

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1687/Del/2022
(Assessment Year: 2017-18)

Narayanan Subramaniam, 1309A Beverly Park 2, MG Road, DLF Phase 2, Gurgaon, Haryana-122002 (Appellant) PAN: AAVPS5624B	Vs.	ACIT, International Taxation, Gurgaon (Respondent)
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Assessee by :	Sh. M. P. Rastogi, CA
Revenue by:	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	21/02/2023
Date of pronouncement	23/02/2023

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the assessee against the order dated 30.05.2022 of Ld. Commissioner of Income Tax (Appeals)-43, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 10321/2019-20 for Assessment Year 2017-18 arising out of an appeal before it against the order dated 22.12.2019 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the Id AO, ACIT, International Taxation, Gurgaon (hereinafter referred as the Ld. AO).
2. Heard and perused the record.
3. At the outset it was mentioned on behalf of the assessee by the Id AR that the vital piece of documents being the copy of passport was filed during the appellate proceedings but it was not considered by the Id CIT(A) and no finding was given and for which ground no 1 is raised. The Id DR could not dispute this fact.

4. Appreciating the matter on record it comes up that the controversy involved is primarily with regard to question if the assessee had non-residential status for the relevant Assessment Year 2017-18 and the Id AO had held it against the assessee on the basis that his stay for more than 180 days abroad was not supported by any evidence including passport. The Id CIT(A)'s order shows that at the appellate stage the assessee had filed submissions dated 18.08.2020 which are available at page No. 4 to 39 of the paper book which has been reproduced at page Nos. 3 to 5 of the Id CIT(A)'s order and therein it was specifically mentioned "*the details of number of days in India in FY 2016-17 again being enclosed herewith along with copy of passport of the appellant.*" In spite of it the Id CIT(A) considered it to be a case where the residential status of the appellant could not be ascertained in absence of passport. No observation was made for not considering the passport as evidence and which does not require much verification. The Id CIT(A) had fallen in error and thus, ground No. 1 as raised in the appeal deserved to be sustained.

5. The appeal of the assessee is allowed for statistical purposes. The issue of consideration of the evidence in the form of passport entry for determination of the residential status of the assessee is restored to the files of the Id CIT(A).

Order pronounced in the open court on 23/02/2023.

-Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 23/02/2023
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi