

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

[Before Sri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 1780/Kol/2017
Assessment Year: 2010-11

Mr. Annanya Sundar Mondal.....**Appellant**
Flat No. B/3,
1/134, Gariahat Road (S)
Jodhpur Park
Kolkata- 700 068
[PAN : AJSPM 6664 M]

The Dy. Commissioner of Income Tax.....**Respondent**
International Taxation
Circle-1(1) &1(2)
Kolkata - 107

Appearances by:

None, appeared on behalf of the assessee.

Shri P.K. Mondol, Addl. CIT, appearing on behalf of the Revenue.

Date of concluding the hearing : October 16, 2017

Date of pronouncing the order : October , 2017

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-22, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 16/03/2017, for the Assessment Year 2010-11, on the following grounds:-

"1. The Ld. CIT(A)-22, Kolkata erred in confirming the order of the DDIT (Intl. Taxn.) Circle- 1(1), Kolkata, the addition of Rs.15,49,190/- being salary received by the appellant on board in foreign waters in the capacity of an NRI, and later transferred to his NRE Account in Kolkata with the help of money transferring agents, as his income from salary taxable under provisions of section 5(2)(a) of the I.T. Act, 1961.

2. That the Ld. CIT(A) overlooked the documentary evidences produced to prove that part of the salary received on board in foreign currency was got transferred to the appellant's NRE Account through the Agents' bank accounts and not through the employer's bank account as alleged by the Assessing Officer.

3. That the Ld. CIT(A) wrongly relied on the decisions of the Hon'ble ITAT to tax foreign salary, where either the amounts were directly remitted by the employer through their banks to an assessee or no evidences were provided that the assessee had control over his salary income in international waters.

4. The order of the CIT(A) being arbitrary, without any basis, having been passed without considering the facts and documentary evidences, be quashed and your appellant be given such relief or reliefs as prayed for.

5. The appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds."

2. The Id. Counsel for the assessee applied for an adjournment. The same is rejected as in my view, it is not a fit case for grant of adjournment. The assessee is working as a crew member with M/s. Indian Steamship. He filed his return of income for the Assessment Year 2010-11 declaring total income at Rs.59,581/-, under the residential status - Non-resident. The assessee claimed the salary income of Rs.15,49,193.55/-, received by him as exempt on the ground that he is a non-resident in the relevant Assessment Year and that the money earned was in foreign waters and received in foreign currency. The Assessing Officer rejected the contention of the assessee and held that the entire salary income is taxable in India, for the reason that the amount was found deposited in a bank account located in India.

2.1. On appeal, Id. First Appellate Authority, has applied the decision of the ITAT Kolkata Bench in the case of *Tapas Kr. Bandhopadhyay vs.*

DDIT (IT) in ITA No. 70/Kol/2016, and confirmed the order of the Assessing Officer. Further aggrieved the assessee is in appeal before us.

3. I find that the issue is no more *res integra*. The Jurisdictional High Court in *Utanka Roy Vs. Director of Income Tax, International Taxation Transfer Pricing*, held that salary of an Indian citizen, working in a foreign ship & rendered services outside India for a period of 286 days is exempt from taxation under section 5(2) of the Income Tax Act, 1961.

4. Respectfully following the proposition of law laid down in this case, I delete this addition and allow the appeal of the assessee.

5. In the result, appeal of the assessee is allowed.

Kolkata, the 31st day of October, 2017.

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Dated :31.10.2017

{SC SPS}

Copy of the order forwarded to:

1. Mr. Annanya Sundar Mondal
Flat No. B/3,
1/134, Gariahat Road (S)
Jodhpur Park
Kolkata- 700 068

2. The Dy. Commissioner of Income Tax
International Taxation
Circle-1(1) &1(2)
Kolkata - 107

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches

