

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM

ITA No. 2041 & 2042/KOL/2024

(Assessment Years: 2014-2015 & 2015-16)

Partha Mukherjee
C/O. Anita Chakrabarti, Shilpa
Kanan, Phase 2, Durgapur,
West Bengal, 713206

Vs.

I.T.O., Ward - 3(3),
Ayakar Bhawan, Lalkuthi Para,
Suri, Birbhum,
West Bengal, 731101

(Appellant)

(Respondent)

PAN No. AOEPM7576D

Assessee by : Shri Akash Mansinka, AR
Revenue by : Shri S.B. Chakraborty, DR

Date of hearing: 09.04.2025
Date of pronouncement : 05.05.2025

ORDER

These are appeals preferred by the assessee against the order of the Commissioner of Income-tax (Appeals) Kolkata (hereinafter referred to as the "Ld. CIT(A)") even dated 02.08.2024 for the AY 2014-15 & 2015-16.

02. The common issue raised in both the appeals are against the order of Id. CIT (A) affirming the assessment order wherein the AO has made an addition by ignoring the fact that the assessee is a non-resident and not liable to be taxed in India.
03. The facts in brief are that the assessee was a non-resident during the relevant assessment year. He was employed with IMB India Private Limited and rendering services abroad. The assessee filed the return of income as non-resident, a copy of which is available in paper book page no. 1 to 8. However, the Id. AO treated the residential status as resident, framed the assessment accordingly.

04. In the appellate proceedings, the appellate authority though recorded a finding to this effect that assessee was non-resident during the relevant assessment year on the basis of NIL stay in India. During the year the assessee was paid basic salary in India of ₹12,41,552/- for the services rendered abroad along with assignment allowances paid outside India of ₹12,04,529/-. However, the Id. CIT (A) dismissed the appeal by giving findings that he cannot differ from the order passed by the Id. AO without giving any cogent reasons.
05. After hearing the rival contentions and perusing the materials available on record, I find that in this case, the assessee is a non-resident and the income received by the assessee by way of salary in India as well abroad is not to be taxed in India as the assessee was a non-resident u/s 5(2) of the Act and only the income received or deemed to have been accrued is taxable in India in case of non-resident. In this case it is undisputed that assessee has rendered services outside India and there was no iota of evidence brought on record by the Id. AO suggesting that income has accrued or has origin in India. Accordingly, I set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition. The case of assessee is squarely covered by the decision of the co-ordinate Benches in the case of Manab Chandra Ghosh Vs. ACIT in ITA No. 40/KOL/2024 for A.Y. 2016-17 vide order dated 27.11.2024, wherein the co-ordinate Bench has held as under:-

"6. We, after hearing the rival submissions of the parties and perusing the material available on record, find that based on the passport details, the assessee was present in India for only 61 days during the financial year 2015-16 which qualifies as a non-resident u/s 5(2) of the Act and only income received or deemed to have accrued or arisen in India, is taxable for a non-resident. We undisputedly note that the assessee is a non-resident employee in IBM India Pvt. Ltd. (an Indian Company) and was sent to abroad to Indonesia for rendering services there. We find no dispute that the services were rendered in Indonesia and the foreign assignment allowances received by the assessee for services rendered in Indonesia and no evidence suggests that income accrued or arose in India. We note that the assessee failed to produce the TRC before the Assessing Officer, which is a procedural lapse and does not negate the substantive compliance. After considering the facts and circumstances of the case and following the decision in

the case of DCIT vs. Sudipta Maity (supra), we find it necessary to delete the addition made by the Assessing Officer of Rs.21,20,960/-, Rs.40,40,749/- and Rs.48,790/- respectively (totaling to Rs.62,10,449/-) based on the fact that the income related to services rendered received outside India is not taxable in India. The Assessing Officer is also directed to allow the refund of Rs.7,13,440/- as claimed by the assessee.

7. In terms of the above, the appeal of the assessee is allowed."

06. In terms of the above, I set aside the order of Id. CIT(A) and direct the AO to delete the addition made. The appeal of the assessee is allowed.

2042/KOL/2024 for A.Y. 2015-16

07. The issue raised in this appeal is similar to one as decided by us in ITA No. 2041/KOL/2024. Accordingly, our decision would, mutatis mutandis, apply to this appeal of assessee in ITA No. 2042/KOL/2024 for A.Y. 2015-16. Hence, the appeal of assessee in ITA No. 2042/KOL/2024 is allowed.

08. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 05.05.2025.

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 05.05.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata