

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1773/Del/2013
(Assessment Year: 2004-05)**

DCIT, Circle – 48(1), New Delhi.	Vs.	Sh. Avijit Chaliha, C/o Telecommunication Pvt. Ltd., Gurgaon, Haryana.
PAN No: ABXPC5353L		
APPELLANT		RESPONDENT

Revenue by : Shri Anil Kumar Sharma, Sr. DR
Assessee by : Ms. Preeti Goel, Adv.

ORDER

Per Anadee Nath Misshra, AM

(A) This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-XXX, New Delhi, ["Ld. CIT(A)", for short], dated 31.01.2013 for Assessment Year 2004-05. The grounds of appeal are as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in:-

- (i) *Deleting the addition of Rs. 2,32,09,544/- as rightly made by the AO on the basis of authentic information in his possession though the assessee failed to appear and explain during the assessment proceedings.*

- (ii) *Accepting the assessee contention that he has earned this income from his employer, without proper evidence.*
- (iii) *The appellant craves the right to alter, amend, add or substitute the grounds of appeal."*

(B) Assessment Order was passed on 27/12/2011 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 ("IT Act", for short). In the Assessment Order all credit entries for the period 01/04/2003 to 31/03/2004 reflected in assessee's City Bank Account No. 5708929222, amounting to total of Rs. 2,32,09,544/-, were treated as assessee's income and assessment was made accordingly treating the aforesaid amount of Rs. 2,32,09,544/- as assessee's total income assessable to tax in India. Aggrieved, the Assessee filed appeal before the Learned Commissioner of Income Tax (Appeals)-XXX, New Delhi. Vide consolidated order dated 31/01/2013 for Assessment Years 2004-05 and 2005-06, the Ld. CIT(A) deleted the aforesaid addition of Rs. 2,32,09,544/- for Assessment Year 2004-05. Relevant portion of the aforesaid impugned order dated 31/01/2012 of the Ld. CIT(A) is reproduced as under:

"2. In response to the appeal notice u/s 250 of the I.T. Act, the Appellant 's Authorized Representative Sh. Abhijit Chalia, appellant, Sh. Gaurav Jain, CA & Sh. Pravat Lath, CA for hearing with written submissions, judgments and other evidences. The case was discussed with them.

3. The written submissions of the AR dated 31.01.2013 is produced as under for reference:

"We refer to the captioned appeals filed before your office. In connection with the same, on behalf of and under instructions of our subject client and in continuation to our earlier submission dated January 10, 2013, January 28, 2013 and January 30,

2013, we would like to submit a summary, which is as under:

Background

A Tax Evasion Petition dated January 22, 2007 was filed by the estranged wife of the appellant against him with the DDIT, Unit-V(I) alleging that the appellant has concealed particulars of his foreign sourced income which were not offered to tax in India. Basis the same, an assessment order was passed by the Assistant Commissioner of Income-tax, Circle - 48(1), New Delhi under section 143(3) read with section 147 of the Income-tax Act, 1961 on December 27, 2011 for Assessment Year ('AY') 2004-05 and 2005-06.

Facts relevant for consideration

A summary of the details filed with your goodself vide various submissions has been provided in the table below-

Particulars	Assessment Year 2004-05	Assessment Year 2005-06
<i>Residential Status</i>	<i>Non Resident</i>	<i>Resident but not ordinarily resident</i>
<i>Assessed Income</i>	<i>INR 23,209,544</i>	<i>INR 7,717,480</i>
<i>Income tax demand</i>	<i>INR 21,800,476</i>	<i>INR 2,304,287</i>
<i>Employment</i>	<i>September 2000 to July, 2003- Sonera Smart Trust, Hong Kong</i> <i>August, 2003 to July, 2004- Tekelec Incorporation, USA</i>	<i>August, 2003 to July, 2004- Tekelec Incorporation, USA</i> <i>From August, 2004- Tekelec Systems India Private Limited, New Delhi</i>
<i>Receipt of salary income</i>	<i>Outside India</i>	<i>Outside India while working with Tekelec Incorporation, USA</i> <i>In India once employed with Tekelec Systems</i>

		<i>India Private Limited, New Delhi</i>
<i>Services rendered</i>	<i>Outside India</i>	<i>Outside India while working with Tekelec Incorporation, USA</i> <i>In India once employed with Tekelec Systems India Private Limited, New Delhi</i>
<i>Income offered to tax</i>	<i>Not offered as he was a non resident and foreign sourced income was not taxable</i>	<i>Foreign sources income not offered to tax as he was a resident but not ordinarily resident</i> <i>Income sources from India post August 2004 offered to tax. TDS certificates in this regard have been enclosed earlier.</i>
<i>Remittance of funds to India</i>	<i>Amounts were remitted to India mainly for the self use of the appellant's wife and for their child, as they were residing in India and were completely dependent on the appellant's earning / salary during the relevant period</i>	<i>Amounts were remitted to India mainly for the self use of the appellant's wife and for their child, as they were residing in India and were completely dependent on the appellant's earning / salary during the relevant period</i>
<i>Approval for initiating re-assessment proceedings after expiry of 4 years from end of subject AY</i>	<i>Not obtained</i>	<i>Not obtained</i>

Further, the appellant would like to submit that he was physically harmed in the Court premises during the divorce proceedings and suffered severe permanent damage in his left eye. This shows how malicious the proceedings had become and that various complaints had been made against the appellant before various authorities which were all driven with an intention to malign the image of the

*appellant without any real substance. A copy of a certificate issued by the appellant's General Practitioner certifying that he suffered a penetrating injury to his left eye is enclosed as **Annexure 1**.*

4. *I have perused the assessment order, grounds of appeals, written submission and remand report and discussed the matter with the AR of the assessee very carefully. The appellant also appeared before me in the course of hearing. The appellant had taken about 9 grounds of appeal for the A.Y. 2004-05 and 10 grounds of appeal for the A.Y. 2005-06. The appellant was away from India and was working in USA for the period 01.08 2003 to 31.07.2004. He was working with a company called Tekelec, who had confirmed this facts vide its letter dated 16.01.2013. His letter is re-produced for ready reference:-*

"This letter is to confirm that Avijit Chaliya was an employee of Tekelec, Inc, NC 27560, USA from date of August 1st, 2003 through July, 31st, 2004. During this time Mr. Chaliha was employed in a full time capacity in the role of Business Development Director based at Raleigh, NC, USA."

He was again out of India from 1st Sept., 2000 to 18.07.2003 vide employer's letter dated 17 May 2010, which was reproduced as under:-

THIS is to confirm that Avijit Chaliha was employed by Sonera SmartTrust Hongkong as a Regional Manager in HongKong when he left SmartTrust.

Avijit was employed at SmartTrust during the period 1st September 2000 till the 18th July 2003."

The appellant during this period had send money through Citi Bank, USA who has NRI account in Delhi for the maintenance of his son & wife in Delhi. Later on, there was divorce suite filed by the wife of appellant and they got separated in 2006 through court proceedings. In the court proceedings, the appellant also got a blow from his opponent lawyer and lost his left eyesight. The separation happened in 2006. Then the wife of the appellant wrote a TEP to income tax department

intimating these facts on which this assessment was made. However, the AO did not enquire into source of money coming into the NRI account in Delhi and made the addition of Rs.2,32,09,544/- in the A.Y. 2004-05 & Rs.37,20,884/- in the A Y. 2005-06. The appellant earned this income in the Tekelec Incorporation, USA, as salary payment for foreign employer and these are taxed in USA. As per Double Taxation Avoidance Agreement these are not to be taxed again in India.

Hence, considering the facts of the case, appellant's bad condition of married life and having the sources explained by the appellant carefully, I have no other option but to delete the addition made by the AO of above amounts for the above 2 assessment years."

(C) This present appeal before Income Tax Appellate Tribunal ("ITAT", for short) has been filed by Revenue against the aforesaid impugned order dated 31/01/2013 for Assessment Year 2004-05. In the course of appellate proceedings in ITAT, a Paper Book was filed from assessee's side, containing the following particulars, on 17.10.2016:

- "1. Copy of Tax Evasion Petition dated 22.01.2007 filed by Respondent assessee's ex-wife's Father before Director General of Income Tax (Investigation).*
- 2. Copy of Employment Letter dated 17/5/2010 issued to the Respondent assessee by SmartTrust Ltd., thereby certifying that the Respondent assessee was employed with them from 1.09.2000 to 18.07.2003.*
- 3. Copy of Employment Letter dated 16/01/2013 issued to the Respondent assessee from Tekelec Inc. (USA), thereby certifying that the Respondent assessee was employed with them from 1.08.2003 to 31.07.2004.*
- 4. Copy of the statement showing contributions made by SMARTTRUST Ltd. (ex-employer of the Respondent assessee) towards Employee Provident Fund Account of the Respondent assessee for period beginning 01.12.2000 uptill 30.06.2003.*

5. *Copy of the Reconciliation statement of Respondent assessee's CitiBank account for AY 2004-05 and 2005-06.*
6. *Copy of statement showing details of amounts credited to Respondent assessee's Bank Account during AY 2004-05 by his foreign employers.*
7. *Copy of Letter dated 25.4.2011 filed before the Assessing Officer during the course of assessment proceedings in response to Notice issued under Section 148 of the Income Tax Act, 1961 ("the Act").*
8. *Copy of Letter dated 25.05.2011 filed before the Assessing Officer during the course of assessment proceedings, inter alia, furnishing:-*
 - a) *Brief note elucidating the grant of divorce and terms of settlement between the Respondent assessee and his ex-wife.*
 - b) *Copy of the Memorandum of Understanding dated 6.04.2010 entered into between the Respondent assessee and his ex-wife, Ms. Gayatri Hazarika Chaliha, thereby stating the terms of settlement of Divorce by Mutual Consent.*
 - c) *Copy of the order dated 14.05.2010 passed by the Supreme Court thereby stating that-*
 - (1) *An MOU had been executed between the Respondent assessee and his ex-wife, amicably resolving the disputes between them.*
 - (2) *Directing the parties involved to file a Divorce Petition through Mutual Consent.*
 - (3) *Staying the proceedings initiated by either of parties before various Courts/ Forums.*
 - d) *Copy of the order dated 24.01.2011 passed by the Supreme Court thereby stating that all pending proceedings between the parties including complain to any Government Authority, by either of the parties, have been withdrawn.*
9. *Copy of letter dated 14.12.2011 filed before the Assessing Officer during the course of assessment proceedings.*
10. *Copy of Letter dated 23.12.2011 filed before the Assessing Officer during the course of assessment proceedings, inter alia, furnishing:-*
 - a) *Copy of the Affidavit dated 23.12.2011 issued by the Respondent Assessee.*
11. *Copy of written submissions dated 10.01.2013 filed by the Assessee before the CIT(A) during the course of Appellate Proceedings.*

12. *Copy of written submissions dated 28.01.2013 filed by the Assessee before the CIT(A) during the course of Appellate Proceedings."*

(C.1) The contents of the aforesaid Paper Book remained un-controverted from Revenue's side till the date of hearing before us on 27/08/2019. Copies of judicial precedents in the cases of Avdesh Kumar v. DCIT [2018] 96 taxmann.com 340 (Delhi-Trib.) and Pramod Kumar Sapra v. ITO [2017] 87 taxmann.com 98 (Delhi-Trib.) were also filed from assessee's side, during appellate proceedings in ITAT.

(D) At the time of hearing before us, the Ld. Counsel for assessee relied on the order of the Ld. CIT(A), relevant portion of which has already been reproduced in the foregoing paragraph no. (B). The Ld. Counsel for assessee placed further reliance on the aforesaid precedents in the case of Avdesh Kumar v. DCIT (Supra) and Pramod Kumar Sapra v. ITO (Supra). In particular, she highlighted the facts that the assessee earned the aforesaid amount totaling of Rs. 2,32,09,544/- as income on account of salary from Tekelec Incorporation, USA which was already taxed in USA; and further, that as per Double Taxation Avoidance Agreement, these are not to be taxed again in India. She relied on the Paper Book as evidence for hearing contentions and submissions. The learned Departmental Representative ("Ld. DR", for short) could not rebut the claim, the submissions and contentions from assessee's side and he could not point out any mistake or error, either on facts or in law, in the aforesaid impugned order dated 31.01.2013 of Ld. CIT(A) as far as Assessment Year 2004-05, with which

we are concerned in this appeal before us, is concerned. The Ld. DR left the matter to the discretion of the Bench.

(E) We have heard both sides. We have perused the material available on record. We have also considered the judicial precedents brought to our attention. On perusal of the aforesaid impugned order dated 31.01.2013 of the Ld. CIT(A), it is found that the assessee was away from India and was working in USA from 01.08.2003 to 31.07.2004; which includes the period from 01.08.2003 to 31.03.2004 forming part of Previous Year relevant to Assessment Year 2004-05 with which we are concerned in the present appeal. Thus, the Assessee was outside India for the period of more than 182 days during Previous Year relevant to Assessment Year 2004-05 and was a non resident within the meaning of Section 6 of Income Tax Act. Further during the aforesaid period on 01.08.2003 to 31.03.2004 the assessee was an employee of Tekelec, Inc. NC 27560, USA in a full time capacity in the role of Business Development Director based at Raleigh, NC, USA. Further, perusal of para 4 of the impugned order dated 31/01/2013 of the Ld. CIT(A) shows that the assessee had sent money through City Bank, USA for the maintenance of his son and wife in Delhi; that later on, there was divorce suit filed by the wife of appellant and they got separated in 2006, through court proceeding; that in the Court proceedings, the appellant also got a blow from his opponent lawyer and lost his left eyesight; that the separation happened in 2006; that the wife of the assessee wrote a Tax Evasion Petition ("TEP", for short) to Income Tax Department based on which assessment was made by the AO; and that the assessee had earned

the aforesaid amount of Rs. 2,32,09,544/- as salary payment from aforesaid foreign employer, which was already taxed in USA and was not to be taxed in India again as per Double Taxation Avoidance Agreement between USA and India. These facts are also substantiated by the contents of the Paper Book referred to already in foregoing paragraph No. (C) of this order. Nothing has been brought to our notice by the Ld. DR to warrant any interference by us in the aforesaid impugned order dated 31.01.2013 of Ld. CIT(A) for Assessment Year 2004-05. In view of these facts and circumstances, we are of the view that the order passed by the Ld. CIT(A) is in accordance with law. We are further of the view that the issue in dispute is covered in favour of the assessee by the aforesaid precedents in the cases of Avdesh Kumar v. DCIT (Supra) and Pramod Kumar Sapra v. ITO (Supra); as neither side has brought any distinguishing facts and circumstances for this year. Therefore, respectfully following the aforesaid judicial precedents, and in view of the foregoing discussion, we also decide the disputed issue for this year in favour of the Assessee and dismiss the appeal filed by the Revenue.

(F) In the Result, appeal of Revenue is dismissed.

Order pronounced in the open court on 03/09/2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 03/09/2019
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

ate of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	