

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.361/Bang/2023
Assessment Year: 2012-13

Sudripta Chakraborty C/o Suresh Muthukrishnan No.3DC-118, 3 <sup>rd</sup> D Cross 2 <sup>nd</sup> Main Road, East of NGEF Layout Kasturi Nagar Bangalore 560 043  <b>PAN NO : AFXPC9687D</b>	<b>Vs.</b>	ITO (International Taxation) Ward 1(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Suresh Muthukrishnan, A.R.
<b>Respondent by</b>	:	Smt. Priyadarshini Besaganni, D.R.

<b>Date of Hearing</b>	:	20.06.2023
<b>Date of Pronouncement</b>	:	13.07.2023

**O R D E R**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

This appeal by assessee is directed against the order of CIT(A)-12, Bangalore dated 9.3.2023 for the assessment year 2012-13. The assessee has raised following grounds of appeal:

- 1. “The order of the authorities below in so far as it is against the appellant is opposed, to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The appellant denies himself liable to be assessed on a total income of Rs. 23,64,898/- determined by the order of the authorities below as against the reported total taxable income of Rs. 3,18,720/- by the appellant under the facts and circumstances of the case.*
- 3. The order of the authorities below is erroneous and arbitrary in as much as they have assessed the Appellant on a Salary income of Rs.22,09,107/- as against Rs.1,55,467/- returned by him.*

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4. *That the learned A.O/CIT[A] erroneous in as much as the appellant has been denied the exemption of Rs.20,53,460/- claimed by him in terms of Article 15(1) of the India- Australia Double Taxation Avoidance agreement which he is entitled under Section 90 of the Act.*
5. *The appellant denies himself to be liable for Interest u/s.234D under the facts and circumstances of the case.*
6. *The appellant craves leave of your Honour to add, alter, amend, rectify, and delete any of the grounds urged above.*
7. *For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant humbly prays that the appeal may be allowed, and Justice rendered.”*

2. Brief facts of the case are as under:

The return of income filed by the assessee on 31.08.2012 for the AY 2012-13 and was selected for scrutiny under CASS. Subsequently, notice u/s 143(2) of the Act was issued on 30.09.2014. Several reminder mails were sent by the Ld. AO but there was no compliance by the assessee. Hence the Ld.AO concluded the assessment ex-parte u/s 144 of the Act on the basis of the information available on record.

2.1 The Ld. AO noted that in the return of income, the assessee had declared the following incomes:

Income from salary	Rs.1,55,647/-
Income from other sources	Rs.1,81,523/-
Gross total income	Rs.3,37,170/-
Deductions	Rs.25,732/-

2.2 It was also observed that the refund of Rs.7,77,220/- claimed in the return had been issued to the assessee during the assessment proceedings were underway. The Ld. AO observed that TDS was not commensurate with the income declared in the return. Based on the TDS shown in the return of income, the Ld.

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AO considered the sum of Rs.73,99,150/- as the assessee's income from salary.

2.3 Aggrieved by the addition made, the assessee has filed an appeal before the Ld. CIT(A).

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3. During the proceedings before Ld. CIT(A), the Ld. A.R. filed written submissions which included the computation of income copies of the assessee's passport showing his residence status, copies of the assessee's return of income filed in Australia and the tax assessment order received from Australia for the period July, 2011 to June, 2012 and copies of assessee's pay slips for the months of April, May and June, 2011.

3.1 In the written submissions, it was stated that the assessee was a non-resident for the year under consideration, as he had been in India for only 53 days. It was submitted that the assessee received salary from Oracle Solutions Services (India) Pvt. Ltd. for the period from 1.4.2011 to 25.11.2011 and thereafter permanently migrated to Australia w.e.f. January 2012. The Ld. A.R. further submitted that the assessee did not work in India from 26.11.2011 to 31.3.2012.

3.2 In the computation of income under the head Salary, the assessee claimed that out of the total salary received for the period 1.4.2011 to 25.11.2011, only Rs.1,55,647/- was relating to services rendered in India for a period of 17 days. The Ld. CIT(A) forwarded the additional evidence to the Ld. AO, for a report, which was received on 28.12.2022. The relevant portion of the remand report is as under:

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*"From the documents furnished, it is observed that the appellant was an employee of Oracle Solution Services (India) Pvt. Ltd.. for the year under consideration. The appellant has further stated that during the period under consideration he had received total salary amounting to Rs.22,09,107/- and claimed exemption of Rs.20,53,460/- as per the Article 15(1) of India Australia DTAA. The appellant has further claimed himself to be a resident of Australia during that period as he had stayed only for 51.5 days in India during AY.2011-12 relevant to the AY.2012-13. The appellant also submitted his copy of passport in support of his stay period in India and also furnished the copy of return of income filed in Australia for the calendar year 2012.*

*It is also pertinent to mention here that it was the responsibility of the appellant to comply to the notices issued and to establish that he was an NRI during that period and was also required to furnish the copy of tax residency certificate for the calendar year 2011 and 2012 to establish his tax residency status. It was also the responsibility of the appellant to furnish the copy of foreign assignment letter / agreement on the basis of which he was sent to Australia.*

*However, he failed to furnish any of these details and therefore the exemption as per the Article 15(1) of the Income Tax Act was not allowed to the appellant. Even during the course of appellate proceedings, the appellant has not furnished the copy of assignment letter as well as the copy of TRC.*

*In view of the above stated facts, the additional evidences submitted by the appellant during the course of remand proceedings are found not satisfactory. Hence, it is submitted that the case may be decided on merits."*

3.3 A copy of the remand report was provided to the assessee. The assessee filed a rejoinder on 28.2.2023, which is as under:-

*"The appellant submits once again reiterates that he was prevented by sufficient cause and non-appearance was neither intentional nor wilful but it was out of circumstances which were beyond his control and prays that the same may be considered and the appeal may kindly disposed off on merits as otherwise the appellant would be fastened with tax liability which is otherwise not due from him. The requirement to furnish a Tax residency certificate and additional information for availing the Treaty benefits came into effect from 01.04.2013 and was not applicable to the impugned assessment year."*

3.4 The ld. CIT(A) then observed as under:

*"I have considered the submissions made by the appellant, the remand report and the rejoinder filed. During the appellate proceedings the AR was asked to submit a copy of the secondment letter for the appellant's employment in Australia. However, the AR during the hearing held on 01.12.2022 submitted that the secondment letter was not available, which was recorded on the order sheet. In the remand report the AO has emphasised that the appellant ought to have submitted Tax Residency Certificate for the calendar year 2011-12 to establish his Tax Residency status. However, the provision in the Act that the treaty benefit would be given only if the Tax Residency Certificate is submitted has come into effect from 01.04.2013 and hence is not applicable to the year under consideration. Be that as it may, the salary income for the entire year was received by the appellant in India and was paid by Oracle India. Sample pay slips have been submitted for the first three months of FY 2011-12 which mention 'overseas assignment salary'. The appellant has stated that he became a permanent resident of Australia from January 2012. What his residence status was during the period July to December 2011 and where he was rendering services to his Indian employer is not clear from the appellant's submission. The terms of the appellant's employment in Australia are not known as the appellant had not furnished any assignment agreement either during the assessment proceedings or during the appellate proceedings. Therefore, it is not known whether services were rendered for Oracle India or whether Oracle India was reimbursed by the Australian entity. Further, the basis for claiming salary of only 17 days as pertaining to services rendered in India is not clear in the absence of the assignment letter. Here it is noted from the appellant's submissions that in the letter dated 22.1.2013 issued by Price Waterhouse Cooper (PWC) to the appellant in connection with his Australian tax return, it is mentioned in Appendix I that the appellant was granted permanent residency status from 17.11.2011. It is also mentioned in the said letter that the appellant came on Accenture's payroll from 26.11.2011. If the services had been rendered for the Australian entity, then the reason for Oracle India to pay the appellant has not been specified. If the appellant was a resident of Australia, then why the salary was paid in India by Oracle India if the appellant was on the payroll of*

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*Accenture Australia is not known. Whether the salary expense was claimed by Oracle India or by the Australian entity is also not known. Given that the salary was paid in India by Oracle India, therefore under the provisions of Section 5 of the Act, this income was received by the appellant in India and is accordingly taxable in India. Since the appellant has not provided a copy of his assignment letter, the terms and conditions of his employment in Australia are not known and hence the taxability of the appellant's remuneration cannot be evaluated against the provisions of the India-Australia DTAA”.*

3.5 The ld. CIT(A) further noticed that in the assessment order the Ld. AO had extrapolated the income from salary on the basis of the TDS claimed, whereas in the return of income, the computation of salary mentions the amount to be Rs.22,09,107/-. In the remand report also, the Ld. AO accepted that the assessee's salary for the year was Rs.22,09,107/-. Therefore, the salary to be brought to tax in India was considered by the Ld. CIT(A) to be Rs.22,09,107/-. The Ld. AO was thus directed accordingly by the Ld. CIT(A) and the grounds of appeal were partly allowed by him.

Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

4. The Ld. A.R. submitted that the assessee filed his return of income electronically on 31.8.2012 reporting a total income of Rs.3,11,438/- after claiming relief of Rs.20,53,460/- being the salary income on which taxes were paid outside India (in Australia) u/s 90 of the Act.

5. The ld. D.R. on the other hand submitted that the assessee did not file any details of tax having paid in Australia.

6. We have heard the rival submissions and perused the materials available on record. We note that the effective

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ground on the issues raised by the assessee in the present appeal is ground no.4

6.1 We note from the index to the paper book filed before this Tribunal that, the assessee has filed the return of income filed in Australia, along with notes on computation prepared by the tax consultants FWC for the year July, 2011 to June, 2022 before the Ld. AO, placed at pages 48 to 79 of the paper book. However, we note that in the remand proceedings it is recorded that the assessee has not furnished the copy of assignment letters as well as TRC.

6.2 We direct the assessee to file all the above relevant documents and details as directed herein above. The Ld. AO shall then grant credit of the tax paid outside India as per the section 90 read with concerned Articles under DTAA. Accordingly, all the grounds raised by the assessee on this common issue is remanded to the Ld. AO for de-novo consideration. Needless to say that proper opportunity of being heard must be granted to the assessee in accordance with law.

7. In the result, appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 13<sup>th</sup> July, 2023

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

Bangalore,  
Dated 13<sup>th</sup> July, 2023.  
VG/SPS

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Copy to:

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

By order

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