IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DLEHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 4040/Del/2019
Assessment Year: 2015-16

Sameer Malhotra, F-102, Trendset Winz, Nanakramguda, Financial District Hyderabad. **PAN: AASPM4471H** (Appellant)	VersuS	ACIT Circle 80(1), New Delhi. (Respondent)

Appellant by : Sh. Siddhesh Chaugule, Ld. Adv.
Sh. Ajit Jain, Ld. C.A.
Respondent by : Sh. Sanjay Kumar, Ld. Sr. DR

Date of hearing : 23.11.2022
Date of order : 28.12.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee/Appellant against the order dated 01.02.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-21, New Delhi (in short "Ld. Commissioner") u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

2. In the instant case, the Appellant, by filing its return of income on dated 29.08.2015, declared a total income of Rs.1,59,36,999/- earned from DBOI Global Services Pvt. Ltd. (in short DBOI) in India during 01.04.2014 to 25.11.2014 and

from J.P. Morgan Chase & Co., Singapore (in short "JPMC") during 15th December, 2015 to 31st March, 2015. Subsequently, the Appellant revised its return of income by e-filing the revised return of income on dated 07.08.2016 whereby the Appellant restricted its income to Rs.47,82,630/- as earned only in India and claimed that income earned in Singapore was not taxable in India and therefore, he is entitled to get relief u/s. 90 of the Act and consequently, the refund of Rs.22,19,630/-.

2.1 The case of the Appellant was selected under limited scrutiny through CASS, which resulted into issuance of statutory notices to the Appellant. In response, the appellant vide replies/letters dated 31.07.2017 and 14.08.2017 claimed that the salary income from Singapore employment for the period 15th December, 2014 to 31st March, 2015 is declared "Schedule FA-Details of foreign Assets and Income from any source outside India" and excluded from the Income-tax calculation from India standpoint under Article 16(1) of the India-Singapore DTAA ("the Treaty").

2.2 The appellant further claimed that he was employed in India till November, 2014 and thereafter at Singapore from 15th December, 2014 onwards and also having Singapore Tax Resident Certificate in this regard, which covers from 2014-2016. The appellant also enclosed the details of taxes paid in Singapore from 1st January to 31st December of the Financial Year under consideration.

The Assessing Officer after considering the reply of the appellant, observed that the Appellant was physically present in India 182 days or more in F.Y. 2014-15 (A.Y. 2015-16) and as per section 6(1)(a) of the Act, " an individual is said to be resident in India in any previous year, if he is in India in that year for a period or periods amounting in all to 182 days or more". Consequently, the Assessing Officer determined that the Appellant is resident in India in F.Y. 2014-15 (A.Y. 2015-16), as he was employed in India till November, 2014.

2.3 Before the Assessing Officer, the Appellant also submitted tie-breaker questionnaire to make is claim towards Singapore Residency and on the basis of that the Appellant claimed that income earned by the Appellant in Singapore cannot be taxed in India. The Assessing Officer in order to analyze the "Tie Breaker Questionnaire" also considered the Article 4 of India-Singapore DTAA which defines as under:

> "1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who is a resident of a Contracting State in accordance with the taxation laws of that State.
>
> 2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :
>
> (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
>
> (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement."

The Assessing Officer Ultimately held that from the submissions of the appellant in respect of tie-breaker questionnaire, it is clear that contrary to its claim, the Appellant is actually a resident of India for Global Taxation purposes and for the purposes of the provisions of India-Singapore DTAA. Claiming that tie-breaker questionnaire settles the question of appellant's residency in Singapore is fallacious assumption and cannot be accepted. The Appellant was physically present in India 182 days or more in F.Y. 2014-15 as it is clear from the appellant's submissions that he shifted to Singapore in December, 2014 only, thus, the appellant's residency in India for the relevant F.Y. 2014-14 is not in doubt. From the tie-breaker questionnaire, it is clear that contrary to the appellant's claim, the Appellant is actually the resident of India for Global Taxation purposes and for the purposes of provisions of India-Singapore DTAA.

2.4 The Assessing Officer at the end, by rejecting the revised return of Appellant on the ground *that there seems to be no reason to accept the revised return of the appellant,* assessed the income of Rs.1,59,36,999/- as declared by the appellant in the original return of income.

3. The appellant, being aggrieved, preferred first appeal before the ld. Commissioner and claimed that he is resident of both India and Singapore, therefore, his residency should be determined as per Article 4(2) of India-Singapore Treaty which prescribes as under:

> *"For the purposes of this Agreement, the term "resident of a Contracting State" means any person who is a resident of a Contracting State in accordance with the taxation laws of that State.*
>
> *2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :*
>
> *(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);*
>
> *(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;*
>
> *(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;*

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement."

3.1 The ld. Commissioner after considering the submissions of the appellant as well as the provisions referred to above, held that if any individual is a resident of both the Contract States, then he shall be deemed to be a resident of the State in which he has a permanent home available to him. Above provision is clearly applicable to the appellant, as he has a 'permanent home' available in India, though the same has been given on lease, while leaving to Singapore, but the fact cannot be denied that the ownership rights are with the appellant only, as the property was rented only for a period of 11 months (w.e.f. Dec. 01, 2014 to Oct. 31, 2015 to the tenant Mr. Joy Ghosh) . The appellant took on rent the property situated at Singapore only for a limited period w.e.f. 1st Jan. 2015 till 31st Dec. 2016. Thus, from the above facts, it is clearly evident that permanent home available to the appellant, was only in India and not in Singapore. In the tie-breaker questionnaire, it has been submitted by the appellant that after completion of foreign assignment, he was residing in India only.

3.2 The ld. Commissioner further observed that even if for a moment, the appellant's claim is accepted that permanent home available to him in both the States, then he shall be

deemed to be the resident of the State in which his personal and economic relations are closer (centre of vital interests). From the facts, available on record, there is no doubt that even centre of vital interests of the appellant are with India only and not with Singapore. In the tie-breaker questionnaire, mentioned in the assessment order, it has been explained by the appellant that majority of savings, investments and personal bank accounts are in India. Even the test of 'habitual abode' is in favour of India, as the Appellant living in India after completion of foreign assignment as there is no denial of the fact that the appellant is an Indian National. The ld. Commissioner also perused the provisions of Article-4 of OECD Model Convention dealing with the definition of term "resident" and held that it is evident that if the appellant is considered resident of both the countries, even then, his status shall be determined as per OECD Model Convention, which makes it evidently clear that the appellant is resident of India and not of Singapore since (i) he has permanent residence in India; his economic interests are located in India; returned to India after completing foreign assignment; (ii) He has spent substantial part of time (i.e., more than 182 days) in India during the year under consideration; and (iii) he is an Indian National and does not have any domicile or any kind of economic or personal interest and has permanent residence in India.

3.3 The ld. Commissioner ultimately held that in view of the above factual matrix of the case, it is evident that there is no force/merit in the claim of the appellant that ties are breaking

in favour of Singapore. As per Article 4 of India-Singapore Treaty and even as per tie-breaker questionnaire, no interference is called for to the action of the Assessing Officer in holding that the appellant is actually the resident of India for Global Taxation purpose and for the purpose of India-Singapore DTAA and income earned in Singapore is taxable in India. Thus, the income revised by filing the revised income tax return is not found to be acceptable excluding the income earned in Singapore for the purpose of taxation in India. The Assessing Officer is directed to tax the income as per original return filed by the appellant.

4. The appellant being aggrieved is in appeal before us.

5. The Assessee claimed before us that the appellant re-located to Singapore along with his family members from 6th December, 2014 onwards and became the resident of Singapore for calendar year 2014-15 and therefore, qualified as resident and ordinary resident of India as per section 6(6) of the Act for the said period, i.e. 15.12.2014 to 31.03.2015. Accordingly, he qualified as resident of both India and Singapore, as per Article 4(1) of the India-Singapore DTAA (in short "the Treaty") and thus residency is required to be determined as per Article 4(2) of the Treaty. As the appellant had home available in the country of employment, i.e., Singapore on the start of his employment there, whereas the home in India was no longer available as the same was let out w.e.f. 01.12.2014 onwards, the Appellant is qualified as ultimate tax resident at Singapore under Article 4(2) of the

Treaty on "permanent home" test. It was further claimed that even the appellant's vital interest was lying in Singapore during the said period as he shifted there with his family and got employment and therefore started earnings there. In support of its claim, the Appellant also produced a Tax Resident Certificate from Singapore Revenue Authorities for the calendar year 2014-15 as required under the Domestic Tax Law as produced before the Assessing Officer during the assessment proceedings as well as before the ld. Commissioner during the appellate proceedings.

6. The ld. DR on the contrary drew our attention to the tie-breaker questionnaire and submitted that in most of the columns which pertains to owning home in the home country, mentions all personal belongings (Automobiles), the country in which the appellant has majority of savings, investments and personal bank accounts and country where casts votes, the Appellant has claimed "India" only which goes to show that the Appellant is to be considered as resident of India for the period under consideration. As the authorities below have clearly held and it is not in controversy that as per section 6(1)(a) of the Act, the Appellant has stayed in India during F.Y. 2014-15 relevant to the assessment year under consideration for 180 days or more therefore, he is liable to be taxed in India qua the income earned in Singapore.

7. Heard the parties and perused the material available on record. Both the authorities below declined to accept the

revised return of income filed by the appellant on 07.08.2016 by which the appellant sought exclusion of the income earned from 15th December, 2014 to 31st March, 2015 in Singapore, mainly on the ground that the Appellant resided in India for a period of 182 days or more and therefore, as per section 6(1)(a) of the Act, the Appellant has to be considered, as to be a resident of India. Further, as the Appellant has permanent home in India therefore as per tie-breaker questionnaire, the appellant is actually a resident of India for Global Taxation purposes and for the purpose of provisions of India-Singapore DTAA.

7.1 The only controversy involved in the instant case relates to the income earned by the Appellant in Singapore from 15th December, 2014 to 31st March, 2015. Therefore, it has to be seen as to whether the appellant is liable to be taxed in India qua the income earned during that period in Singapore.

7.2 We have given thoughtful consideration to the rival submissions. The case of the appellant is that the appellant is resident of both India and Singapore and have Tax Residency Certificate from Singapore Revenue Authorities for the calendar Year 2014-15. Also, the appellant is having Singapore Driving License and Overseas Bank Account and house in India was not available to the Appellant during Singapore assignment period, as the same was on rent. Therefore, the permanent home test for the period i.e. 6th December, 2014 to 31st March, 2015 goes in favour of the

appellant. Further vital interest of Appellant was also lying in Singapore, because he shifted there with his family and started employment and earnings and savings there from. Accordingly, the Appellant qualified as ultimate Tax Resident of Singapore from 15th December, 2014 onwards as per Article 15(1) of the Treaty, which reads as under:

> "Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State. "

7.3 The Appellant further claimed that as the Appellant qualifies to be the resident of both India and Singapore under Article 4(1) of the Treaty, the residency would need to be determined as per Article 4(2) of the Treaty on the below mentioned criteria which says –

> 4(1).....
>
> 4(2) Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :
>
> (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the

State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement."

7.4 Further, as per UN Model Commentary, the concept of home has been defined as under :

> "13. As regards the concept of home, it should be observed that any form of home may be taken into account (house or apartment belonging to or rented by the individual, rented furnished room). But the permanence of the home is essential; this means that the individual has arranged to have the dwelling available to him at all times continuously, and not occasionally for the purpose of a stay which, owing to the reasons for it, is necessarily of short duration (travel for pleasure, business travel, educational travel, attending a course at a school, etc.). "

7.5 Further, as per UN Model, the facts to which the special rules will apply are those existing during the period when the

residence of the taxpayer affects tax liability, which may be less than an entire taxable period.

7.6 We observe that specific provisions made in DTAA having importance and would prevail over the general provisions contained in the Income Tax Act unless and until the same are in derogation of the laws of the land. The Appellant along with his family members shifted to Singapore on 06.12.2014 and thereafter remained there during the period under consideration and earned the income while serving in Singapore itself.

7.7 It is a fact that in the Tie-Breaker Questionnaire, the Appellant specifically mentioned to have apartment on rent in Singapore as well and his wife and two daughters were also living along with him in the country of assignment, i.e., Singapore. The Appellant also held Driving License in both the countries and both the countries have been shown as country of residence on various official Forms and documents for the period from December, 2015 to June, 2016, further paid taxes in Singapore while working there from. Further mentioned that all income which will be paid in future (i.e., bonus for period Jan. 2016 to June 2016) for the work period in Singapore, will be taxable in Singapore.

7.8 In our considered view, no doubt the tie-breaker questionnaire having importance in determining the residency

of a person, but cannot be exclusively taken into consideration as a base for deciding the residency. The permanence of home can be determined on qualitative and quantitative basis. It is not in controversy that the Appellant for the period under consideration has shown the income earned in Singapore and paid the taxes in Singapore. Therefore, as per Treaty, he cannot be subjected to tax in India in order to avoid double taxation.

7.9 The Co-ordinate Bench of Tribunal in the case of Raman Chopra vs. DCIT (2016) 69 taxmann.com 452 (Delhi-Trib.) has also dealt with the identical issue wherein, the Appellant had worked outside India for a certain period and therefore, claimed the exclusion of income earned outside India. The Hon'ble coordinate Bench after analysing the factual position of the case held that the Appellant is also the resident of USA for the period 01.04.2010 to 30.06.2010. As the Appellant is considered liable to tax both in India and US as per the tax laws in each jurisdiction, a determination of the residential status as per the India-USA Double Taxation Avoidance Agreement (Treaty) has to be done based on the tie breaker analysis as contained in Article 4(2) of the Treaty.

7.10 It is pertinent to mention herein that both the authorities below have not doubted the tax residency certificate issued by the Singapore authorities for the period under consideration and on the basis of that, the Income tax has already been paid by the Appellant in Singapore. Further,

may be, the Appellant has stayed more than 182 days in India, however, he also qualified as resident of both India and Singapore under Article 4(1) of the Treaty. As per clause (a) of Article 4(2) of the Treaty, a person shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests). The ld. Commissioner on the basis of tie-breaker questionnaire held that there is no doubt that even the centre of vital interest of the appellant are with India only and not with Singapore, as the majority of the savings, investments and personal bank accounts are in India, whereas it is a fact that the appellant has worked in Singapore during the period under consideration and stayed therein only. Therefore, his personal and economic relations (Centre of vital interests) at that particular time/period cannot be brushed aside, as the Appellant went to Singapore along with his family for earning income and consequently his personal and economic relations remained in Singapore only.

7.11 As per Article 4(2)(b), habitual abode is also available for consideration in deciding the residency of a person. Habitual abode does not mean the place of permanent residence, but in fact it means the place where one normally resides. During the period under consideration, the Appellant resided in Singapore and had habitual abode therein only. Therefore, on this reason as well, the Appellant could be treated as resident of Singapore. Section 90(2) of the Act says

clearly where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the Appellant to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to the Appellant. Further, sub-section (4) of section 90 of the Act prescribes, an Appellant, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory. It is not the case here that the provisions of section 90(2) of the Act are not applicable to the instant case and the provisions of the Treaty and actions of the Appellant are contrary to the laws of the land and the Appellant has failed to produce the Tax Residency Certificate issued by the Singapore Authorities and not paid the relevant taxes in that country for the income earned during the period under consideration.

7.12 On the aforesaid deliberations and analyzations and in the cumulative effects, we are unable to sustain the addition under challenge. Consequently, the addition is deleted and the Assessing Officer is directed to accept the revised return of income filed by the appellant.

8. In the result, the appeal filed by the appellant stands allowed.

Order pronounced in the open court on 28.12.2022.

Sd/-	Sd/-
(ANIL CHATURVEDI)	**(N.K. CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

*aks/-