

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA
[Before Shri P. M. Jagtap, Hon'ble Vice President &
Smt. Madhumita Roy, Hon'ble Judicial Member]**

[Through Virtual Court]

**ITA No. 2108/Kol/2019
Assessment Year: 2016-17**

Sankha Mukherjee.....Appellant
*Flat 7B, Wing 2, Orbit City,
82A, Raja S.C. Mullick Road,
Kolkata - 700 047
[PAN : AHRPM 3642 C]*

A.C.I.T, CIR 2(1) IT, Kolkata.....Respondent
*110, Shantipally, E.M. Bypass,
Kolkata - 700 107.*

Appearances by:

*Shri Ram Ratan Modi, CA appearing on behalf of the Assessee
Smt. Ranu Biswas, Addl. CIT, appearing on behalf of the Revenue*

Date of concluding the hearing : August 03, 2020

Date of pronouncing the order : August 12, 2020

ORDER

PER MADHUMITA ROY, JM

The instant appeal at the instance of the assessee is directed against the order dated 27.06.2019 passed by the Ld. CIT(A)- 22, Kolkata arising out of the order dated 13.12.2018 passed by the ACIT, Circle - 2(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2016-17 whereby and whereunder the addition of Rs. 2,63,330/- on the income from foreign asset through the retirement plan 401(K), deciding the same as taxable in India has been challenged.

2. The short facts relating to the issue is that during the year under consideration, the assessee mentioned the foreign investment in schedule FA of Income Tax Return. The investment pertains to

investment in retirement plan 401(K) in the United States of America as per the law of the country. Such investment was made while the assessee was a NRI and was working in the United States as an employee of HSBC.

3. At the time of hearing of the instant appeal, the Learned counsel appearing for the assessee submitted before us that the Revenue wrongly applied Article 20 of the DTAA between India and USA whereas the case of the assessee falls under the purview of Article 16 of the said DTAA. According to him, the alleged income has not arisen in India. More so, no withdrawal was made during the year under consideration by the assessee, neither any dividend or capital gain was earned by the assessee. The matter relates to benefit of an investment income arising out of a pension facilities provided by USA Government to the assessee. The fact that no real income has been received nor accrued from such investment during the relevant previous year, was not taken into consideration in its proper perspective by the Revenue while making addition. The Learned counsel appearing for the assessee prayed before us to restore the issue to the file of the Id. AO to verify the claim of the assessee and to adjudicate the same on the basis of the case made out by the assessee before the Revenue as envisaged hereinabove and to pass order accordingly.

Such contentions, however, has not been objected by the Ld. DR with all her fairness.

4. Hence, keeping in view the entire aspect of the matter, in order of render effective justice, we find it fit and proper to set aside the

issue to the file of the Ld. AO to verify the claim of the assessee upon giving an opportunity of being heard to the assessee and taking into consideration, the evidence on record and any other evidence which the assessee may choose to file at the time of hearing of the matter and and to pass orders accordingly.

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

Order Pronounced in the Open Court on 12th August, 2020.

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated: 12/08/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Sankha Mukherjee, Flat 7B, Wing 2, Orbit City, 82A, Raja S.C. Mullick Road, Kolkata – 700 047.
2. ACIT, Circle – 2(1), IT, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata