

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.257 to 259/Bang/2021
Assessment Year: 2011-12 to 2013-14

Dr. Ramesh Krishna Gowda #761. Vinayaka Layout 11 th Main, Nagarbhavi Main Road Bangalore 560 072 PAN NO : AGLPD3185C	Vs.	Deputy Commissioner of Income-tax (International Taxation) Circle-1(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravi Shankar, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	06.10.2021
Date of Pronouncement	:	06.10.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed these appeals challenging the order passed by Ld. CIT(A)-12, Bengaluru and they relate to the assessment years 2011-12 to 2013-14. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the orders passed by the A.O. rejecting the rectification applications filed u/s 154 of the Income-tax Act,1961 ['the Act' for short] in all the three years.

2. The Ld. Counsel appearing for the assessee submitted that the assessee is a Doctor by profession and was employed outside India during these three years under consideration. The assessee's

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status was “non-resident” under the Indian Income Tax Act in these years and actually there was no necessity to file return of income. However, the assessee filed returns of income in all these three years on the advice of a tax practitioner. While filing return of income, the salary earned outside India was declared under the head “Income from salary” even though the same is not taxable in India. The Ld. A.R. submitted that the assessee declared the salary earned abroad under the head “salary” in order to substantiate the source of funds repatriated to India. However, while computing the taxability, the assessee computed NIL tax, i.e., no tax is payable thereon. However, while processing the return of income u/s 143(1) of the Act, the CPC raised demand of Rs.5,25,290/-, Rs.33,16,810/- & 17,88,820/- respectively for assessment years 2011-12, 2012-13 & 2013-14.

3. The Ld. A.R. submitted that the assessee had filed returns of income belatedly, i.e., beyond the time limit prescribed u/s 139(1) of the Act and hence he could not file revised returns u/s 139(5) of the Act. In fact, the assessee showed NIL tax liability in the returns of income, which demonstrates that the assessee’s intention of disclosing the salary income under the head Income from Salary. The Ld A.R submitted that the assessee came to know of the mistake only when he consulted a new chartered account and further when the demand was enforced upon him. Subsequently, the assessee filed rectification petitions before CPC for these three years and the same was transferred to the A.O. for disposing the rectification petitions physically. The A.O. rejected the rectification petitions with the following observations:-

“The assessee filed the returns of income of AYs 2011-12, 2012-13 & 2013-14 declaring an income of Rs.19,68,791/-, Rs.94,60,780/- & Rs.56,53,214/- respectively. The returns of income were processed by CPC and demand of Rs.5,25,290/-, Rs.33,16,810/- &

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17,88,820/- were raised for AYs 2011-12, 2012-13 & 2013-14 respectively.

Now the assessee has filed a rectification application stating that "I was NRI during the period under consideration and the whole income declared in return of income was the income earned in abroad. While filing the return of income, the professional who helped me in the filing return has erroneously offered the salary earned abroad as salary taxable".

From the perusal of submission made by the assessee, it is seen that the assessee had declared the income as salary and had not claimed any exemption/deduction/relief in his returns of income. Since the assessee himself had declared the income as taxable and there is no mistake apparent from record, the rectification petition is rejected. You are requested to pay the demand mentioned above along with interest u/s 220(2) immediately."

4. The Ld. A.R. submitted that the Ld. CIT(A) also confirmed the orders passed by A.O. by holding that the claim of the assessee is a fresh claim, which is not allowable u/s 154 of the Act. In AY 2011-12, the Ld. CIT(A) also held that the rectification petition of that year has been filed by the assessee beyond the limitation period of 4 years and hence the rectification application could not be entertained. The Ld. A.R. submitted that the A.O. has rejected the rectification petition only for the reason that the assessee himself had declared the income as taxable and hence there is no mistake apparent from record. The case of the AO in AY 2011-12 was not related to the limitation period. He submitted that the assessee did not have copy of intimation u/s 143(1) for AY 2011-12 and collected the same from the assessing officer. Immediately, thereafter, the assessee filed rectification petition before the AO for all the three years. Hence, it cannot be said that the petition filed for AY 2011-12 was beyond the limitation period, since the Courts have held that the limitation shall start from the date of knowledge of the assessee. The Ld A.R submitted that it not the case of the A.O. that the rectification petition was beyond the time limit. Hence the Ld.

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CIT(A) was not justified in invoking the limitation issue without analyzing the facts relating to the same.

5. The Ld. A.R. submitted that the assessee is a non-resident and hence the income earned outside India is not taxable in India as per the provisions of section 5(2) of the Act. He further submitted that there is no estoppel against law. Hence, what could not be taxed under the Income Tax Act could not be subjected to tax by the A.O. on the reasoning that the assessee has voluntarily offered the same in the Income tax return. The Ld. A.R. submitted that the assessee is not liable to declare salary income earned outside India for taxation. However, he has erroneously declared the same under the head "income from salary". As stated earlier, the assessee has computed tax liability as nil in the return of income, which fact proves that the salary income is not liable for taxation in India. Hence, salary earned outside india has been offered wrongly in the return of income and the same is a mistake apparent from record. Hence the AO should have rectified the same u/s 154 of the Act. Accordingly, he submitted that the matter may be restored to the A.O. with a direction to rectify the mistake.

6. On the contrary, the Ld. D.R. supported the order passed by Ld. CIT(A).

7. Having heard the rival contentions, we are of the view that there is merit in the submissions made by the Ld. A.R. There is no dispute with regard to the fact that the assessee is a non-resident. It is the submission of the assessee that the salary income was earned by him abroad and hence the same is not liable to tax under the Act u/s 5(2) of the Act. There is merit in the submission of the assessee that the A.O. could not assess an income, which is not

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liable to tax under the Income Tax Act even if it was offered by the assessee in its return of income. As rightly pointed out by Ld. A.R., there is no estoppel against law and, in our view, the income erroneously offered in the return of income would constitute mistake apparent from record.

8. With regard to the point of limitation pointed by Ld CIT(A), we find merit in the submissions of Ld A.R. Accordingly, we hold that the petition u/s 154 of the Act was filed in time in AY 2011-12.

9. Accordingly, we set aside the orders passed by Ld CIT(A) in all the three years under consideration and restore them to the file of the AO to examine the claim of the assessee raised in the petitions filed u/s 154 of the Act in accordance with the law.

10. In the result, all the three appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on 6th Oct, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 6th Oct, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**