INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, Accountant Member

ITA No. 4246/Del/2016
(Assessment Year: 2012-13)

Souvik Mukherjee, Gupta Ranjan K & Co, 208 Ansals Laxmi Deep Laxmi Nagar, District Centre, Delhi-110092 (Appellant) **PAN: AGTPM9231G**	Vs.	Income Tax Officer, Ward-59(3), New Delhi (Respondent)

Assessee by :	Dr. Rakesh Gupta, Adv Shri Somit Aggarwal, Adv Shri deepesh Garg, Adv
Revenue by:	Shri Sanjay Kumar, Sr. DR
Date of Hearing	08/06/2023
Date of pronouncement	27/06/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.4246/Del/2016 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-19, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No.25/2015-16 dated 05.05.2016 against the order of assessment passed u/s 143(3) Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 20.03.2015 by the Assessing Officer, Ward-59(3), New Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in denying relief under section 90 of the Income Tax Act 1961.

2. That in any view of matter and in any case, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned assessment

order is beyond jurisdiction, illegal, in violation of principles of natural justice, contrary to law and facts and deserves to be quashed."

3. We have heard the rival submissions and perused the material available on record. The assessee during the year under consideration, is a resident individual and had filed his return of income for AY 2012-13 on 23.07.2012 declaring total income of Rs. 1,42,58,599/-. The assessee had declared income under the head income from salary, income from house property and income from other sources. During the course of scrutiny assessment proceedings, the ld AO found assessee had claimed relief u/s 90 of the Act in respect of bonus received from his previous employer in Singapore amounting to Rs. 12,18,677/-. The AO in para 5 of his order had stated that the assessee had received salary for the period from January 2011 to March 2011 amounting to Singapore $ 58865 and bonus amounting to Singapore $ 109859. The ld AO also stated in para 5 of his order that the assessee had paid Singapore $ 9998.55 as tax in Singapore. The ld AO accordingly granted relief only to the extent of Rs. 5.92% (9998.55 / 168724 X 100) u/s 90 of the Act and which was worked out to Rs. 2,33,481/-. Accordingly, the ld AO proceeded to disallow the relief u/s 90 of the Act in the sum of Rs. 9,85,196/- (Rs. 12,18,677 -2,33,481/-). These actions of the ld AO was upheld by the ld CIT(A) by observing as under:-

"16. I have gone through the submissions of the appellant. In brief the contention of the appellant is that bonus represents arrears of salary in respect of services rendered in Singapore during the Financial Year 2010-11 and as per section 15(e), it is chargeable under the head salaries. He, further, relies on section 9(1)(ii) to say that income under the head salaries is deemed to accrue or arise in India only if the services are rendered in India. However, in his case, the services were rendered outside India, therefore, as per the provisions of section 9(1)(ii), this income should not at all be charged to tax in India and be excluded from the total income.

17. The argument of the appellant is contrary to his return. In his return he has already offered income which had been received from the Singapore Company and on which the tax has been duly deducted by his present employer. In the return, he had only claimed relief under section 90 in respect of taxes paid but in his argument he seeks

exemption from tax in respect of entire bonus received. 1, however, do not agree with the alternate argument of the appellant for the following reasons:-

(i) During the relevant Assessment Year 2012-13, the appellant is a resident of India which can be seen from his return of income. As per section 5 of the Act, a resident is liable in respect of:-

(a) income received or deemed to received in India;
(b) income which accrues or arises or deemed to accrue or arise in India;
(c) Income which accrues or arises to him outside India.

(ii) The appellant has stated that the amount of bonus was received by him in his bank account at Singapore and therefore, the income was not received in India. He, thereafter, states that as per provisions of section 9(1)(ii), income being in the nature of salary was rendered outside India since the bonus was received in respect of serviced rendered by him when he was a non-resident. He, therefore, states that he does not fall under any of the categories mentioned in Section 5 of the Act.

iii) During the relevant previous year i.e. 2011-12, on 1 June, a bonus was declared by the Singapore Company, this is evident from letter filed by the appellant. This letter shows that no bonus was declared in the preceding year and the bonus was determined & declared in the month of June which was subsequently paid. This shows that this income has accrued/arisen to him during the relevant previous year. Since bonus is never a part of salary and is declared on the basis of performance and profits of the Company, it is not contractual income but is a gratuitous payment which arises or accrues only when the same is declared. Since the bonus was declared during the relevant previous year when the appellant was resident, it squarely falls within clause (c) of section 5(1) of the Act. In view of the above discussion, the bonus was chargeable to tax in India during the relevant year and tax has been properly deducted by his employer on the same. In view of the above discussion, appellant is entitled to a relief of Rs. 2,33,774/-in view of DTTA with Singapore read with section 90 of the Income Tax Act, 1961. This ground of appeal is rejected."

4. The main crux of the confirmation of the addition by the ld CIT(A) is that the assessee, being a resident during the year under consideration, this sum of bonus though pertaining to employment services rendered in Singapore but received during the year under consideration by the assessee, shall be treated as income accruing or

arising to him in terms of section 5 of the Act. The ld CIT(A) however, accepted the fact that the bonus was declared by the Singapore Company only on 1st June 2011 and accordingly concluded that this income had accrued and arisen to the assessee during the year under consideration, in which year the assessee is a resident.

5. It is not in dispute that this bonus is received by the assessee form the Singapore Company in respect of employment services rendered by the assessee in Singapore. It is not in dispute that the assessee when he had rendered employment services in Singapore was a non-resident. It is not in dispute that this bonus received from Singapore Company was treated as part of salary by the assessee and by the Singapore Company. It is not in dispute that the bonus has been declared by the Singapore Company only on 1st June 2011. This excruciating fact of bonus getting declared on 1st June 2011 clearly proves the contention of the assessee that the said bonus was in respect of employment services rendered by the assessee in Singapore when he was a non resident. The evidence in this regard is enclosed at page 7 to 8 of the paper book. It is a fact that the bonus is included by the assessee in his return of income and tax has been deducted by the Indian employer also. We find from Article 15 of the Double Taxation Avoidance Agreement entered into between India and Singapore, salary, wages and other similar remuneration derived by a resident of contracting state in respect of employment shall be taxable only in that state unless the employment is exercised in other contracting state. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other state. Admittedly, the assessee herein was a non resident when he was rendering employment in Singapore Company in pursuance of which employment, the assessee was given bonus in June 2011. It is not in dispute that during the period for which bonus is received, the assessee was serving only in Singapore and not in India. On perusal of the provisions of section 5(1) of the Act, the

said bonus income would have to be construed as income accruing or arising to him in India and it is also received during the year by the assessee. Hence, the bonus received by the assessee, being a resident would be taxable for the year under consideration in India. However, in terms of section 90 of the Act, the entire taxes paid by the assessee in Singapore for the very same salary and bonus component, would be eligible for tax credit for the assessee. We are unable to apprehend ourselves to accept to the tax credit calculation determined by the ld. AO in the instant case by working out @5.92% which has no support from the provisions of Act or in DTAA. Hence, the said determination of foreign tax credit by the AO is hereby rejected. However, we direct the ld AO to allow the foreign tax credit in full in respect of tax paid in Singapore for the very same salary and bonus income. With these directions, the ground raised by the assessee are allowed and ld AO is directed to give tax credit to the assessee accordingly.

6. In the result the appeal is allowed for statistical purposes.

Order pronounced in the open court on 27/06/2023.

-Sd/-	-Sd
(KUL BHARAT)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 27/06/2023
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi