

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2613/PUN/2017
निर्धारण वर्ष / Assessment Year: 2011-12

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| Sachin Gopaldas Totale, 269, Baliram Peth, Jalgaon- 425001. PAN : AAIPT5627Q | Vs. | DCIT, Circle-1, Jalgaon |
| Appellant | | Respondent |

Assessee by : Shri Vinay Kawdia
Revenue by : Shri M. Jasnani
Date of hearing : 08.03.2022
Date of pronouncement : 15.03.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 2, Nashik ['CIT(A)' for short] dated 20.09.2017 for the assessment year 2011-12.

2. The appellant raised the following grounds of appeal :-

- "1) The learned CIT(A) grossly erred in finalising the appeal proceedings without disposing off the mistake apparent from record u/s 154 as pointed out by the appellant and rejected by the AO.*
- 2) The learned CIT(A) grossly erred in exceeding his powers u/s 251(1)(c) of the Act while passing the appellate order.*
- 3) In an appeal proceeding against the order u/s 154 passed by the AO, the CIT(A) erred in changing the status of the appellant as*

'Resident' which was confirmed by the AO as 'Non Resident' and not disputed by the appellant in any appeal.

4) In the facts and circumstances of the case, the CIT(A) erred in not adjudicating the ground of appeal raised by the appellant regarding applicability of 154(8) of the Act to the facts of the case.

5) The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal."

3. Briefly, the facts of the case are that the appellant is an individual deriving income under the head 'salary'. The return of income for the assessment year 2011-12 was filed on 21.03.2013 disclosing total income of Rs.75,66,070/- claiming the residential status of the appellant as "Resident". In the return of income, the appellant offered global income including the income earned in United States of America (USA) 'Agreement of Secondment Abroad' entered into EMC Data Storage Systems (India) Pvt. Ltd., Bangalore. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-1, Jalgaon ('the Assessing Officer') accepting the returned income but denying the claim of the appellant for tax credit/relief of Rs.2,89,924/- claimed u/s 90 of the Income Tax Act, 1961 ('the Act') read with Article 25 of the Double Taxation Avoidance Agreement (DTAA) between India and USA by holding that the appellant status is 'Non-Resident'.

4. On receipt of the assessment order, the appellant filed an application u/s 154 of the Act on 25.06.2014 before the Assessing Officer stating that when the Assessing Officer had treated the appellant as 'Non-Resident'. As natural corollary, the taxable income should be assessed as per section 5(2) of the Act i.e. assessing only the income earned in India. However, the said application came to be rejected vide order dated 10.07.2015.

5. Being aggrieved by the above order of the Assessing Officer, an appeal was preferred before the ld. CIT(A) raising the similar contentions also contending that the Assessing Officer ought not to have rejected the Miscellaneous Petition filed u/s 154 of the Act. The material facts are not in dispute. However, the ld. CIT(A) held that the appellant is only 'Resident' in India as the appellant had gone to USA for 'Secondment' for a period of 8 months during the previous year relevant to the assessment year under consideration and he had not gone for the purpose of employment. The ld. CIT(A) directed the Assessing Officer to give benefits of DTAA on credit for USA paid Rs.2,89,924/- as claimed by the assessee in the return of income.

6. Being aggrieved by the above decision of the ld. CIT(A), the appellant is before us in the present appeal.

7. It is contended before us that when the Assessing Officer treated the appellant as a 'Non-Resident Indian' (NRI) then he ought to have assessed the income only in terms of the provisions of section 5(2) of the Act.

8. On the other hand, ld. CIT-DR relied on the orders of the lower authorities submitted that the mistake committed by the Assessing Officer was corrected in the appeal proceedings of the Act and, therefore, the assessee should not have been aggrieved with the order of the ld. CIT(A).

9. We heard the rival submissions and perused the material on record. We have carefully gone through the grounds of appeal and perused the orders of the lower authorities. In the return of income filed by the appellant claimed the status of the appellant as 'Resident'. However, the assessment was completed by the Assessing Officer in the status of the appellant as 'Non-Resident', which was accepted by the assessee. As natural corollary of this fact, the income of the appellant should be assessed under the provisions of section 5(2) of the Act. But, the Assessing Officer assessed the income in the status of the appellant as 'Resident'. On appeal, the ld. CIT(A) restored the status of the appellant from 'Non-Resident' to 'Resident' undoubtedly, the powers of the ld.

CIT(A) are co-terminus with that of the Assessing Officer and as a result of order of the Id. CIT(A), there would be no change either in the returned income or the tax liability. Therefore, the assessee should not be aggrieved by the order of the Id. CIT(A). Accordingly, we do not find any merit in the present appeal filed by the assessee. Hence, we dismiss the appeal of the assessee.

10. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 15th day of March, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th March, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Nashik.
4. The Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.