

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.36/Viz/2023

(निर्धारण वर्ष / Assessment Year :2016-17)

Bokam Sanyasi Naidu,  
Visakhapatnam.

PAN: AIWPB 3717 D

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs.

The Income Tax Officer,  
Ward (International Taxation)  
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Satya Sai Rath, CIT-DR

12/10/2023

31/10/2023

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal is filed by the assessee is directed against the directions of the Ld. Dispute Resolution Panel [DRP] passed U/s. 144C(5) of the Act in F.No. 38/DRP-1/BNG/2022-23, dated 15/12/2022 for the AY 2016-17.

2. Briefly stated the facts of the case are that the assessee who is an individual non-resident filed his return of income on

27/09/2016 admitting a total income of Rs. 1,50,315/- and claimed exemption U/s. 54EC of the Act for the income from capital gains. Further, the assessee also claimed an amount of Rs. 1,14,43,118/- as exempt income. The return of income was summarily processed U/s. 143(1) of the Act. During the scrutiny proceedings, as per the information available on record, the Ld. AO observed that the assessee along with other three persons sold certain properties for a total consideration of Rs. 1,70,59,000/- as per the sale deeds whereas the SRO value of the property was Rs. 2,64,47,000/-. On verification of the original return of income filed by the assessee, the Ld. AO noticed that the assessee did not adopt the sale consideration as per the SRO value for the purpose of stamp duty and registration purpose and worked out the difference of Rs.93,88,000/- and assessed the same in the hands of the assessee as per the provisions of section 50C of the Act. Thereafter, notice U/s. 148 was issued to the assessee. In response, the assessee filed revised return on 3/2/2022 admitting his share of LTCG as per the SRO value and claimed exempt income of Rs. 1,14,43,118/-. Subsequently, notice U/s. 143(2) and 142(1) were issued on the assessee and called for the information and accordingly the assessee filed his reply by stating that the said amount of Rs. 1,14,43,118/- is a

salary income declared in the return of income vide Schedule EI under NRI status which was exempted from income tax. Thereafter, the Ld. AO issued show cause notice on 10/03/2022 requesting the assessee as to why the assessee's claim of exempt income of Rs. 1,14,43,118/- besides other deductions should not be disallowed and brought to tax. In response the assessee filed its reply dated 14/03/2022. After considering the submissions of the assessee, the Ld. AO disallowed a sum of Rs. 1,14,43,118/- under the head 'salaries' U/s. 5(2)(a) of the Act stating that the salary was received by the assessee in India into his NRE account. Aggrieved by the draft assessment order of the Ld. AO, the assessee filed his objections before the Ld. DRP. The Ld. DRP after considering the objections raised by the assessee, upheld the additions made by the Ld. AO in his draft assessment order amounting to Rs. 1,14,43,118/- received by the assessee in his NRE bank account in India. The Ld. DRP in its directions has observed that the remuneration to the assessee was received by him in Nigeria but directly credited to his NRE account in India. Therefore, the Ld. DRP concluded that the Ld. AO is absolutely correct in invoking the provisions of section 5(2)(a) of the Act. Aggrieved by the directions of the Ld. DRP, the assessee is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. DRP-1, Bengaluru is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Hon'ble DRP is not justified in sustaining the addition of Rs. 1,14,43,118/- made by the Assessing Officer by rejecting the claim of the appellant that the salary received for services rendered in Nigeria is outside the scope of total income chargeable to tax in India.*
- 3. Any other grounds may be urged at the time of hearing."*

3. At the outset, the Ld. AR argued that the assessee being a non-resident and engaged in on-shore projects has requested his employer in Nigeria to transfer the salaries to his NRE account in India to meet his family commitments. The Ld. AR referred to the appointment letter placed in paper book Page No. 37 and stated that the assessee even though posted in Nigeria Office, will be deployed for their operations in on-shore block in different areas by mutual agreement. The Ld. AR further submitted that the Central Board of Direct Taxes [CBDT] in its Circular No. 13 of 2017 has clarified that salary accrued to a non-resident seafarers for services rendered outside on a foreign ship shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian Bank. The Ld. AR therefore pleaded that since the assessee in the present case is engaged in on-shore employment, the same

analogy applies to the assessee and hence it cannot be considered as an income in the hands of the assessee and cannot be taxed in India. The Ld. AR also further argued that since the income was not taxable in Nigeria, it cannot be taxed in India.

Per contra, the Ld. DR relied on the directions of the Ld. DRP. Further, the Ld. DR argued that the CBDT Circular No. 13/2017 is with respect to a seafarer who is on board ships and cannot be applied to the assessee in the instant case. He therefore pleaded that the directions of the Ld. DRP be upheld.

4. We have heard the rival contentions and perused the material available on record and the orders of the Ld. Revenue Authorities. It is an undisputed fact that the assessee is employed in Nigeria as a Senior Drilling Engineer and deployed in on-shore block in different areas by mutual agreement. Admittedly, the assessee has requested his employer in Nigeria to credit his salary to the NRE account maintained in India as he is always engaged in on-shore operations. Further, as argued by the Ld. AR the salary has become due as per the provisions of section 15A of the Act deserves consideration. The provisions of section 5(2)(a) of the Act cannot be applied in the instant case as the salary become due to an employee in the previous year where

the services are rendered by the employee. Section 9(1)(ii) is extracted below for the sake of brevity:

***Income deemed to accrue or arise in India.***

***9. (1) The following incomes shall be deemed to accrue or arise in India :—***

*(ii) income which falls under the head "Salaries", if it is earned in India.*

*Explanation.—For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—*

*(a) service rendered in India; and*

*(b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment, shall be regarded as income earned in India ;*

In the instant case the fact that the assessee is employed in Nigeria is not disputed by the revenue. Since the salary is received by the assessee in NRE account in India, it cannot be considered as income in India, as services were rendered on-shore by the assessee, the salary cannot be considered as accrued or deemed to accrue to the assessee in India and hence the provisions of section 5(2)(a) of the Act cannot be applied. From the bare reading of Section 9(1)(ii) as extracted above, the salary shall be deemed to accrue or arise in India and shall be regarded as income earned in India, only when services are rendered in India. Further, we find that there is merit in the argument of the Ld. AR wherein the CBDT Circular No. 13/2017 shall be applied to the assessee who is working on-shore and merely because of the use of the word "seafarer" in the Circular

the benefit to the assessee cannot be denied. The clarification given by the Ministry of Finance in Circular No. 13/2017 is to mitigate the hardships faced by the assessees where a non-resident received his salary in the NRE account maintained with an Indian Bank, since conditions of his employment are not restricted to a single place but either in the ships or in the on-shore projects elsewhere. We are therefore of the considered opinion that this beneficial Circular No. 13/2017 of the CBDT shall be applied to the instant case. Considering the above facts and circumstances of the case, we are inclined to quash the directions of the Ld. DRP and allow the grounds raised by the assessee.

5. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 31<sup>st</sup> October, 2023.

Sd/-

(दुव्वूरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :31.10.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Bokam Sanyasi Naidu, Flat No. 101, Swapnalok Residency, BS Layout, Seethammadhara, Visakhapatnam, Andhra Pradesh – 530013.
2. राजस्व/The Revenue – The Income Tax Officer, Ward (International Taxation), Infinity Tower, Shankaramatham Road, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam