

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथ, लेखक सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.376/Chny/2023
निर्धारण वर्ष /Assessment Year: 2017-18

The Income Tax Officer,
Ward-2(1),
International Taxation,
Chennai.

Vs. Shri Ahamed Thambi,
New No.24, Old No.18-C,
Mayor Sivashanmugam Pillai
Street, Nungambakkam,
Chennai – 600 034.
[PAN: AHCPR 1686A]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri N. Arjun Raj, Advocate
: Shri N. Sanjay Gandhi, JCIT

सुनवाई की तारीख/Date of Hearing

: 10.06.2024

घोषणा की तारीख /Date of Pronouncement

: 28.08.2024

आदेश / ORDER

PER S.R. RAGHUNATHA, A.M :

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-16, Chennai [hereinafter "CIT(A)] in ITA No.12/CIT(A)-16/2021-22, dated 19.01.2023. The assessment was framed by the Income Tax Officer, International Taxation, Ward-2(1), Chennai for the Assessment Year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 13.04.2021.

2. The Revenue has raised following grounds of appeal.

“This decision of the Ld. CIT(A) holding that the cash withdrawal from his employer company's current employment form part of salary and exempt under the head salary income is not acceptable on the following grounds.

1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.

2. The Ld. CIT(A) has erred in observing the assessee's bank account statement of ADIB Bank, UAE that an amount of Rs. 1,74,000 UAE Dhirham. i.e. Rs. 31,57,404/- has only been credited as salary.

3. The Ld. CIT(A) has erred in observing that the assessee's explanation of cash withdrawal from his employer company's current account towards incentive, bonus and extra time remuneration would be a part of his total salary, further there are no direct evidence in support of the returned income of Rs. 2,66,37,601/- (Rs. 2,97,95,005/- minus Rs.31,57,404/-) as Salary income.

4. Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is right in holding that the cash withdrawal from his employer company's current account towards incentive, bonus and extra time remuneration form part of salary and exempt under the head income from salary.”

3. Brief facts of the case are that the assessee is a NRI during the Financial Year 2016-17 and filed his return of income for the A.Y. 2017-18 on 08.11.2017 admitting a total income of Rs.27,11,510/- consisting of income from House property and income from other sources. The Assessee has also claimed short term capital loss of (current year) at Rs.1,77,00,000/- and an exempt income of Rs.2,97,99,127/-. The case was selected for Scrutiny by CASS. Notices U/s.143(2) of the Act and later U/s.142(1) of the Act dated 11.10.2019 were issued and duly served upon the Assessee by calling for information required in support

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of the exempt income of Rs.2.97 Crores. The assessee's A.R vide reply dated 11.11.2019 and 19.11.2019 has stated that the assessee is presently in Puzal Prison, Chennai and the assessee was working in UAE for the past 25 years. The salary income earned abroad during the year under consideration amounting to Rs.2.97 crores and NRE interest of Rs. 4,122/- were claimed as exempt. Later, for ascertaining the claim of the Assessee a reference has been made to the FT and TR, in order to obtain the information regarding the salary income received by the assessee in UAE. The information sought for from FT and TR is not forthcoming. Then time limit of passing order U/s.143(3) of the Act was getting barred by limitation to complete the assessment proceedings, the AO considering the assessee's reply concluded the assessment as under :

"2.1.3 In continuation of the proceedings, a notice u/s 142(1) of the IT Act, dated 05-02-2021 and a show cause notice dated 08-03-2021 was issued to the assessee. In response to the above notices, the assessee's authorised representative filed letter on 08-03-2021 and 18-03-2021 along with the Statement from ADIB Bank, UAE and stated that apart from salary income, the assessee has received incentive, bonus etc. The assessee's reply is reproduced here under.

"assessee was working in UAE for the past 25 years. Part of the monthly salary credited as UAE currency in ADIB Bank, UAE. Apart from salary the assessee used to withdraw cash from his employer company current account towards incentive, Bonus, and extra time remuneration which form total salary of Rs. 2,97,95,005/-"

As per the bank statement the amounts of salary credits appearing in the bank statement are listed as below:

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S. No.	Date	Description	Credit in UAE Dharams
1	19.04.2016	SAL WPS 00000000212594PIF	29,000
2	14.06.2016	SAL WPS 00000000212594PIF	29,000
3	04.09.2016	SAL WPS 00000000212594PIF	29,000
4	05.10.2016	SAL WPS 00000000212594PIF	29,000
5	21.12.2016	SAL WPS 00000000212594PIF	29,000
6	22.02.2017	SAL WPS 00000000212594PIF	29,000
		TOTAL	1,74,000

2.1.4 It is seen from the bank statement that an amount of Rs.1,74,000 UAE Dhirham ie. Rs. 31,57404/- has only been credited as salary. The assessee's explanation of cash withdrawal from his employer company's current account towards incentive, bonus and extra time remuneration were also form part of the total salary admitted of Rs.2,97.95.005/-, could not be accepted, as there is no direct evidence in support of the same. In view of the above, the assessee's contention that the amount of Rs.2,66,37,601/- (Rs.2,97,95,005/- minus Rs.31,57,404/-) as Salary income and claimed it as exempt income is disallowed and added as income from salary

(Disallowance of exempt income: Rs.2,66,37, 601/-)

2.2.2 On perusal of the reply furnished by the assessee it is found that the cost of furniture, fixtures and interiors, etc., is included as the Cost of acquisition of the said property. It is to be mentioned here that the assessee has sold an immovable property vide document No.687/2016 dated 07-11-2016 for a consideration of Rs.3,38,00,000/- being the value as per the stamp valuation authorities. The purchase cost of the property as per the sale deed vide document no. 648/2015 dated 11-09-2015 is Rs. 3,30,00,000/-. The assessee in his reply has stated that the Cost of Sale consideration of the property as per the Sale Deed, also includes the value of furniture, fixtures and interiors etc., as per the S.no,4-b, c, d and e of the reply appended above, amounting to Rs. 1,90,00,000/- is not incurred towards purchase of property as per the purchase deed of the property and therefore could not be considered as cost of acquisition of property. Therefore, the Capital Gains arising out of sale of immovable property is computed as under:

Income from STCG:

Sale consideration as per registered sale deed : Rs.3,38,00,000/-
 Cost of purchase as per stamp value authorities
 (Including registration charges of Rs.23,66,060/-) : Rs. 3,53,66,060/-

Short term capital loss

Rs.15,66,060/-

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In view of the above, the Short Term Capital Loss arising out of the sale of the immovable property works out to Rs.15,66,060/-. Therefore, the assessee's claim of short term capital loss of Rs. 1,77,00,000/- does not arise and accordingly is not allowed.

(Short Term Capital Loss : Rs.15,66,060/-)"

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A) by raising the ground that the AO has erred in disallowing the salary income earned in UAE, which has been claimed as exempt income. After considering the details, documents and other information furnished by the assessee, the Ld.CIT(A) noted that the assessee was a non-resident in India during the assessment year under consideration and allowed the appeal of the assessee holding as under:

5. After taking into account the above mentioned sequence of events, and all the material evidence available on assessment records, the grounds of appeal raised by the appellant as grounds of appeal nos. 1 and 2 are adjudicated as under:

The First Ground of appeal raises a factual question, which is, what is the situs of the receipt of Rs.2,97,95,005/-. As demonstrated by documentary evidence, the situs was definitely UAE. The appellant did not receive any amount in India. The appellant has earned the same in UAE from a UAE based business with no links, whatsoever with the Sovereign State of India. Thus, the amount of Rs.2,97,95,005/- was accrued outside India, earned outside India, received outside India and was also expended outside except for a minor part of Rs.5,37,000/- which was remitted to India. The employer of the appellant certified that the appellant was in receipt of the said amount, whether the same was received in a bank account or in cash or via general ledger becomes immaterial and irrelevant for Indian Taxation purposes.

5.2 And next comes, the residential status of the appellant. As seen from the corroborative and statutory evidence submitted by the appellant in the form of passport, the appellant has stayed in India in all for 30 days. His status as a non-resident in India is an undisputed fact as emerging from assessment record as well as assessment order also. The Authorised Representative of the appellant pleaded the same via ground of appeal no.2 and stated that his

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salary income accrued/earned and received outside India cannot be chargeable to tax subject to provisions of the Act.

5.3 The basic principles of chargeability of income as per section 4 of IT Act are:

(i) Income tax is to be charged at the rate or rates fixed for the year by Annual Finance Act;

(ii) the charge is on every person, including the assessable entities enumerated in section 2(31);

(iii) the income taxed is that of the previous year and not of the year of assessment; and]

(iv) the levy is to be on the total income for the assessable entity computed accordance with and subject to the provisions of the Act.

The change in respect of the total income is expressly declared to be "in accordance with and subject to the provisions of this Act". These words, read in conjunction with definition of total income in section 2(45), imply three main things:

(a) The income charged is that referred to in section 5.

(b) Full effect must be given to the exemptions from tax granted under various provisions of the Act : and

(c) the income should be assessed under the appropriate head and should be computed as prescribed for the different heads of income.

Thus, the correct method of approach is to treat nothing as being charged to tax until by the process of computation laid down by the Act, the status of the assessee on the basis of which income, profits and gains emerge.

5.4 Therefore, in view of the above factual and legal matrix, the Assessing Officer's action in treating Rs.2,66,37,600/- as taxable salary income is found to be wrong. The Assessing Officer is directed to delete the said addition of Rs.2,66,37,600/- Thus, grounds of appeal no.1 and 2 are allowed in full."

5. Aggrieved by the order of the Id.CIT(A), the Revenue is in appeal before us.

6. The Ld. Sr.DR stated that the Ld.CIT(A) has erred in observing the assessee's salary income of Rs.2.97 crores earned in UAE, even though the same is not credited to his bank accounts and out of which

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Rs.2.66 crores has been drawn from his employer company's current account towards incentive, bonus and extra time remuneration. The

Ld. Sr.DR submitted the written submission as detailed below:

"During the assessment proceedings, the claim of exempt income of Rs.2,66,37,601/- was disallowed for the reason that assessee failed to furnish direct evidence for receipt of salary income (Rs.2,97,95,005 - 31,57,404 salary received in bank account).

2. During the first appellate proceedings, the Ld.CIT(A) called for Remand report. The Remand Report was furnished by the Assessing Officer on 08.09.2022. After receipt of Remand Report, the Ld.CIT(A) deleted the addition made by the Assessing Officer reasoning residential status which is less than 182 days.

3. It can be seen from the bank statement that an amount of Rs.1,74,000 UAE Dhirham i.e., Rs.31,57,404/- has only been credited as salary.

4. On perusal of the Remand Report it is seen that the Assessee has submitted a certificate from his employer M/s.AL KAYED WORKSHOP and also ledger details evidencing his gross salary of AED 1,655,000/-. The assessee's explanation of cash withdrawal from his employer company's current account towards incentive, bonus and extra time remuneration could not be accepted as there is no direct evidence found for disbursement of salary in his bank account other than Rs.31,57,404/-, Hence, the contention of the assessee is not acceptable."

7. Per contra, the Ld. AR supporting the order of the Ld.CIT(A), stated that the assessee was non-resident during the A.Y. 2017-18 and the salary earned at UAE is exempt from income tax in India. The Ld.CIT(A) has considered the details of the assessee's stay in UAE during the relevant assessment year, his employment and salary drawn and rightly allowed the appeal of the assessee by deleting the addition of exempt salary income made by the AO. The Ld.AR

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submitted the paper book consisting of 92 pages in support of claiming the salary income as exempt in India.

8. We have heard the rival contentions and gone through the orders of lower authorities and paper books. It is an admitted fact that the assessee was Non-resident and was employed in UAE during the relevant assessment year under consideration. The AO has made an addition of Rs.2.66 Crores under the head salary income of the assessee stating the corresponding credit in his bank account was not established for having received the salary outside India. We note that, during the appellate proceedings, the assessee had filed the following details before the Ld.CIT(A):

1. *Copy of the passport of the assessee – Page No.54 to 85 of PB*
2. *Table showing the 20 days stay in India during the A.Y. 2017-18 – Page No.47*
3. *Salary certificate issued by the Company –Page 13 & 14*
4. *General ledger of the assessee in the books of M/s.Al Kayed Workshop for the FY 2016-17 – Page 6 to 12*
5. *Travel details (Flight) of Dubai to India – Page 50 to 53*
6. *Extract of monthly salary income at UAE – Page 86 & 87*
7. *Axis bank statement of Assessee for the FY 2016-17 – Page 88 to 92.*

Further, the above details had been sent to the AO and obtained the remand report and thereafter, reply of the assessee to the remand report has been obtained by the Id. CIT(A) and concluded the proceedings by allowing the appeal of the assessee.

9. In the facts of the case, we note that the assessee was a Non-Resident employed at UAE and earned salary income from AL Kayed Workshop. During the relevant assessment year, the assessee had stayed in India only for 20 days. The assessee has earned salary at UAE and in support of that salary certificate issued by the employer along with the eligible emoluments of salary for the period from 01.04.2016 to 31.07.2017 (A.Y 2017-18) was furnished before the Ld. CIT(A), which has been accepted by the Ld. CIT(A). Further it is also noted that the assessee had submitted general ledger account of assessee maintained by the company wherein the amounts credited as eligible salary on regular basis along with amounts withdrawn from time to time for his personal use/investments. In the facts and circumstances of the case and by going through the documents, the assessee has proved that the amount of Rs. 2,66,37,601/- has been earned from the company at outside India which has been supported by the proof of employment at UAE, salary certificate, ledger account of salary drawn duly certified by the company. We also find that the Ld. CIT(A) arrived a right conclusion seeing the facts and evidence in record and therefore, we are of the opinion that there is no interference needed for the decision made by the Ld. CIT(A) and hence, we dismiss the appeal of the Revenue.

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10. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 28th August, 2024.

Sd/-
(महवीर सिंह)
(Mahavir Singh)

उपध्यक्ष / Vice President

चेन्नई/Chennai, दिनांक/Dated: 28th August, 2024.

EDN/-

Sd/-
(एस. आर. रघुनाथ)
(S.R. Raghunatha)

लेखा सदस्य /Accountant Member

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF