment year 2018-19, assessees preferred these appeals. For the sake of convenience, we dispose of these appeals by this common order.

2. Only question that is central in all these appeals is whether the foreign assignment allowance received by the assessee for the services rendered outside India could be taxed in India?

3. Brief facts are that the assessees are the employees of IBM India Private Limited, which is an Indian company. The said company sent the assessees on long term assignment to various countries. During that year, the assessees received salary which includes the component of the foreign allowance received outside India. The employee transferred the foreign assignment allowance from the bank accounts held in India to the nostro accounts to top it up to the Travel Currency Card (TCC), which the assessee can use only abroad, but not in India, and it is a foreign currency denominated account. All the assessees have offered such portion of the salary which was received by them in India, but claimed the foreign assignment allowances received outside India as 'exempt income'.

4. While processing the returns of income filed by all these assessees, the respective learned Assessing Officers took the view that though the assessees qualify to be non-residents during the financial year 2017-18 and

physically working outside India, they were only loaned to other organizations to work in other countries. The assessees continued to be on the pay rolls of IBM India Private Limited only. Further, the Indian company transferred the sums representing the foreign allowances through the bank which were disbursed outside India. According to the learned Assessing Officer, the very fact that the employer deducted the TDS in India on the entire amounts paid to the assessee itself shows that as per the employer, it was an Indian source income earned by the assessees in India, and, therefore, the situs of employment is in India only, because the contract of employment was in India. Learned Assessing Officer, therefore, concluded that the situs of employment is in India and accordingly, the salary income accrued to the assessee in India and, therefore, the same is liable to be taxed in India.

5. Aggrieved, assessees preferred appeals before the learned CIT(A). The learned CIT(A) concurred with the observations of the learned Assessing Officer and held that the place of accrual of salary income is in India and the other country is a host country as per the terms of assignment contract that TDS made by the employer is the primary evidence to show that the situs of employment is in India and the entire salary is accrued to the assessee in India. Learned CIT(A) accordingly dismissed the appeals preferred by various assessees. learned CIT(A) further held that insofar as the ITA No. 366/Hyd/2022 in the case of Tadimarri Prasanth Reddy is concerned, this person did not pay any tax in UAE and, therefore, if the foreign assignment allowance to treat as non-taxable in India, it amounts to double non-taxation, which is impermissible under law.

6. Assessees are, therefore, aggrieved and filed these appeals contending that it is incorrect to say that the foreign assignment allowance for the services rendered outside India and received outside India to be taxed in India. The assessees are being non-residents would not be liable

to tax under the Act as the foreign assignment allowance was not received nor accrued nor deemed to be received/accrued in India during the year for services rendered in India.

7. Learned AR submitted that this issue is no longer res integra and an identical facts for arising in the cases of Bodhisattva Chattopadhyay vs. CIT [2019] 111 taxmann.com 374 (Kolkata – Trib.), Sri Ranjit Kumar Vuppu vs. ITO, ITA No. 86/Hyd/2021, dated 22/04/2021, DCIT vs. Sudipta Maity [2018] 96 taxmann.com 336 (Kolkata – Trib.), Sri Srinivas Mahesh Laxman vs. ITO, ITA No. 1991/Hyd/2018, dated 28/05/2021 and Shri Venkata Rama Rao vs. ITO, ITA No. 1992/Hyd/2018, dated 25/02/2021, wherein the Co-ordinate Benches of this Tribunal while placing reliance on the decisions of the Hon'ble High Courts of Bombay, Karnataka and Calcutta in the cases of CIT vs. Avtar Singh Wadhwan [2001] 115 Taxman 536 (Bombay), DIT vs. Prahlad Vijendra Rao [2011] 198 Taxman 551 (Karnataka) and Utanka Roy vs. DIT [2017] 82 taxmann.com 113 (Calcutta) held that the income derived by a non-resident for performing services outside India, the accrual thereof happens outside India, such income cannot be taxed in India under section 5(2) of the Act.

8. Learned DR argued very vehemently in the same line as that of the authorities below to submit that since the assessee is on the pay rolls of the Indian company even during his assignment abroad, his service conditions are controlled and governed by the parent company in India and also because the parent company deducted TDS on the entire remuneration received by the assessee, this conclusively proves that the situs of employment is in India. According to him, merely because the assessee were directed to perform duties on foreign soil for a temporary period of time, it does not take away the right of the Revenue to collect tax on such amount, which was accrued/received by the assessees in India. According to him, the reasoning given by the learned Assessing Officer to come to the conclusion that all through this period, the situs of

employment is in India is impeccable and does not require any interference.

9. Apart from this, he submitted that insofar as the ITA No. 366/Hyd/2022 in the case of Tadimarri Prasanth Reddy, this person did not pay any tax in UAE and, therefore, if the foreign assignment allowance to treat as non-taxable in India, it amounts to double non-taxation, which is not the intention of the provisions of the Act and Double Taxation Avoidance Agreement (DTAA).

10. We have gone through the record in the light of the submissions made on either side. So far as the facts are concerned absolutely there is no dispute. Assessees happen to be the employees of IBM India Private Limited during the relevant period and the authorities acknowledged that they are the non-residents at that time. However, the Revenue's contention is that the income was received by the assessees in India when the employee transferred the foreign assignment allowance from the bank accounts held in India to the nostro accounts to top it up to the Travel Currency Card (TCC) and, therefore, point of receipt is the point of payment, which goes to show that since the employer transferred the amount in India, it automatically means that the receipt also happens in India. According to him, the Bank is the agent of the employee, and therefore, payment to the banker is equivalent to payment to the assessees. Apart from that, Revenue vehemently contended that though the assessees are sent on foreign assignment, the umbilical cord still lies with the Indian company inasmuch as salary is paid by the Indian company and all the service conditions are controlled by the Indian company.

11. On a careful consideration of the contentions raised on either side, in the light of the decisions relied upon by the assessees, we are of the considered opinion that this issue is no longer res integra and all the aspects raised by the Revenue are elaborately and exhaustively dealt with by co-ordinate Benches of this Tribunal in the cases of Bodhisattva

Chattopadhyay vs. CIT (supra), Sri Ranjit Kumar Vuppu vs. ITO (supra), DCIT vs. Sudipta Maity (supra), Sri Srinivas Mahesh Laxman vs. ITO (supra) and Shri Venkata Rama Rao vs. ITO (supra).

12. While reaching the conclusion that such an amount of foreign assignment allowance received for the services rendered outside India by way of TCC abroad is not taxable in India, reliance was placed by the co-ordinate Benches of the Tribunal on the decisions of CIT vs. Avtar Singh Wadhwan (supra), DIT vs. Prahlad Vijendra Rao (supra) and Utanka Roy vs. DIT (supra). In the case of Bodhisattva Chattopadhyay vs. CIT (supra), the facts are identical. In that case also the assessee was found to be a non-resident and the assessee received the foreign assignment allowance which the employer transferred from the employer's bank account held in Bangalore to Axis Bank nostro account for top up to the TCC and also that the employer affected TDS on the entire remuneration that was paid to the assessee both in India and abroad. Further in that case, the contention of the Revenue was that the impugned foreign assignment allowance did not suffer any tax in the host country and, therefore, it was a case of double non-taxation which is impermissible under law.

13. By placing reliance on the binding precedents and dealing with the issues elaborately, the Tribunal reached a conclusion that the foreign assignment allowance that was topped up to the TCC of the assessee, though it was transferred by the employer from their bank account in India to the Axis bank's nostro accounts, is not taxable in India. The Tribunal repelled contentions of the Revenue as to the double non-taxation of this amount, because it was not subjected to any tax in the host country, stating that such a fact is immaterial to decide the issue, because the question effectively is whether such foreign assignment allowance is taxable in India or not? For such question, the subjection of the said amount to tax in the host country is totally irrelevant.

14. Since the issue involved in these appeals has consistently been dealt with by the Tribunal and also by the higher fora, we respectfully follow the view taken in all the cases. We accordingly accept the contentions of the assessees and reject the plea taken by the Revenue. Accordingly, the grounds raised by the assessees in all these appeals are allowed.

15. In the result, all the appeals are allowed.

Order pronounced in the open court on this the 28th day of June, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad,
Dated: 28/06/2023

TNMM

Copy forwarded to:

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5. Abraham Juby, Nochumannil, Pulloopuram Post, Ranni, Pathanamthitta.
6. Income Tax Officer (Int. Taxation)-2, Hyderabad.
7. Income Tax Officer (Int. Taxation)-1, Hyderabad.
8. DR, ITAT, Hyderabad.
9. GUARD FILE

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