

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

Before: **Shri J. Sudhakar Reddy, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

I.T.A No.2311/Kol/2017

(Assessment Year: 2014-15)

DCIT(IT), Circle-2(1), Kolkata

Appellant

Vs

Shri Subrato Majumder

Respondent

[PAN: AFCPM2371M]

For the Appellant : Shri C.J. Singh, JCIT, Sr. DR
For the Respondent : Shri Soumitro Choudhury, Advocate

Date of hearing : 24.04.2019

Date of pronouncement : 10.07.2019

ORDER

PER Shri S.S. Viswanethra Ravi, JM:

This appeal by the Revenue against the order dated 30.08.2017 passed by the Commissioner of Income Tax (Appeals)-22, Kolkata for the Assessment Year 2014-15.

2. We find that this appeal was filed with a delay of 3 days and upon hearing both the parties, we find that the reasons stated by the Id. Sr. DR are bona fide which really prevented the appellant-revenue in filing the appeal in time. Therefore, the delay of 3 days is condoned.

3. The only issue to be decided is as to whether the CIT(A) is justified in deleting the addition made by the Assessing Officer on account of charging income said to have been received in India for the services rendered outside India in the facts and circumstances of the case.

4. Heard both parties and perused the materials available on record. According to Assessing Officer, the assessee received a salary of Rs.85,42,000/- in his NRE account of HDFC Bank, Kolkata. The Assessing Officer sought explanation why the said amount is not chargeable to tax. The assessee explained that his employer, Shell Petroleum Development Company of Nigeria Ltd. paid the said amount in Euro currency after deducting tax. Further it has been contended that the said salary was received for services rendered outside India and is not chargeable to tax in India. The Assessing Officer opined that the term 'received in India' in section 5(2)(a)(i) of the Act has a literal meaning that total income of a person who is a non-resident shall include any income derived from whatever source if it is received in India. Section 5(2)(b)(iv) of the Act mentions the term 'accrues or arises to him in India and there is no specific section in the Act which deals with any income which accrues or arises to any person only in India. Further he was of the opinion that no section in the Act which provides for a charge on any income derived from any source on the basis of accruing or arising specifically in India. Therefore according to Assessing Officer, the total income of a person who is non-resident shall include in income derived from whatever source if it is received in India is chargeable to tax under Income Tax Act. Further according to him, even if the non-resident renders services outside India if any income accrues or arises to him in India is chargeable to tax under Income Tax Act thereby the Assessing Officer added the above said amount to the total income of the assessee vide its order dated 21.12.2016 u/s 143(3) of the Act.

5. Having aggrieved the assessee challenged order of Assessing Officer before CIT(A). According to CIT(A), the issue is covered by the decision of Hon'ble High Court of Calcutta in the case of Utanka Roy vs. DCIT & Others reported in [2017] 390 ITR 109 (Cal). Further the CBDT

in Circular No.13/2017 dated 11.04.2017 wherein it has been clarified where the salary has accrued to a non-resident sea farer for services rendered outside India shall not be included in the total income merely on the ground that the salary has been credited into the NRE account maintained with an Indian Bank by the sea farer. It is noted that the CIT(A) by placing reliance in the case of Utanka Roy (supra) deleted the addition made by the Assessing Officer by observing that the salary received by a non-resident in India for the services rendered outside India is not taxable in India under Income Tax Act 1961. The relevant portion of which is reproduced hereinbelow:

"4. It is also to be recorded that in a similar recent judgment of the Hon'ble Jurisdiction High Court, Utanka Roy Vs. Director of Income Tax (Int. Tax) & Others [2017] 390 ITR 109 (Cat), the Hon'ble Court has in identical circumstances decided the matter in favour of the taxpayer. In the said situation, the appellant has also relied on the Circular issued by the Hon'ble CBDT in F.No.500/-07120t7-Ff & TR-V [Circular No 13/2017] dated 11th April, 2017, wherein it has been clarified that in a situation where the salary has accrued to a non-resident sea farer for services rendered outside India on a Foreign ship shall not be included in the total income merely on grounds that the salary has been credited into the NRE account maintained with an Indian Bank by the seafarer. It may be worthwhile to reproduce the circular as under:

Circular No. 13/2017

*F. No: 500/2017-FT & TR-V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Foreign Tax & Tax Research - II
FT & TR-Y Division*

New Delhi, dated 11.04.2017

Subject: Clarification regarding liability to income-tax in India for a non-resident seafarer receiving remuneration in NRE (Non Resident External) account maintained with an Indian Bank.

Representations have been received in the Board that income by way of salary, received by non-resident seafarers, for services rendered outside India on-board foreign ships, are being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer.

2. The matter has been examined in the Board. Section 5(2)(a) of the Income-tax Act provides that only such income of a non-resident shall be subjected to tax In India that is either received or Is deemed to be received in India. It is hereby clarified that salary accrued to a non-resident seafarer for services rendered outside India on a **foreign ship** shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

Sd/-
Under Secretary (FT & TR-V)

5. From the above, it would appear that the above Circular of the Board would have an overriding effect, more so as it is a circular which is clarificatory and beneficial to the assessee-taxpayers. Moreover It has also to be recorded that in similar circumstances, the Hon'ble Jurisdictional high Court in the case of *Utanka Roy Vs DIT(IT) and others* reported in [2017] 390 ITR 109(Cal) , Kolkata has in a similar factual matrix decided the matter in favour of the seafaring taxpayer, While adjudicating the matter the Hon'ble High Court has also considered the decision of "the Hon'ble Karnataka High Court in the case of *DIT Vs Prahalad Vijendra Rao* [2011] 198 taxman 551 (Karnataka High Court), wherein in similar circumstances it was held that that the income of a person working outside India for more than the specified number of days has been held not to have accrued in India. The said matter has also been decided in favour of the sea faring assessee in *Commissioner Of Income-Tax Versus Avtar Singh Wadhwan* 2000 (11) TMI 116 - BOMBAY High Court Other Citation: [2001] 247 ITR 260,165 CTR 414.

In view of the above decisions and the Circular issued by the Board, which is clarificatory and beneficial to the assessee, in my considered view of the matter, the decisions of the Hon'ble ITAT referred to by the Ld. AO would be superseded and rendered academic. In the said circumstances, I am inclined to adjudicate these grounds in favour of the appellant, The grounds are accordingly allowed."

6. We find that the Hon'ble High Court of Calcutta in the case of *Utanka Roy* (supra) has decided the similar issue on same, identical facts by holding that the salary accrued to the non-resident for the services rendered outside India shall not be included in the total income. Therefore the facts of the present case are similar to the facts of the case before the Hon'ble High Court of Calcutta. Therefore, we find

no infirmity in the order of the CIT(A) and it is justified. Thus only ground raised by the assessee is allowed.

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

Order pronounced in the open court on 10.07.2019.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Dated : 10.07.2019
Place : Kolkata
RS, Sr.PS

Copy of the order forwarded to:

1. Appellant – DCIT(IT), Circle-2(1), Kolkata.
- 2 Respondent – Shri Subrato Majumder, Flat No.4AB, Block-P, Bhawani Complex, Krishnapur, Baroritala, Kolkata – 700102.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

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By order,
Assistant Registrar,
ITAT, Kolkata