

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE “A” BENCH, BANGALORE**

**Before Ms. Padmavathy S., Accountant Member  
and  
Shri Prakash Chand Yadav, Judicial Member**

<b>ITA No. 584/Bang/2024</b> (Assessment Year: 2015-16)		
Varghese Paul B604, Duo Harmony 1, Suranjan Das Road New Thippasandra Post Bangalore 560075 PAN – AEVPP6357A  (Appellant)	vs.	ACIT, Circle - 5(3)(2) Room No. 59, 6th Floor HMT Bhvan, No. 59, Bellary Road, Ganga Nagar Bengaluru 560032  (Respondent)

Assessee by:	Shri Ketan Ved, CA
Revenue by:	Ms. Neha Sahay, JCIT-DR

Date of hearing:	22.10.2024
Date of pronouncement:	25.10.2024

**ORDER**

**Per: Prakash Chand Yadav, J.M.**

The present appeal by the assessee is arising from the order of the Id. CIT(A)-12, Bengaluru dated 24.02.2023 having DIN No. ITBA/APL/M/250/2022-23/1050096242(1) and relates to AY 2015-16.

2. The assessee has raised five grounds of appeal. Ground No. 1 & 5 are general in nature. In ground Nos. 2 & 3 the assessee had challenged the applicability of Article 4 of India US DTAA to the case of the assessee. In ground No. 4 the assessee has challenged the denial of benefit of exemption available to the assessee under Article 16 of the India US DTAA. Beside these grounds the assessee has also filed an application on 29.07.2024 and raised

additional grounds seeking the benefits of section 90 of the Indian Income Tax Act, 1961 (the Act) vis-a-vis the credit of foreign taxes paid by the assessee abroad.

3. Before proceeding further, we observe that there is a delay of 164 days in filing the present appeal. Explaining the cause of delay, the counsel for the assessee pointed out that because of the communication gap between the assessee and his Chartered Accountant, who was handling the tax matters, the assessee was not able to file the appeal before the ITAT in time. The learned A.R. has also drawn the attention of the bench towards the affidavit duly sworn by the assessee. The learned D.R. could not seriously oppose the prayer for condonation of delay. Hence, considering the facts and circumstances of the case we hereby condone the delay and proceed to adjudicate the appeal.

4. The facts leading to the filing of the present appeal are like that the assessee was a salaried employee of M/s. Thomson Reuters Holding Inc., USA for the year under consideration. The assessee has filed original return of income on 31.08.2015 declaring income of Rs. 1,84,12,210/-. The assessee filed revised return of income on 07.03.2017 showing total income of Rs. 1,50,43,540/-. The return of income filed by the assessee was processed and thereafter selected for scrutiny. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee, despite a resident of India, assessee has not included his salary income earned abroad for the period from April 2014 to June, 2014 (herein after referred to as relevant period), in his total income. The AO observed that the assessee has claimed benefit of the tie-breaker test on the ground that during the period between April to June 2014 the assessee was also a resident of US. The assessee has also claimed the benefit of Article 16 of India US DTAA and contended that the salary income is taxable in the contracting state only. However, the AO observed that the

assessee was having two house properties in India as well as investments in India, therefore the assessee is not entitled for tie-breaker test benefit. The AO further observed that the employer of the assessee M/s. Thomson Reuters Holding, the Indian company has included assessee's US income for the purpose of TDS in India while crediting the salary of the assessee for his US assignment. Considering all these facts the AO could not provide benefit of Article 16. So far as the claim of the assessee vis-a-vis credit of the taxes paid abroad, the AO observed that the assessee has not made any claim before him.

5. Aggrieved with the order of the AO the assessee filed appeal before the Id. CIT(A) and, inter alia, contended that the assessee's wife and children were also there in US for the relevant period. They were having driving licences and rented accommodation and hence the split residency benefit should be allowed to the assessee and as such the income earned in US is not includable in the total income taxable in India. The Id. CIT(A), after interpreting the provisions of Article 4 dismissed the appeal of the assessee. The Id. CIT(A) has also distinguished the case law relied upon by the assessee.

6. Aggrieved with the order of the CIT(A), assessee is in appeal before us. The learned A.R. appearing on behalf of the assessee referring to the tax residency certificate issued by the US authorities on 10.06.2019, i.e., after the completion of the assessment proceedings, inter alia, argued that the assessee was resident of US during that period and income earned by the assessee in US is not includable in the total taxable income.

7. The learned D.R. appearing on behalf of Revenue vehemently supported the orders of the authorities below and also relied upon the judgement of Canada Tribunal in the case of Norman Gaudreau v. Her Majesty The Queen reported in [2012] 20 taxmann.com 72 (TC-Canada).

8. After considering the rival submissions and examining the material on record we observe that two things we have to examine: (a) whether the income earned by the assessee in USA is taxable in India in the light of the law of tie-breaker test; and (b) if the income is assessable in India then whether having regard to the provisions of section 90 of the Act, credit of taxes paid by the assessee abroad is to be given.

9. So far as the applicability of tie-breaker test is concerned the assessee has relied upon the fact of having property in US, having family in US for that period. However, we cannot lose sight on the following facts also: -

- (a) **Assessee was having house in India. Only one house is rented out and the other is shown as self occupied.**
- (b) **Assessee was having investments in India**
- (c) **Assessee's employer, a very big firm having battery of lawyers and CAs has deducted TDS of assessee on income earned abroad, in India.**
- (d) **In the return filed in US the assessee has shown his residence in India.**
- (e) **So far as the presence of tax residency certificate that may be helpful for credit of taxes paid.**

While examining the test of tie-breaker test one has to see the centre of vital interest, when we see the facts of the present case, it is abundantly clear that centre of vital interest in the present case has remained in India. The case laws relied upon by the AR of the assessee are on different facts and in fact the counsel for the assessee has also fairly accepted that the cases relied upon are distinguishable on facts. Hence we do not see any infirmity in the orders of authorities below. We hold that benefit of tie-breaker test is not available to the present assessee and hence the income earned by him in US is includable in total income within the meaning of section 5 of the Income Tax Act.

10. Be that as it may we find force in the contention of the assessee raised in additional grounds of appeal that is credit of taxes already paid abroad. Therefore, we direct the AO to grant the benefits of taxes paid abroad

by the assessee vis-a-vis the income earned to avoid double taxation of same income.

11. In the result, the appeal filed by the assessee is partly allowed in above terms.

Order pronounced in the open Court on 25<sup>th</sup> October, 2024.

Sd/-  
**(Padmavathy S.)**  
**Accountant Member**

Sd/-  
**(Prakash Chand Yadav)**  
**Judicial Member**

Bengaluru, Dated: 25<sup>th</sup> October, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

*By Order*

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*Assistant Registrar*  
*ITAT, Bangalore*