

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2107/Del/2023 : Asstt. Year: 2020-21**

Anjali Puri, 19, Road-13, Club Road, Punjabi Bagh Extension, New Delhi-110026	Vs	DCIT, International Taxation-2(2)(2), New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AHAPP6368D</b>		

**Assessee by : Sh. Vishal Kalra, Adv. &  
Ms. Snigdha Gautam, Adv.  
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

<b>Date of Hearing: 06.12.2023</b>	<b>Date of Pronouncement: 14.02.2024</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

This appeal has been filed by the assessee against the order dated 23.05.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

*"1. That on the facts and circumstances of the case and in law the AO has erred in completing the assessment of the Appellant at an income of INR 1,05,42,085 as against NIL taxable income returned in the income tax return*

*2. That on the facts and circumstances of the case and in law, the Dispute Resolution Panel ("DRP")/AO have erred in not granting benefit of tax exemption under Article 15 of the India - Ireland Double Taxation Avoidance Agreement (DTAA).*

*3. That on the facts and circumstances of the case and in law, the AO/ DRP have erred in incorrectly interpreting the letter of assignment while making an addition of INR 1,05,42,985 in respect of the salary received by the Appellant from her international assignment and borne by British Airways PLC (Ireland).*

*4. That on the facts and circumstances of the case and in law, the AO/ DRP have erred in disregarding the documents and evidence furnished by the Appellant and proceeded to make the addition on account of salary received without application of mind and appreciating that the salary paid was in relation employment exercised overseas.*

*5. That on the facts and circumstances of the case and in law, the AO/DRP have erred in not granting relief under Article 15 of the India Ireland DTAA and further erred in not appreciating that the income is accrued where the employment is exercised instead of the situs of the*

*6. That on the facts and circumstances of the case and in law, the AO/ DRP have erred in concluding that the salary received by the Appellant from his international assignment shall be deemed to accrue or arise in India under section 9 of the Act.*

*7. That on the facts and circumstances of the case and in law, the AO erred in levying interest under Section 234B of the Act.*

*8. That on the facts and circumstances of the case and in law, the AO erred in initiating penalty proceedings under section 270A of the Act in respect of misreporting of income."*

3. The assessee is an individual employed with British Airways PLC, a company incorporated under the laws of United Kingdom. The assessee was deputed on a long term-term assignment from April 01, 2019 to British Airways PLC, Ireland branch ("BA PLC, Ireland").

4. During the year, the assessee rendered services outside India (i.e. in Ireland) and was a tax resident of Netherlands by virtue of the Tax Residency Certificate ("TRC"). Further, in the relevant F.Y., the total stay of the assessee in India was less than 60 days. Accordingly, by virtue of section 6(1) of the Income-tax Act, 1961, the assessee qualified as Non-Resident in India for the impugned Assessment Year. The said fact of the assessee being a resident and the services were rendered outside India is an accepted position and not disputed by the AO in his order.

5. While on the deputation, for administrative convenience and on behalf of BA PLC, Ireland, the assessee received salary in India in respect of the services rendered outside India i.e., in Ireland to BA PLC, Ireland. Further, to ensure withholding compliance laid down under section 192 of the Act, BA PLC, India deducted tax at source on the salary paid in India and deposited with the government. The Company was reimbursed in full by the BA PLC, Ireland.

6. The assessee filed the Income Tax Return for the impugned year under section 139(1) of the Act on December 24, 2020, as a Non-Resident Indian, in accordance with the section 90 of the Act read with Article 15(1) of the India-Ireland Double Taxation Avoidance Agreement ("DTAA"), claiming the income to be exempt from tax in India.

7. The assessment proceedings under section 143(3) of the Act were initiated. The AO issued the draft Assessment Order under section 144C(1) of the Act, wherein an addition of Rs.1,05,42,985/- on account of salary received was made to the income of the Assessee. Aggrieved, the Assessee approached Id. Dispute Resolution Panel ("DRP"), the Id. DRP vide its directions dated April 19, 2023, affirming the addition proposed by the Assessing Officer.

8. Based on directions issued by the Id. DRP, final assessment order was issued by AO on April 23, 2023 under section 14C(3) read with section 143(3) of the Act, assessing the total income of the assessee amounting to Rs.5,69,40,697/- after denying the exemption/relief claimed by the assessee under Article 15(1) of India - Ireland DTAA.

9. Aggrieved, the assessee filed appeal before the Tribunal.

10. Ground No. 2 to 5 relating to salary income earned by the assessee for services rendered in Ireland is not taxable in India as the assessee being non-resident and covered under Article 15(1) of India - Ireland DTAA.

11. During the course of assessment proceedings, the assessee had provided following documents to substantiate the claims made:

- a) Letter of Assignment dated February 21, 2019.
- b) Certificate/letter by the BA PLC, India in relation to salary received by her.

- c) Certificate/letter by the BA PLC, Ireland in relation to reimbursement of salary paid by BA PLC, India to the Assessee.
- d) Tax residency certificate
- e) Income Tax Return filed in Ireland for the year 2019.
- f) Income Tax Return filed in Ireland for the year 2020.
- g) Income Tax Return filed in India along with Income Tax computation.
- h) Ireland employment permit dated February 11, 2019.
- i) Relevant extract of the passport.

12. From the above, it is clear that despite the above submissions and evidence on record, the Assessing Officer erred in incorrectly holding that the Assessee was based in India and that the salary was taxable in India, where infact the salary was earned from BA PLC, Ireland and the services were rendered outside India.

13. However, the Id. DRP after perusing the documents submitted by the Assessee erroneously noted that there is a failure on the part of Assessee to provide agreement between Irish and Indian entity. Evidently, the Id. DRP failed to appreciate certificate / letter of reimbursement issued by BA PLC, Ireland substantiates the assessee's submission that during the impugned Assessment Year, the assessee was employed with BA PLC. Ireland and was paid salary in India merely for administrative convenience.

**Salary income of the Assessee was not exigible in India under Article 15 of the DTAA**

14. The Assessing Officer was not correct in not granting relief under Article 15 of the DTAA and disregarding that income is accrued where employment is exercised. As per the Article 15 of the DTAA between India and Netherlands, the income earned by the person is exempt from tax if following conditions are satisfied:

- (1) If the person has not stayed for more than 183 days in India, and
- (2) If the employment is exercised outside India.

15. In the present case, both the conditions prescribed in the Article 15 are satisfied. The first condition has not been disputed by the Assessing Officer, whereas the second condition has been justified by various evidences furnished by the assessee. The Assessing Officer himself in para 7 of the Assessment Order has accepted that the services were rendered outside India.

16. Therefore, it is hereby held that the assessee was a residing and exercising employment in Ireland under the complete control of BA PLC, Ireland for the impugned Assessment Year. Further, the salary was also borne by BA PLC, Ireland. Thus, the salary of the assessee derived from BA PLC, India on behalf of BA PLC, Ireland are duly considered exempt from tax in India.

**17. Salary income earned by the assessee for services rendered in Ireland cannot be said to be deemed to accrue or arise in India under section 9 of the Act.**

18. Taxability of income under the head "salary" is covered under section 9(1)(ii) of the Act, which states as follows:

*"(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 real 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".*

19. Thus even in view of section 9(1)(ii) of the Act, salary payment can be said to be earned in India only the corresponding services are rendered in India. In other words, if the services are rendered outside India, for which salary has been paid, then the income cannot be said to accrue or arise in India.

20. Further, the contention of Assessing Officer that the assessee rendered services from India is incorrect in light of the tax residency certificate for Ireland. The assessee for the year under consideration was a tax resident of Ireland. In light of above facts and legal position, since the employment was not exercised in India, such income cannot be held to be taxable in

India and hence, the addition made by the AO on this issue is hereby directed to be deleted.

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

Order Pronounced in the Open Court on 14/02/2024.

**Sd/-**  
**(Kul Bharat)**  
**Judicial Member**

**Dated: 14/02/2024**

\*Subodh Kumar, Sr. PS\*

**Sd/-**  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

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1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**