

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES : BENCH "B" HYDERABAD**

(Through Video Conference)

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 1991/Hyd./2018
Assessment Year : 2014-15**

Sri Srinivas Mahesh Laxman
Hyderabad
[PAN: ABWPL3772H]

vs. ITO , International Taxation 1
Hyderabad

(Appellant)

(Respondent)

For Assessee: Shery Goyal for Sri Ankur Agrawal, AR
For Revenue: Shri Rohit Muzumdar, D.R.

Date of Hearing : 18/03/2021
Date of Pronouncement : 28/05/2021

ORDER

PER S.S. GODARA, J.M.

This assessee's appeal for AY 2014-15 arises from CIT(A)-10 Hyderabad's order dated 19.04.2018 passed in case no. 0189/2016-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961 for short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance canvassed in the instant appeal challenges correctness of both lower authorities' action holding his salary/allowances received in lieu of services performed outside India to the tune of Rs.30,46,223/-, as taxable in India.

2.1. It emerges during the course of hearing that we need not delve much deeper in the relevant facts. This assessee is admittedly an employee of M/s IBM India Pvt. Ltd. He worked outside India and received the impugned sum as salary/allowances in lieu thereof. There is further no quarrel that the learned lower authorities have admittedly assessed him as a non-resident. The vexed question that arises for our apt adjudication is that of correctness of both the lower authorities action holding assessee non-resident's salary/allowances for services performed outside India is taxable in India. The CIT(A)'s detailed discussion under challenge reads as follows.

"5. After considering the material on record, it is seen that there is no dispute on the status of the appellant and the assessment is made in the status of a non-resident. The appellant stated that the foreign allowances did not accrue or arose in India. The appellant further stated that the foreign allowances were received outside India. Further, the foreign allowances were said to be received through travel card. The AO observed that receipt through travel card does not prove the fact that the receipt is outside India. The AO observed that the travel card is a mobile card and can be used anywhere. The AO also pointed out that the employer has not confirmed this fact.

5.1. In response, the appellant stated that the travel card cannot be used in India as the same is issued in foreign currency. The AR relied upon the certificate issued by the employer which is available at page 51 of the paper book. This certificate dated 06.06.2016, issued by IBM, states that the appellant was sent on a foreign assignment and that a sum of Rs.30,46,223/- paid to the appellant, represents the allowances received by the employee outside India for services rendered in Netherlands.

5.2 Though the employer has certified that the foreign allowances were received by the appellant outside India, the same has not been substantiated with necessary documents. Usage of travel card is one thing and place of receipt of foreign allowances is another. And, the appellant failed to prove the fact that the foreign allowances were actually received outside India.

5.3 The appellant also stated that taxes, in respect of the foreign allowances, were paid in Netherlands. In this connection, the appellant furnished copies of annual statements for 2013 and 2014, which are employee records with the Netherland Tax Authorities (pages 52 & 53 of the paper book). This will not

help the case of the appellant as the appellant is still required to establish the fact that the foreign allowances were received outside India.

5.4 In terms of Section 5(2)(a), the charge is on the basis of receipt in India and applies to non-residents. On the basis of receipt in India, the entire sum of receipt, though accruing or arising outside India, becomes taxable in India. This was so held by the Hon'ble Supreme Court in the case of Standard Triumph Motor Co. Ltd. Vs. CIT (1993) 201 ITR 391. In the case of the appellant, as it is not proved that the foreign allowances were received outside India, the same will have to be treated as received in India. Accordingly, the foreign allowance is liable to be taxed in India. Therefore, this ground of appeal is dismissed.”

3. We have given our thoughtful consideration to rival contentions against and in support of the impugned assessment of a non-resident's salary/allowances for services rendered outside India held as taxable in India. We find that the instant issue is no more res integra as per DIT (International Taxation) vs. Prahlad Vijendra Rao (2011) 239 CTR 107 (Kar.); Utanka Roy vs. DIT 390 ITR 109 (Calcutta) and Arvind Singh Chauhan vs. ITO (2014) 147 ITD 409 (Agra) already having decided it in taxpayer's favour and against the department thereby holding that such salary/allowance(s) which are received in lieu of services performed outside India are not taxable in India by virtue of sec.5(2) of the Act merely because an assessee is permanent resident of India. We adopt the very reasoning mutatis mutandis and direct the Assessing Officer to delete the impugned addition.

4. This assessee's appeal is allowed in above terms.

Pronounced in Open Court on 28th May, 2021.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Dated: the 28th May, 2021.

* gmv

Copy of the Order forwarded to:

1. Shri Srinivas Mahesh Laxman, 1-8-114, Vidyuthnagar Colony, Road no.1, Dilsuknagar, Hyderabad 500 060.
2. ITO, International Taxation-1, Hyderabad.
3. CIT(A)-10, Hyderabad-
4. Pr.CIT-10, Hyderabad.
5. CCIT, (IT) (SZ) Bengaluru
- 6.DR, ITAT, Hyderabad.
7. Guard File.