

**आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM**

आयकर अपील सं./ ITA No. 46/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 45/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

Asst. Commissioner of Income Tax, Circle-15(1)-2, Room No. 483A, 4 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai	Vs.	Shri Binod Kumar Singh, A-601/602, Delphi Orchard Avenue, Hiranandani Business Park, Powai, Mumbai-400 076
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AMXPS1998L</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri B. Yadgiri, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	S/shri Jitendra B. Sanghavi, Amit Khatiwala, ARs'

सुनवाई की तारीख / <b>Date of hearing:</b>	17-01-2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	30-01-2019

**आदेश / ORDER**

महावीर सिंह, न्यायिक सदस्य/  
**PER MAHAVIR SINGH, JM:**

These appeals filed by the Revenue are arising out of the common order of Commissioner of Income Tax (Appeals)-49, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-49/IT-344/2014-15, CIT(A)-49/IT-27/2015-



16 vide order dated 24/10/2016. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle-40, Mumbai (in short 'ACIT'/'ITO'/'AO') for the A.Y. 2011-12 & 2012-13 vide orders dated 28.02.2014 & 30.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these two appeals of the Revenue is against the order of CIT(A) in treating the status of assessee as non-resident. For this Revenue has raised identically worded grounds and facts and circumstances are also identical. Hence, we will take the facts of both the years but will take the grounds from AY 2011-12 in ITA No. 46/Mum/2017 and the same reads as under: -

*“(i) On the facts and circumstances of the case, the Id. CIT(A) erred in holding the status of the assessee as “Non-Resident” without appreciating that clause (b) of explanation to section 6(1)(c) is not applicable in assessee’s case.*

*(ii) On the facts and circumstances of the case, the Ld. CIT(A) erred in not considering the AO’s view that even if assessee is treated as NRI, then also there is need to analyse taxability of his income as an NRI in the light of section 5 and section 9 of the I.T. Act, 1961.*

*(iii) On the facts and circumstances of the cases, the Ld. CIT(A) erred in deleting the addition of Rs. 5,50,52,941/- under section 68 of the Act representing remittances from abroad*



*from the foreign banking accounts of the assessee holding that the assessee is a non-resident and foreign income is not taxable in India without investigation the source of funds transferred from foreign bank account.”*

3. During the assessment proceedings the AR of the assessee was asked to justify that the assessee is non-resident. The assessee furnished copies of the passport along with the details of No. of days of stay in India. The same as under:

Date of Arrival – date of departure (As per immigration seal)	FY/Previous year	No. of days of stay	Grand total of No. of days	Page No. in the original passport
01.04.2010 11.04.2010	2010-11	11		9
30.06.2010 20.07.2010	2010-11	21		4
12.09.2010 17.10.2010	2010-11	36		8
10.10.2010 12.01.2011	2010-11	34		8
06.02.2011 22.02.2011	2010-11	17		121
29.03.2011	2010-11	3		12
			122	

4. In view of the above, the CIT(A) held that the assessee is of non-resident status and he observed in Para 5.2 and 5.3 as under: -

*“5.2. have gone through the order of the ITAT, Mumbai Bench 'B' Mumbai dated 18.12.2015 which is a consolidated order for A.Yrs 2006-07,*



*2007-08 to 2009-10 and 2003-04 to 2005-06 . In para 2.9 it has been observed as under:*

*"It is also noted that for A. Y. 200 7-08, the contention of the assessee as well as other details, contention of the Assessing Officer were considered holding that the period of stay of the assessee in India was 173 days as against 178 days determined by the Assessing Officer, meaning thereby, the period of stay was less than 182 days, therefore, in view of the terms of section 6(1)(c) of the Act read with Explanation (b) his status was nonresident, therefore, the global income cannot be taxed in India. We, therefore, on this issue, affirm the conclusion of the Ld. Commissioner of Income Tax (Appeals)."*

*Further considering the background of the assessee, it is clear that he is an Indian citizen who is conducting business in Ukraine, Russia and CSI countries and he is living with his family in England. During the previous year 2010-11, he has come on a visit to India on 6 occasions and therefore Explanation (b) to sec.6(1) is applicable to the case of the appellant and he could be treated as resident if he had stayed*



during the said previous year in India for 182 days or more.

5.3. I find that the appellant has stayed in India for 122 days during the previous year under consideration, which is less than 182 days. Accordingly, the residential status of the appellant is found to be non-resident in view of Explanation (b) to sec.6(1) r.w.s. 6(1)(c) of the Act and the A.O. is directed to treat the residential status of the appellant as non-resident for A.Y.2011-12. Ground No.1 & 2 are allowed.”

5. Similarly, for AY 2012-13 the CIT(A) noted the following that the assessee stayed in India for 88 days and the details for which reads as under: -

Date of arrival-ate of departure (as per immigration seal)	No. of days of stay	Page No. in the passport
01.04.2011-23.04.2011	23	12
05.07.2011-12.07.2011	8	10. & 23
04.08.2011 to 07.08.2011	4	15 & 26
09.08.2011-11.08.2011	3	15 & 26
27.09.2011-04.10.2011	8	14 & 24
12.12.2011-19.12.2011	8	5
25.01.2012-01.02.2012	8	4 & 8
06.03.2012 (arrival)	26	4 & 8
Grand Total	88	

6. Accordingly, the CIT(A) decided that the assessee is a non-resident and he observed in para 8.6 and 8.7 as under-



*“8.6 The A.O. found that the total number of days of stay in India by the appellant during the F.Y.2011-12 was 122 days and the total number of days of stay in the four preceding previous year as 506 days. Therefore, A,O. concluded that in terms of the provisions of sec.6(1)(c), the appellant was to be treated as resident in India in the previous year 2011-12 since in the preceding four years he was in India for more than 365 days and during the previous year 2011-12 he was in India for more than 60 days. The appellant has submitted that his case was covered by Explanation (b) to sec 6(1)(c) of the Act since he was visiting India during the relevant previous year to attend to his investments and business affairs of his company and has further relied on the decision of the ITAT, Mumbai order dated 18/12/2015 in his own case.*

*8.7. I find that the appellant has stayed in India for 88 days during the previous year under consideration, i.e., in F.Y. 2011-12, which is less than 182 days. Further, the appellant has visited India on eight occasions during the year and the facts of the case remain similar to those in A.Y. 2011-12. Accordingly, following the decision on this issue for A.Y. 2011-12 as per para 5.2 and 5,3 above, the residential status of the appellant*



*is held to be non-resident for the A.Y. 2012-13, in view of Explanation (b) to sec.6(1) r.w.s. 6(1)(c) of the Act. Accordingly, the A.O. is directed to treat the residential status of the appellant as non-resident for A.Y.2012-13. Ground No.1 & 2 are allowed.”*

7. In view of the above, the learned counsel for the assessee stated that this issue is covered by Tribunal's decision in assessee's own case for AY 2010-11 in ITA No. 2134/Mum/2016 order dated 07.09.2018, wherein the Tribunal has followed assessee's own case decided in AYs 2003-04 to 2009-10, vide para 11 to 13 as under: -

*“11. At the outset, on both the issues, the Id. Counsel of the assessee placed reliance upon the decision of the ITAT in assessee's own case as above and stated that the issues are covered in favour of the assessee. He submitted that on identical facts, this tribunal in assessee's own case vide common order dated 18.12.2015 has decided the consolidated order for seven years from A.Ys. 2003-04 to 2009-10 and has decided the issues in favour of the assessee. He submitted that in deciding both the issues, the Id. CIT(A) has referred to same ITAT decision. Hence, the Id. Counsel of the assessee submitted that the order of the Id. CIT(A) needs to be affirmed. He further referred to another ITAT decision in the case of Dy. CIT vs. Madhusudhan Rao [2015] 57 taxmann.com 262*



*(Hyd. Trib) stating that this case law also supports the case of the assessee.*

*12. Per contra, the Id. Departmental Representative ('Id. DR' for short) relied upon the orders of the A.O. However, he did not dispute the proposition that the identical issues have been decided by the ITAT in favour of the assessee. No contrary decision has also been referred by the Revenue.*

*13. Upon careful consideration, we find that on both the issues raised in this appeal by the Revenue, the ITAT by a consolidated order in the case of the same assessee for seven years from A.Ys. 2003-04 to 2009-10 has decided the issues in favour of the assessee. The Id. CIT(A) has adjudicated the issues by relying upon the said order of the ITAT in assessee's own case. We find that there no difference in facts in the present case as compared to the aforesaid consolidated order in assessee's own case for seven years has been pointed out by the Revenue. No other contrary decision has also been produced before us. It is also not the case that the Hon'ble jurisdictional High Court has reversed the order of the ITAT in assessee's own case as above. Accordingly, in the background of the aforesaid precedent, we do not find any infirmity in the order of the Id.*



*CIT(A) as the same is based upon the order of the ITAT in assessee's own case for several earlier assessment years."*

8. As the issue is squarely covered by Tribunal's decision in assessee's own case as noted above & respectfully following the same, we confirm the order of CIT(A) and this appeal of Revenue is dismissed.

9. Similar is issue in ITA No. 45/Mum/2017 for AY 2012-13, which we have already adjudicated accordingly, this appeal of Revenue is also dismissed.

10. **In the result, the appeals of Revenue are dismissed.**

Order pronounced in the open court on 30-01-2019.

Sd/-

(एन. के. प्रधान /N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 30-01-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai