

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1613 & 1614/Chny/2024
निर्धारण वर्ष /Assessment Years: 2018-19 & 2019-20

The Income Tax Officer,
(International Taxation),
Coimbatore.

Devakalaianandan
Balasubramanian,
Vs. 24, Satchidananda,
Jothi Nikedhan Kallar Post,
Mettupalayam – 641 305.
[PAN: AGHPB 8473F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

C.O No. 68/Chny/2024
(Arises in ITA No. 1614/Chny/2024)
निर्धारण वर्ष /Assessment Year: 2019-20

Devakalaianandan
Balasubramanian,
24, Satchidananda,
Jothi Nikedhan Kallar Post,
Mettupalayam – 641 305.
[PAN: AGHPB 8473F]

The Income Tax Officer,
(International Taxation),
Vs. Coimbatore.

(अपीलार्थी/Appellant/Cross
Objector)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri Aakash Uppal, C.A

प्रत्यर्थी की ओर से /Revenue by

: Ms. Babitha, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.10.2024 & 10.10.2024

घोषणा की तारीख /Date of Pronouncement

: 10.10.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid two appeals filed by the Revenue for Assessment Years (AYs) 2018-19 & 2019-20 and Cross Objections filed by the assessee for A.Y 2019-20 arises out of the orders of Learned Commissioner of Income Tax (Appeals)-16, Chennai [hereinafter "CIT(A)"] dated 27.03.2024 & 29.03.2024, respectively. We will take up the ITA1613/Chny/2024 for A.Y. 2018-19 first.

2. The assessee is a Non-Resident individual deriving income from salary. Assessee has filed his return of income on 30.08.2018 admitting income Nil for A.Y 2018-19. However, the A.O has made the addition of salary income of Rs. 83,61,675/- and bank credit of Rs. 31,67,599/- in the order passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter "the Act"). The Ld. CIT(A) after calling remand report from assessing officer and considering the tax residency certificate from Vietnam and return filled in Vietnam has deleted the addition as the assessee is a Non-Resident and resident of Vietnam and the income has been offered in Vietnam.

:- 3 -:

3. The Ld. Authorized Representative (A.R) of the assessee, at the outset, submitted that the tax effect involved in these cases is Rs. 25,78,711/- for A.Y 2018-19 and Rs. 30,53,655/- for A.Y 2019-20 which is below the prescribed limit as per CBDT vide Circular No.09 of 2024 dated 17.09.2024 and therefore, appeal is not maintainable.

4. The Ld. Departmental Representative (DR), on the other hand, has submitted that these cases falls under exceptional clause given in circular issued by CBDT vide Circular No. 5/2024 dated 15.03.2024 for monetary limits.

5. We have heard the rival submissions, and perused the materials available on record. We find that the exception provided vide CBDT Circular No.5/2024 dated 15.03.2024 relied by the Ld. DR is not relevant to the present case as the dispute is not relating to determination of the nature of transaction such that, the liability to deduct TDS/TCS thereon or otherwise is under question nor the dispute is relating to applicability of the provisions double taxation avoidance agreement. The AO has made the addition for the reason that assessee before him has not submitted documentary evidence in respect of his status as non-resident in India or tax resident in any

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other country. The Ld CIT(A) has called for remand report and considered these evidences. We therefore are opinion that these cases are not covered by exception clause to CBDT circular 05/2014 dated 15.03.2024. On similar facts, the Co-ordinate Bench of this Tribunal in the case of ITO vs. Muthu Kishore in ITA No.1288/Chny/2024 dated 24.07.2024 held as under:

“6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that, the exceptions provided in CBDT vide No. 5/2024 dated 15.03.2024 vide 3.1 (l)(ii) is not relevant to the present case on hand which is given below :

“3.1. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:

- i. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or*
- ii. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise.”*

Hence, the appeal filed by the revenue is not sustainable based on the monetary limit fixed by the CBDT for preferring the appeal before Tribunal.”

6. In view of the above, both the appeals filed the Revenue are dismissed.

C.O No.68/Chny/2024 for A.Y 2019-20

7. Assessee has withdrawn the CO filled, accordingly the same is dismissed as withdrawn .

:- 5 -:

8. In the result, both the appeals filed by the Revenue are dismissed and the C.O filed by the assessee is dismissed as withdrawn.

Order pronounced on 10th October, 2024.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 10th October, 2024.

EDN/-

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य /Accountant Member

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

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