

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.298/Ahd/2022
निर्धारण वर्ष /Assessment Year : 2018-19

Pralay Pradyotkanti Ghosh 22, Konark Society Nr. Railway Colony Jawahar Chowk, Sabarmati Ahmedabad - 380 019	बनाम/ v/s.	The ITO Ward-1 International Taxation Ahmedabad
स्थायी लेखा सं./PAN: ABYPG 6172 C		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Bandish Soparkar, AR	
Revenue by :	Shri Atul Pandey, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 27/06/2024
घोषणा की तारीख /Date of Pronouncement: 12/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the Assessee as against the order passed by the Ld.Commissioner of Income-tax(Appeals)-13, Ahmedabad [hereinafter referred to as "the Ld.CIT(A)"], dated 01/06/2022, arising out of the assessment order passed by the Assessing Officer (AO) under section 143(3) r.w.s.144C(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 22/10/2021 relevant to the Assessment Year (AY) 2018-19.

Facts of the case:

2. The assessee filed his original return of income u/s.139(1) of the Act for the A.Y. 2018-19 declaring total income of Rs.16,590/-. The case was selected for scrutiny under CASS. During the course of assessment proceedings, the assessee submitted that, he is an Engineer (Under Water Inspector) working at offshore fields. During the year under consideration, the assessee shown income from other sources and capital gains. The assessee also received salary income from his employer (Oceaneering International GMBH) to the tune of Rs.61,74,262/- on which TDS of Rs.18,35,210/- u/s.192 of the Act was deducted, however, the same was shown as "exempt income" in the return of income filed by the assessee.

2.1. The assessee was requested to provide details of the offshore sites/rig/ship (including its name, ownership details, its control & management, coordinates of its location, etc.), where the work has been performed by him during the year under consideration. He was also asked to explain whether location of these offshore sites/rig/ship was within the part of "India" as defined in section 2(25A) of the Act?

2.2. The assessee in his reply contested that the place of duty of the assessee is in KG-D6 Oil Fields in Bay of Bengal in International water. The job is in international water, and it is not part of India as defined in section 2(25A) of the Income-tax Act.

2.3. The AO concluded that the KG-D6 Oil Fields in Bay of Bengal is part of Indian Territory and therefore, the work performed by the assessee cannot be termed as work outside Indian Territory. He further concluded

that co-ordinates of KG-D6 Oil Fields in Bay of Bengal are situated within Exclusive Economic Zone of India and the same is within the part of "India" as defined in section 2(25A) of the Act.

2.4. The assessee was issued a show-cause notice as to why salary of Rs.61,74,262/- claimed as "exempt income", should not be taxed u/s.5(2)(b) r.w.s.9(1)(ii) of the Act. In response thereto, the assessee furnished his reply and contested that, sailing foreign ship beyond Indian territorial waters even in Exclusive Economic Zone also is not covered in term "India" as per section 2(25A) of the Income tax Act. The assessee relied upon the case of ITAT Kolkatta bench, in the matter of **Basab Mukherjee, Jalpaiguri vs Department of Income Tax**, wherein case of **CIT vs. Indo Oceanic Shipping Co. Ltd. [2001] 247 ITR 247 (Bom)**, was also discussed.

2.5. Not satisfied with the explanation submitted by the assessee, the Assessing Officer, added back Rs.61,74,262/- to the total income of the assessee under section 5(2)(b) r.w.s. 9(1)(ii) of the Income Tax Act.

3. The assessee filed an appeal before the Ld.CIT(A), who dismissed the appeal concluding that the income is earned by assessee is a salary for activities within India. For the sake of clarity, we reproduce the relevant part of the order of CIT(A) hereunder:

"9.3 Facts of the case are that the appellant is an employee of Oceaneering International GMBH, Singapore and received a salary of Rs. 61,74,262/- in US dollars. The nature of work performed by the appellant in KG-06 Oil Fields in Bay of Bengal in International water is under water inspection of platforms, appurtenances and pipelines in Oil Fields and other miscellaneous jobs. The appellant's place of duty is claimed to be on ship and external inspection of Oil Rig

structure. The appellant has worked on a foreign ship under the employment of foreign company beyond territorial waters though within the Exclusive Economic Zone. The appellant performs his duty by boarding on other small remotely operated sub-sea vessels. The appellant does not visit or go on the Oil Rig properties or Oil Rig platforms. The appellant has essentially claimed that as the **duty is performed in a sailing foreign ship**, the same does not fall within the definition of India. Thus, the salary income is exempt in India being NRI.

9.3.1 The appellant also submitted that the definition of "India" in the Act covers the areas of Exclusive Economic Zone: **however, it does not cover sailing, i.e, operating ships.** It is pertinent to note that some of the areas where oil was located came to be included as forming part of India as per the Notification issued under the Territorial Waters Act, 1976 and to those areas the Income Tax Act was applied. However, the Act was applied **only to income which is derived in such areas from the activities enumerated in the Notification viz. extraction of oil, exploration of oil and minerals.** However, there is no Notification which includes foreign ships into the term "India" under the Territorial Waters Act read with the Notifications issued thereunder. Even under the Territorial Waters Act, there is no law which includes such operating Ships to for part of India. The role of the appellant is to do periodic inspection, i.c.. under water inspection of the Oil Rig properties by sailing in small vessels called "Remotely operated sub-sca vehis" which is capable of sailing inside dupth of the sea water, Thus, the appellant never lands or be on the Oil Rig platforms or properties and his job role is performed in sailing foreign ship only.

9.4 The undisputed facts are that KG-DG Basin lies within the Exclusive Economic Zone of India. As per section 2(25A) as applicable wre f 25/08/1976. includes such EEZ as a territory of India where Income tax Act 1961 is applicable as per section 1 of the said Act. The factum of employer employce relationship between "Oceaneering" with the appellant is coident from the terms and conditions filed during appeal proceedings. The appellant has claimed to be a non-resident which has not been disputed by the AO, hence is covered under the scope of section 5(2) of the Act which states as under:

"Scope of total income.

5. (1) Subject to the provisions of this Act, the total income of any previous vear of a person who is a resident includes all income from whatever source derioed which –
(a) is received or is deemed to be received in India in such year hy or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year: or

(c) accrues or arises to him outside India during such year:

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6. the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

2) Subject to the provisions of this Act, the total income of an previous year of a person who is a non-resident includes all income from whatever source derived which-

(a) is received or is deemed to be received in India in such year by or on behalf of such person;

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.-Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2.-For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India."

9.4.1 Irrespective of the status of the appellant, its income received for activity in India is within the scope of total income chargeable to tax in India, his being on foreign vessel is not material if the ship is operating within India. The case law cited by the appellant predates the amendment brought in 2(25A) of the Act and not applicable.

9.5 The appellant's reading of Notification no GSR 304(E), dated March 31, 1983 that Act is applied only to income which is derived in such areas from the activities enumerated in the Notification viz extraction of oil, exploration of oil and minerals is also completely misplaced from the collective reading of clause (c) with clauses (a) and (b) of that notification. It is pertinent to note as the appellant himself claims

to be employed in the external inspection of on Rig structure used for extraction of oil, exploration of oil and minerals located within Exclusive Economic Zone of India. It is immaterial which route or what mode of transport he takes to the place of work but what really matters is the fact that he is not deriving his income for merely being on the ship/vessel but for the work of external inspection of Oil Rig structure used for extraction of oil, exploration of oil and minerals located within Exclusive Economic Zone of India. In view of the above, the source of appellant's income is not the ship/vessel but the inspection services provided to the Oil Rigs for oil exploration and extraction. Therefore. the appellant's income is very much taxable in India within the meaning of Notification No. GSR 304(E), dated March 31, 1983. Apart from this, it is also seen that the appellant has neither offered this salary income for taxation in Singapore nor in any other foreign country elsewhere.

9.6 In view of the above, the position of law is unambiguous, leaving no scope for any other interpretation. The receipt earned by the appellant are his salary income received for activity within India. The arguments raised by the appellant are firmly rejected. I hold that Rs 61,74,262/- is the salary income of the appellant and thereby uphold the addition made by the AO in this regard. Ground of Appeal 3 is Dismissed.

10. In the result, the appeal is Dismissed."

4. The Ld.CIT(A) also dismissed the appeal on the grounds of assessee that the order was passed beyond the time limit u/s.153 of the Act, stating that AO had passed the draft assessment order on 03.09.2021. While doing so, the Ld. CIT(A) relied on the judgment of **Hon'ble Gujarat High Court in the case of C-SAM (India) (P) Ltd dated 31-7-2017 in Tax Appeal No. 542 of 2017 and CBDT Circular 09/2013 dated 19-11-2013.**

4.1. The Ld.CIT(A) also dismissed the appeal on the grounds of the assessee that the order was passed by AO without giving notice u/s.143(2) of the Act. While doing so, he concluded that the notice u/s.143(2) was issued by the erstwhile AO after selection of case for scrutiny.

5. Aggrieved by the order of the Ld.CIT(A) the assessee is in appeal before us with the following grounds of appeal:

“The learned C.I.T. (APPEALS)-13, Ahmedabad has erred in law and on facts:

- 1. In upholding the order of the Learned Assessing Officer, even though the Assessment Order dated 22/10/2021 has been passed beyond time limit up to 30/09/2021 prescribed u/s. 153 of the Act.*
- 2. In upholding the order of the Learned Assessing Officer passing the Assessment Order by the successor Assessing Officer without issuing fresh notice u/s. 143(2) of the Act up on change in incumbent.*
- 3. In upholding the order of the Learned Assessing Officer making addition of salary income of Rs. 61,74,262/-, though the appellant has worked on a sailing foreign ship under the employment of foreign company beyond territorial waters of India.*

The appellant craves leave to add, amend, alter, edit, delete, modify or change the ground of appeal at the time of or before the hearing of the appeal.”

On Ground Nos.1 and 2

6. The Ld.CIT(A) has dealt with these grounds in detail and has dismissed these two grounds. For the sake of clarity, we reproduce the relevant part of the Ld.CIT(A)'s order hereunder:

“7.5 From the above. it is immensely clear that the jurisdictional court has laid down a proposition that in case of the beneficial amendment that has been brought about for the benefit of assessee, shall be applicable from the date such amendment was introduced. From the records. it is seen that the AO passed the draft assessment order u/s. 144C(1) on 03.09.2021 giving the appellant an opportunity to file his objection if any, before the Hon'ble DRP within 30 days. The AO reported that the appellant neither filed his objection before the undersigned nor filed any objection before the Hon'ble DRP within 30 days. Subsequently, the final assessment order u/s. 143(3) r.w.s. 144C of the Act was passed on 22.10.2021. which is well within the time limit provided w/s, 144C (4) of the Act. The provision of draft assessment

order u/s. 144C of the Act is a beneficial provision for the assessee so as to allow it an opportunity to resolve a contentious issue by going before the Hon'ble DRP before the final order is passed. In view of the above, this ground of appeal is Dismissed.

.....

8.3 Considering the rival contentions. it is opined that as a matter of fact, notice u/s. 143(2) of the Act was issued by the erstwhile AO after selection of the case of the appellant for scrutiny. Further, going through the provisions u/s. 143(2) of the Act, there is no recurring obligation on the part of each changed incumbent AO to issue fresh notice u/s. 143(2) of the Act each time. The current AO gave due opportunity to the appellant before completion of assessment and therefore held to have complied with the provisions of law.

8.5 Therefore, Ground of appeal 2 is Dismissed."

6.1. On Ground No.1, we concur with the Ld.CIT(A)'s observation that the assessment order dated 22/10/2021 was issued within the statutory time limit as prescribed by Section 144C(4) of the Act. The provision of draft assessment order under Section 144C of the Act is intended to benefit the assessee by allowing an opportunity to resolve contentious issues before the final order is passed. Further it is noted from the submission by the assessee before Ld.CIT(A) that the Continuous Discharge Certificate (CDC) and passport entries are sufficient evidence to prove that the assessee was non-resident during the financial year under consideration and the same was verified by the AO.

6.2. On Ground No.2, we agree with the Ld.CIT(A) that the issuance of a fresh notice under Section 143(2) of the Act by each successor AO is not mandated by law. The procedural compliance of issuing the initial notice was adhered to, and the appellant was afforded an adequate opportunity to be heard. Consequently, this ground of appeal is dismissed.

6.3. Thus, Ground Nos.1 &2 of the assessee's appeal are dismissed.

Ground No.3

7. This ground relates with the addition of salary income of Rs.61,74,262/- in the hands of assessee being earned from the activity within India.

7.1. During the course of hearing before us, the Ld.Counsel for the assessee contented that the assessee is in employment with Singapore based company, named Oceaneering International GMBH. The assessee's place of duty is on ship engaged in underwater inspection of platforms, appurtenances, and pipelines in the KG-06 Oil Fields in the Bay of Bengal, specifically within international waters. The key-points noted are:

1. The work involves boarding small, remotely operated sub-sea vessels from a foreign ship.
2. The foreign ship operates beyond the territorial waters of India but within the Exclusive Economic Zone (EEZ).
3. The assessee does not visit or work on the Oil Rig properties or platforms.
4. The place of duty is claimed to be on the ship, performing external inspections of Oil Rig structures.

7.2. The Ld.Counsel for the assessee further contented that as per sub-section (9) of Section 7 of The Territorial Waters, Continental Shelf,

Exclusive Economic Zone and Other Maritime Zones Act, 1976 (Act No. 80 of 1976), ships of all States enjoy freedom of navigation. Therefore, the foreign ship on which the assessee was employed to carry out specific activities as a part of his employment agreement was considered to be out of India.

7.3. The Ld.Counsel further drew our attention to the Notification No. GSR 304(E) dated March 31, 1983 (Gazette of India, Entry No.117 dated March 31,1983, Part II, section 3(i)) referred by CIT(A) in para 9.2.3 of his order, which extends Income Tax Act, 1961 (43 of 1961) to the continental shelf of India and the exclusive economic zone of India. As per this notification, the Act applies only in respect of income derived by every person from all or any of the specified activities. These activities as per this notification are:

- (a) the prospecting for or extraction or production of mineral oils in the Continental Shelf of India or the exclusive economic zone of India;
- (b) the provision of any services or facilities or supply of any ship, aircraft machinery or plant (whether by way of sale or hire) in connection with any activities referred to in clause (a):
- (c) the rendering of services as an employee of any person engaged in an of the activities referred to in clause (a) or clause (b).

7.4. He also contended, without prejudice to his earlier contention, that if the assessee is treated as resident and his income is held as taxable in India then the order passed under section 143(3) r.w.s. 144C(3) of the Act would be time barred.

7.5. The Ld. Departmental Representative (DR) relied on the orders of lower authorities and stated that AO is not questioning the residential status and his income earned and accrued in India shall be taxable irrespective of his residential status as Non-resident.

8. We have heard the rival contentions and perused the material available on records. The core issue revolves around whether the salary income earned by the assessee is exempt under the Income Tax Act, 1961, given the nature and location of the employment.

8.1. As per Section 2(25A) of the Income Tax Act, 'India' includes its territorial waters, the seabed and subsoil underlying such waters, the continental shelf, the Exclusive Economic Zone (EEZ), and other maritime zones as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.

8.2. The EEZ extends up to 200 nautical miles from the baseline but does not constitute territorial waters, which extend only up to 12 nautical miles. The EEZ is recognized for its resource exploitation rights, but does not extend India's sovereignty to the extent that territorial waters do. Operations on a foreign ship within the EEZ, especially those not involving direct interaction with the seabed or subsoil, are not automatically considered as services rendered within 'India' for tax purposes.

8.3. Notification No. GSR 304(E) specifically extends the Act **ONLY** in respect of income derived from specified activities. The Ld.CIT(A) has failed

to consider the fact that sub-section 9 of section 7 of The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 gives freedom of navigation to foreign ships and therefore employees working on such ships who are not carrying out activities as specified by the said notification are not deemed to be working in India.

8.4. Section 9(1)(ii) of the Income Tax Act, 1961 states that income earned from services rendered in India is taxable. Since the assessee's duties, which are not covered by Notification No. GSR 304(E), are performed on a foreign ship operating beyond the territorial waters (though within the EEZ) it can be concluded that the services are not rendered in India.

8.5. Judicial pronouncements relied upon by the assessee are considered. It is noted that the place of performance of service is different in those cases. However, the principle laid down in these cases cannot be ignored which says that the salary received by a non-resident engineer from foreign employer for services rendered outside India could not be subjected to tax in India merely because foreign employer remitted the salary to assessee's NRE account in India. In assessee's own case for A.Y. 2016-17, the issue was decided in favour of assessee.

8.6. Given the facts and relevant legal provisions if the assessee qualifies as an NRI under Section 6 of the Income Tax Act, the salary income earned from services performed outside the territorial waters of India is exempt under the Act. Since AO has passed his order u/s. 143(3) r.w.s. 144C(3) of the Act and that he has verified the CDC of the assessee, it is concluded that AO has confirmed the residential status as Non-resident. Therefore, as a

result of the discussion made hereinabove, the salary income earned by the assessee is "exempt income". Thus, this ground of assessee's appeal is allowed and the addition of Rs.61,74,262/- is hereby deleted.

9. In the result, the appeal of Assessee is partly allowed.

Order pronounced in the Open Court on 12th July, 2024 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 12/07/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-13, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोक्त/DR,ITAT, Ahmedabad,
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