<u>आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।</u>
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकरअपील सं./ ITA No.1588/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2020-2021)

The Income Tax Officer, International Taxation, Ward, Coimbatore 641 018.	**Vs.**	Vijayakumar Murthy, 110/3, Mudaliyaar Thottam, Vinayagar Koil Street-1, Modapalayam Railway Colony, Tamil Nadu 638 002.
[PAN: AEXPV 8817R] (**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

अपीलार्थी की ओर से/ Appellant by	**:**	Ms. Preeti Goel (Virtual)
प्रत्यर्थी की ओर से /Respondent by	**:**	Shri. Ashwin D. Gowda, IRS, Addl.CIT
सुनवाई की तारीख/Date of Hearing	**:**	23.10.2024
घोषणा की तारीख /Date of Pronouncement	**:**	04.11.2024

<u>आदेश / O R D E R</u>

<u>PER MANU KUMAR GIRI (Judicial Member)</u>

This appeal by the assessee is arising out of the order No.ITBA/APL/S/250/2023-24/1062556751 (1) dated 13.03.2024 of the Commissioner of Income Tax (Appeals)-16, Chennai. The assessment was framed by the Income Tax Officer, International Taxation, Ward, Coimbatore for the assessment year 2020-21 u/s.143(3) r.w.s 144C of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 29.03.2022.

2. Brief facts of the case are that the assessee a non-resident filed his return of Income on 28.12.2020, admitting total income of Rs.27,83,172/- and revised return of income on 31.03.2021 admitting total income of Rs.2,90,250/- and claiming exemption of Rs.23,26,204/- under Article 16 of DTAA between India and UK and also exemption of Rs.4,35,169/- u/s 10(14)(i) of the Act. The assessee claimed refund of Rs.6,19,250/-. The case was selected for scrutiny under CASS and notice u/s 143(2) of the Act dated 29.06.2021 was issued and duly served on the assessee. Notice u/s 142(1) of the Act were issued on various dates and duly served. The assessee was an employee of the M/s Ernst & Young LLP, India in the financial year 2019-2020. He had been sent on international assignment to and salary for that period had been paid in India by employer. In the year under consideration, the assessee received gross salary of Rs.34,33,780/- and TDS of Rs.6,20,705/- was deducted by M/s Ernst & Young LLP. As per the assessee, he stayed in India for less than 60 days during the previous year 2019-20 relevant to the assessment year 2020-21. Therefore, he qualified as a Non Resident in India during the previous year 2019-20 under section 6(1) of the Act. Thus, the assessee qualifies as a tax resident of for the previous year 2019-20. Regarding assessment proceedings, the National e-assessment Centre issued statutory notices u/s 143(2) and 142(1) of the Act, and later on transferred the case to the jurisdictional Assessing Officer concerned. Complying with the notices, a draft Assessment Order was issued. A final order u/s 143(3) of the Act dated 30.05.2022 was passed after assessing

the entire gross total salary as per Form-16, taxable in India under the head salary, as under:-

Income as per ITR	*Rs.2,90,290/-*
Add: disallowance of exemption claimed under article 16 of DTAA	
Between India and UK	*Rs.23,26,204/-*
Pardiem disallowed	*Rs. 4,35,169/-*
Unexplained money u/s 69A	*Rs. 90,287/-*
Income assessed u/s 143(3)	*Rs. 31,41,950/-*

Aggrieved, assessee preferred an appeal before the ld. CIT(A).

3. The ld. CIT(A) deleted the addition of Rs.23,26,204/- by observing as under:-

> *"4.4 As seen from the facts in the instant case, it is Assessing Officer's case that as the source of the salary income is from India, the accrual of income is from India, and therefore. India, as a sovereign has the right to collect the tax from the same. Undoubtedly as per section 5 of Income Tax Act, 1961, this is the fundamental premise of all these salary cases, where the appellants have consequent to their assignment, exercise employment in other countries, on behalf of the employer in India. That is the reason why, the employers deduct tax at source, as a matter of abundant caution.*
>
> *However, when the income is offered to tax in the other contracting tax, i.e. where the services were rendered and the other contracting tax established its right to taxation by way of residence, section 90 of Income Tax Act, 1961 comes to play its role and the treaty overrides the provisions of the Act. The appellant gets entitlement to beneficial tax regime as per section 90.*
>
> *Therefore, I find that the appellant is eligible to claim exemption on Rs.23,26,204/- and I direct the Assessing Officer, to delete the said addition in his hands.*
>
> *In view of the above finding, Grounds of Appeal No. 1,4,5 and 6 are allowed".*

04. We have heard the both parties, perused the materials available on record, paper book and gone through orders of the authorities below. Brief facts are that the assessee is assessed as non-resident in AY 2020-21 as he had spent less than 60 days in India. The appellant was an employee of the M/s. Ernst & Young LLP during the previous year 2019-20. During Financial Year 2019-20 the appellant was seconded on overseas assignment to UK by his employer 'M/s Ernst & Young LLP'. The appellant received gross salary of Rs.23,26,204/- for services rendered in UK to M/s Ernst & Young LLP and claimed exemption under Article 15(1) of DTAA between India and UK.

05. The salary continued to be paid in India by the employer 'M/s Ernst & Young LLP'. The assessee submitted before AO that assessee being tax resident of UK, the salary income was taxable in UK only and the same has been offered to tax in UK. It was further contended before AO that assessee being non-resident, the salary received in India for work performed in UK would be exempt in India as per Article 15(1) of DTAA between India and UK. The assessee submitted before ld. Assessing Officer that salary is taxable in India only if it accrues in India and salary is considered to be accrued where the employment is exercised. However, Ld. AO held that the assessee did not shift his employer and the assessee continued to be on the payroll of its employer. There existed employer-employee relationship. Therefore, the income so received would be chargeable to tax in India under section 15 of the Act which provides that any salary due from an employer would be chargeable to tax under the head salaries. Further, in terms of the provisions of

Section 5(2) of the Act, salary received by non-resident in India would be taxable in India. Therefore, the assessee's submissions were rejected. It was, however, held that the assessee could avail tax credit on the tax payable in UK as per Article 23 of DTAA. The assessee was non-resident and therefore, he was not eligible to claim benefit of DTAA. Accordingly, the income as reflected in Form 16 was brought to tax.

6. We find substance in the arguments of the Ld.AR that assessee being tax resident of UK, the salary income was taxable in UK only. In fact, salary to the tune of Rs.23,26,204/- received for the employment exercised in UK is taxable in UK and in the light of Article 15(1) of the India-UK DTAA it is exempt income. We have also gone through the Co-ordinate Bench decision cited in the case of *Shri Ramesh Kumar AE Vs ITO for AY 2015-16 in IT(TP)A 51/Chny/2018 dated 11.08.2023.* The Co-ordinate Bench order held as under:-

> *"4. We find that similar issue, on similar facts, has been decided by us in our decision titled as* ***Shri Kanagaraj Shanmugam vs. ITO (ITA No.2936/Chny/2018 dated 07.09.2022)*** *as under: -*
>
> > *"Our findings and Adjudication*
> > *5. From the fact it emerges that the assessee has stayed in India for 63 days during this year and his status, as per law, is non-resident. The assessee has worked in India for 21 days and offered proportionate salary to that extent to tax. For remaining period, the work has been performed in though the salary has been received in India from existing employer. It is also a fact on record that this salary, for work performed in , has been offered to tax in which is evident from Tax Returns filed in . The assessee submit the as per Article 16(1) of DTAA, this income would be taxable in only. Alternatively, the assessee relies on the provisions of Sec.15 read with Sec.5(2) and Sec.9(1)(ii) which provides for taxability of salary on accrual basis and not on receipt basis. However, Ld. CIT(A) has held that the assessee would not be eligible for the benefit of DTAA since DTAA relief is to be given by resident country which is in the present case.*
> > *6. We find that an identical issue has been addressed by coordinate bench of Chennai Tribunal in* ***Shri Paul Xavier Antonysamy V/s ITO (ITA***

***No.2233/Chny/2018 dated 28.02.2020)**. In this decision, the bench has held that the provisions of Sec.5(2) are subjected to other provisions of the Act. The regular salary accrued to any assessee is chargeable to tax in terms of Sec.15(a). Even as per the provisions of Sec.9(1)(ii), salary income could be deemed to accrue or arise in India only if it is earned in India in respect of services rendered in India. The bench, reading down Article-1 and Article-15 of India-Australia DTAA, held that Treaty benefit shall be applicable to persons who are residents of both India as well as Australia. Therefore, the contention of the revenue that the assessee being a non-resident and hence treaty benefit cannot be extended to assessee, is incorrect. Accordingly, it was held by the bench that the salary so earned for work performed in Australia would be taxable in Australia. The case law of Swaminathan Ravichandran V/s ITO (ITA No.2911/Mds/2016 dated 05.08.2016) was held to be factually distinguished on the ground that in that case the assessee was claiming foreign tax credit relief for taxes paid on doubly taxed income which was not the case in that appeal. In para-7, the bench found the issue to be covered in assessee's favor by various judicial precedents including the decision of Hon'ble Karnataka High Court in DIT V/s Prahlad Vijendra Rao (198 Taxman 551); decision of Hon'ble Bombay High Court in CIT V/s Avtar Singh Wadhawan (247 ITR 260); decision of Hon'ble Calcutta High Court in Sumanabandyopadhyay V/s DDIT (TS281-HC-2017) as well as CBDT Circular No.13/2017 dated 11/04/2017.*

7. We find that facts are pari-materia the same before us and the ratio of this decision is squarely applicable to the present case. Therefore, we would hold that salary income as accrued to the assessee for work performed in would not be taxable in India. However, the salary received for work performed in India would be taxable in India. Accordingly, we direct Ld. AO to re-compute the income of the assessee. The above proposition is also supported by the fact that upon perusal of tax return, it could be seen that the assessee has offered earnings from employment for£24184 on net basis which has been tax grossed up for £6046. This is in view of the fact that OFSSL has paid provisional payment of £9062 to revenue authorities since the employer has undertaken to meet the income tax liability arising from employee's earnings in . Accordingly, the assessee has claimed refund of £3016. On the basis of the above, it could be seen that separate tax payment has been made by OFSSL to revenue authorities to discharge the tax liability of the assessee in that country.

8. The assessee has also placed on record Tax Residency Certificate (Page nos. 192-193 of paper book). As per this certificate, the assessee has claimed relief for foreign earning not taxable in for £7952. The same shall be considered by Ld. AO while computing the quantum of income taxable in India as directed by us in preceding para-7.

9.The appeal stands partly allowed in terms of our above order."

*In the above decision, we have held that salary income as accrued to the assessee for work performed in a foreign jurisdiction would not be taxable in India whereas the salary received for work performed in India would be taxable in India. The benefit of DTAA would be available to the assessee as per the decision of coordinate bench of Chennai Tribunal in **Shri Paul Xavier Antonysamy V/s ITO (ITA No.2233/Chny/2018 dated 28.02.2020)** wherein it was held by the bench that the provisions of Sec.5(2) are*

*subjected to other provisions of the Act. The regular salary accrued to any assessee is chargeable to tax in terms of Sec.15(a). Even as per the provisions of Sec.9(1)(ii), salary income could be deemed to accrue or arise in India only if it is earned in India in respect of services rendered in India. The bench, reading down Article-1 and Article-15 of India-Australia DTAA, held that Treaty benefit shall be applicable to persons who are residents of both India as well as Australia. Therefore, the contention of the revenue that the assessee being a non-resident and hence treaty benefit cannot be extended to assessee, is incorrect. Accordingly, it was held by the bench that the salary so earned for work performed in Australia would be taxable in Australia. The case law of Swaminathan Ravichandran V/s ITO (*ITA No.*2911/Mds/2016 dated 05.08.2016) was held to be factually distinguishable.*

5.We find that similar fact exists before us in the present appeal. The proportionate salary for services rendered in India has already been offered to tax in India whereas the balance salary has been offered to tax in UK. The salary reconciliation statement has been placed by Ld. AR on record. The assessee has not claimed any foreign tax credit in any of the jurisdiction. The UK tax has been paid by the foreign entity i.e., M/s Ford Motor (UK) Co. Ltd. and the assessee has offered salary income on gross basis.

6. The Ld. Sr. DR has relied on the decision of SMC bench in the case of Dennis Rozario (ITA No.298/Mds/2016 dated 06.01.2017) as well as another decision of SMC bench in Shri M.Ramesh Kumar (ITA No.1979/Mds/2017 dated 16.11.2017) which has taken a view against the assessee. However, both these decisions have been rendered by SMC bench and therefore, we are inclined to follow our own decision as cited above which has been rendered by coordinate bench. The Ld. AO is directed to re-compute the income of the assessee. The substantiative grounds raised by the assessee stand allowed which render additional grounds of appeal as infructuous. In the result, the appeal of the assessee is allowed in terms of our above order."

7. We have gone through order cited supra and respectfully agreed with the view taken by the Coordinate bench in *IT(TP)A No.51/Chny/2022 etc dated*

11.08.2023 for AY 2015-16. A similar view, has also been taken by the coordinate bench in the case of *Nanthakumar Murugesan Vs ITO (International Taxation [2024] 165 taxmann.com 304* (Chennai- trib.). We find that identical fact exists before us in the present appeals. The proportionate salary for services rendered in India has already been offered to tax in India whereas the balance salary has already been offered to tax in UK. The assessee has not claimed any foreign tax credit in any of the jurisdiction. The UK tax has been paid. Therefore, ld. CIT(A) has rightly deleted the addition of Rs.23,26,204/- made by the Ld. Assessing Officer.

8. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 4th day of November, 2024 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	**(मनु कुमार गिरि)**
(MANOJ KUMAR AGGARWAL)	**(MANU KUMAR GIRI)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई Chennai:
दिनांक Dated : 04-11-2024
KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF