

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA-IT No. 334/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2020-21)

Ronald Bhushan Raj Vs. ITO (Int Taxn)-1,
Kammuri, Hyderabad
Pune
[PAN No. AYEPK4609D]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri Kishor B. Phadke, AR
राजस्व द्वारा / Revenue by: Shri L.V. Bhaskara Reddy, CIT-DR

सुनवाई की तारीख/Date of hearing: 19/03/2024
घोषणा की तारीख/Pronouncement on: 21/03/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the final assessment order passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of Ronald Bhushan Raj Kammuri ("the assessee") for the assessment year 2020-21, under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short "the Act"), assessee filed this appeal.

2. Only issue that arises for consideration in this appeal is whether the salary accrued to a non-resident, for the services rendered outside India could be included in the total income merely because such salary has been

credited in his account in India or on the ground of non-production of Tax Residency Certificate. Assessee in this case is admittedly a non-resident India, but his salary for the period between September 2019 and, though accrued outside India, but was credited to his account in India.

3. Both the learned Assessing Officer and the learned DRP were of the opinion that for want of production of Tax Residency Certificate, the assessee cannot claim exemption of the salary accrued to him outside India. Hence, assessee filed this appeal, stating that the salary accrued to the assessee outside India is not taxable in India under section 9(1)(ii) read with sections 4 and 5 of the Act, since services were performed outside India and the assessee happens to be a non-resident Indian.

4. Learned AR submitted that Tax Residency Certificate is not at all necessary in the case of the assessee because when the income accrued outside India is not at all taxable in India, there is no need to refer to the DTAA. Reliance is placed on the decisions reported in Avtar Singh Wadhwan 115 Taxman 536 and Dylan George Smith 11 taxmann.com 348. Further reliance is placed on the CBDT Circular No. 13/2017, dated 11/04/2017.

5. Learned DR placed reliance on the orders of the learned Assessing Officer and the learned DRP.

6. We have gone through the record in the light of the submissions made on either side. Vide Section 9(1)(ii) of the Act, the salary income of a non-resident Indian is taxable in India only when the related employment is exercised in India. In the case of Avtar Singh Wadhwan (supra), the Hon'ble Apex Court held that income accruing to non-resident outside

India would be outside charge of tax in India. In the case of Dylan George Smith (supra), the Hon'ble Karnataka High Court held that for the services rendered and salary accrued outside India, merely because the salary was credited to the account of the assessee in India that would not render the assessee liable to tax in India. Apart from that, the CBDT vide Circular No. 11/04/2017 made it amply clear that salary accrued to a non-resident for the services rendered outside India shall not be included in the total income merely because the said salary has been credited in the bank account in India. In view of this legal position, we find it difficult to sustain the impugned orders, insisting for Tax Residency Certificate. Learned Assessing Officer is directed to delete such portion of salary, which accrued to the assessee in USA, though it is credited to assessee's bank account in India. Grounds of appeal are accordingly allowed.

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

Order pronounced in the open court on this the 21st day of March, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 21/03/2024

TNMM

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Ronald Bhushan Raj Kammuri, 13-182/1, Madusudan Nagar, Malkajgiri,
District : Medchal-Malkajgiri.
2. The ITO (Int Taxn)-1, Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE.

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ITAT, HYDERABAD