

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri S.S.Godara, JM & Hon’ble Shri M.Balaganesh, AM]

I.T.A No. 1827/Kol/2017

Assessment Year : 2014-15

ACIT(IT), Circle-1(1), Kolkata
(Appellant)

-vs-

Shri Ayan Majumdar
[PAN: AFBPM 9117 Q]
(Respondent)

For the Appellant : Shri Robin Chowdhury, Addl. CIT

For the Respondent : Shri Navin Jain, AR

Date of Hearing : 03.12.2018

Date of Pronouncement : 05.12.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-22, Kolkata [in short the Id CIT(A)] in Appeal No.75/CIT(A)-22/Kol/16-17 dated 26.05.2017 against the order passed by ACIT(IT), Circle-1(1), Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 19.12.2016 for the Assessment Year 2014-15.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the addition made in the sum of Rs 66,38,022/- which was brought to tax by

the Id AO by applying the provisions of section 5(2)(a) of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is an employee in IBM India Private Limited and during the financial year 2013-14 was sent on short term foreign assignment to United Kingdom. During the previous year 2013-14, the assessee stayed in India for 13 days. Accordingly, his residential status for the year under consideration would be Non-Resident in India. During the year under consideration, the assessee had received the following emoluments from IBM :-

- a) Gross Salary received – Rs 66,38,027/- and
- b) Foreign allowances on account of the international assignment received in United Kingdom for rendering services outside India– Rs 75,68,0505/-

IBM had effected TDS of Rs 45,88,295/- on the entire emoluments paid to the assessee including the foreign allowances paid to the assessee u/s 192(1) of the Act. The assessee filed his return of income for the Asst Year 2014-15 declaring taxable income of Rs 11,99,620/- (being the income from other sources) after claiming deduction of Rs 1,05,542/- under Chapter VIA of the Act and claimed a refund of Rs 45,26,490/- in his return of income.

3.1. During the financial year 2013-14 , the assessee qualifies to be a tax resident of United Kingdom (UK). As per the provisions of Article 16(1) of the India-UK Double Taxation Avoidance Agreement (DTAA) , salary earned by a UK tax resident is taxable only in UK. Accordingly, the assessee claimed exemption of Rs 66,38,027/- as per Article 16(1) of India-UK DTAA. The assessee pleaded that the entire foreign allowance of Rs 75,68,505/- was not offered to tax in India as the same was received by the assessee outside India for the services rendered outside India which does not form

part of the total income u/s 5(2) of the Act. The assessee also claimed relief under Article 16(1) of India UK DTAA in respect of salary received in India amounting to Rs 66,38,027/-. The Id AO denied the relief claimed in the sum of Rs 66,38,027/- under India – UK DTAA and brought the same to tax while completing the assessment.

4. We have heard the rival submissions. We find that the fact that assessee had rendered services in UK during the relevant Asst Year is substantiated from the following documents:-

- a) Copy of UK tax return filed with UK Revenue Authorities
- b) Certificate of IBM clarifying that the assessee was sent on short term foreign assignment to UK.

4.1. We find that the provisions of Article 16(1) of India-UK DTAA reads as under:-

ARTICLE 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Article "17 (Directors' fees), 18 (Artistes and athletes), 19 (Governmental remuneration and pensions), 20 (Pensions and annuities), 21 (Students and trainees) and 22 (Teachers) of this Convention, 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.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall not be taxed in that other State if :

- (a) he is present in the other State for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year;*
- (b) the remuneration is paid by, or on behalf of, an employer who is not resident of that other State; and*
- (c) the remuneration is not deductible in computing the profits of an enterprise chargeable to tax in that other State.*

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

4.2. It is not in dispute that the assessee is a non-resident in India and is a tax resident of UK during the year under consideration. It is not in dispute that his employment is exercised in UK. We find that the Id AO had denied the relief claimed under India –UK DTAA for not furnishing the tax residency certificate during the course of assessment proceedings. Admittedly, the same was furnished by the assessee before the Id CITA for the first time. The Id CITA without asking for a remand report from the Id AO in this regard, proceeded to grant relief to the assessee. We find that the revenue had raised one of the ground on account of violation of provisions of Rule 46A of the Income Tax Rules with regard to the tax residency certificate furnished only before the Id CITA. Hence in the interest of justice and fairplay, we deem it fit and appropriate, to remand this issue to the file of Id AO , for the limited purpose of verification of the tax residency certificate furnished before the Id CITA. This was the only basis of denial of claim of assessee by the Id AO in the assessment. If on verification of the same, the Id AO is satisfied regarding the claim of the assessee, then the assessee should be granted the relief. Accordingly, the grounds raised by the revenue are allowed for statistical purposes.

5. In the result, the appeal of the revenue is allowed for statistical purposes.

Order pronounced in the Court on 05.12.2018

Sd/-

[S.S. Godara]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 05.12.2018
SB, Sr. PS

Copy of the order forwarded to:

1. ACIT(IT), Circle-1(1), 2nd Floor, Aayakar Bhawan Poorva, 110, Shantipally, Kolkata-700107.
2. Shri Ayan Majumdar, BD-302, Sector-1, Salt Lake, Kolkata-700064
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches