आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM

(HYBRID HEARING)

श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन,लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./**I.T.A.No.89/VIZ/2025**
(निर्धारणवर्ष/ **Assessment Year:2022-23)**

Vijay Mariappan Austin Prakash 201, Pooja Apartment No. 42 Vittal Mallya Road Bangalore - 560001 **[PAN: BPRPP1578P]**	Vs.	**ACIT (International Taxation)** Income Tax Office Infinity Towers Sankaramattam Road Visakhapatnam – 530016 Andhra Pradesh

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Ramaswamy Vijayanand, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Badicala Yadagiri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	18.11.2025
घोषणा की तारीख/Date of Pronouncement	:	05.12.2025

आदेश /O R D E R

PER SHRI S. BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appealis filed by the assessee against the final assessment order passed under section 143(3) r.w.s. 144C(13) of Income Tax Act, 1961 (in short 'Act') vide order dated 10.12.2024 for the A.Y. 2022-23.

2. Brief facts of the case are that, assessee being a Non-Resident Individual filed his return of income on 17.07.2022 admitting a taxable income of Rs.9,21,280/- and exempt income of Rs.8,30,64,982/-. Assessee is a consultant to Zerodha Broking Limited [in short "ZBL"] during the impugned assessment year providing business advisory services relating to the business planning and business development. ZBL paid a fee of Rs.8,28,36,296/- to the assessee after deducting tax under section 195 of the Act. Assessee claimed the income as exempt and claimed refund of the tax deducted by the ZBL. The case was selected for scrutiny under CASS and statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. After verification of the submissions made by the assessee, the Ld. AO observed that as per Form 26AS assessee has claimed a TDS amount of Rs.86,26,842/-. Thereafter, a questionnaire under section 142(1) of the Act was issued and served on the assessee to provide the period of stay in India and the assessee in response submitted that he has stayed in India less than sixty (60) days during the impugned assessment year and further submitted the Tax Residency Certificate [in short "TRC"] issued by Dubai Tax Authorities. Further, he also submitted the residential documents claiming that he is a citizen of Singapore. Ld. AO noticed that assessee was being paid salary by Zerodha Group of Companies upto 30.09.2020 and from 01.10.2020 the assessee was engaged as a consultant with ZBL. Ld. AO further observed that nature of services provided by the assessee as an employee on salary basis and the services as per the consultancy

agreement remain the same and hence observed that the assessee has changed the source of income from salary to consultancy in order to avoid the taxability of same in India. Ld. AO also invoked provisions of section 9(1)(i) of the Act stating that the assessee is having a business connection in India on account of Significant Economic Presence [in short "SEP]. Ld. AO also observed that the assessee has exceeded the threshold amount prescribed under Rule 11UD of the I.T. Rules for the purpose of Significant Economic Presence. He further observed that assessee is also not covered under Article 14 of India-UAE DTAA by stating that the services rendered by the assessee does not fall within the definition of the "professional services" as defined in Article 14 of India-UAE DTAA, with the above observations, Ld. AO issued show-cause notice to the assessee as to why an amount of Rs.8,28,36,296/- cannot be added to the total income of the assessee. The draft order under section 144C(1) was passed on 29.03.2024.

3. Aggrieved by the draft order, the assessee filed his objection before DRP, Bengaluru on 15.05.2024. The DRP-1, Bangalore passed a direction under section 144C(5) on 05.12.2024 by rejecting the assessee's objection as it was filed beyond the limitation period, wherein the DRP does not have powers to condone the delay. Ld. AO thereafter passed a final assessment order on 10.12.2024 by assessing the income at Rs.8,28,36,896/- under section 144C(13) of the Act as business income of the assessee.

4. Aggrieved by the final assessment order, assessee is in appeal before us by raising following grounds of appeal : -

> *"1. That the assessment order dated 10.12.2024 passed /s 143 r.w.s. 144C(13) of the Income-tax Act, 1961 ("the Act") is arbitrary and contrary to facts and the law.*
>
> *2. That the assessment order dated 10.12.2024 passed u/s 143 r.w.s. 144C(13) of the Act ("the impugned Assessment Order") stated to have been issued owing to the alleged failures to comply with all the terms of the notices u/s 142(1) of the Act, is rather, in effect an Order u/s 144 of the Act, which suffers from being beyond the limitation specified u/s 153 of the Act.*
>
> *3. That the impugned Assessment Order suffers from being time barred since it ought to have been completed on or before 31.05.2024 in accordance with the provisions of sub-section (3) of Section 144C for the reason of the Dispute Resolution Panel outrightly rejecting the objections filed by the Appellant by treating it as invalid, thus the matter ceasing to fall within the scope of sub-section(5) of Section 144C of the Act.*
>
> *4. That the impugned Assessment Order has violated the principles of natural justice since in the grave circumstances of the Appellant, neither the requests nor the submissions made by the Appellant during the assessment proceedings were considered nor was the Appellant granted an opportunity of being heard.*
>
> *5. That the impugned Assessment Order is erroneous for failing to appreciate that the services rendered by the Appellant were covered within the scope of Article14 of the India-UAE Double Taxation Avoidance Agreement and accordingly the same could not have been brought to tax in India in the absence of any fixed base in India or the Appellant staying in India for more than 183 days during the relevant previous year.*
>
> *6. That the impugned Assessment Order has flawed determination of the Appellant earning business income from a payee in India, being Zerodha Broking Limited, when the Statement of TDS in Form 26AS verified by the Assessing Officer negates drawing such a conclusion.*

7. That the impugned Assessment Order is erroneous because for a non-resident, the entire tax on income chargeable to tax in India, if any, was entirely deductible at source u/s 195 of the Act and that no tax was recoverable from the Appellant.

8. That the impugned Assessment Order invokes the provisions of "significant economic presence" as per Explanation 2A(a) to Section 9(1)(i) of the Act which is academic in the absence of any factual finding of either a fixed base as per Article 14 or a permanent establishment as per Article 5 of the India-UAE DTAA being determined in the case of the Appellant, and more so when the Tax Residency Certificate from the Federal Tax Authority of the UAE and Form 10F, on the basis of which the residential status of the Appellant was determined as that of a 'non-resident', were placed on record.

9. That the failure of the AO in accessing the filings on the common portal under the Goods and Services Tax law of the payee, being Zerodha Broking Limited, to inquire whether the said payee has remitted GST on reverse charge mechanism for import of services rendered by the Appellant from outside India, has foisted an erroneous inference of "significant economic presence" in India upon the Appellant.

10 That the impugned Assessment Order fails to appreciate that even in the case of"significant economic presence", it is the profits attributable to the Indian operations alone that are chargeable to tax under the Act which are nil in the case of the Assessee for the reason of not carrying on any operations in India.

11. That the Authorities below having sought a confirmation from the payee, being Zerodha Broking Limited and failed in obtaining the same, ought not to havedrawn any adverse conclusion against the Appellant, more so, when the Appellant was an employee of the payee, being Zerodha Broking Limited, during the earlier years and only the payee could have provided a confirmation on the nature of contract of the Appellant with the payee.

12. That the impugned Assessment Order is erroneous by failing to appreciate and take into consideration the objections filed, and the evidence furnished by the assessee.

13. That the impugned Assessment Order by citing the absence of provisions as a reason for failing to condone the delay overlooked the implied powers which subsection (7) to Section 144C of the Act grants, without demarcating any timeline thereof."

5. The issues emanating out of the above grounds is as follows: -

i. Validity of the final assessment order passed beyond the limitation period as specified under section 153 of the Act.

ii. Denial of the benefit of the provisions of DTAA as per Article 14.

iii. Invoking the provisions of Significant Economic Presence as per Explanation to section 2(A)(a) to section 9(1)((i) of the Act.

6. Ld. Authorised Representative [hereinafter "Ld.AR"] submitted that since the objections filed by the assessee before DRP treating them as invalid, the assessment order ought to have passed on or before 31.05.2024 in accordance of provisions of sub-section 3 of section 144C of the Act. He therefore submitted that the assessment order passed by the Ld. AO on 10.12.2024 is beyond the period of limitation and hence *void ab initio*.

7. Further, he also submitted that as per the provisions of section 90(2) of the Act assessee being an NRI having and being a tax resident in Dubai is covered under the provisions of Article 14 of India-UAE DTAA and hence entitled for beneficial treatment as per provisions of India-UAE DTAA. He submitted that the Ld. AO erred in observing that the assessee does not provide professional services and hence not covered under Article 14 of India-UAE DTAA. He further submitted that the definition of "professional services" as per Article 14 of DTAAA is an inclusive definition and the assessee is engaged in the management consultancy which is covered as per Article 14 of the

India-UAE DTAA and hence assessee is entitled for claiming the relief as per section 90(2) of the Act.

8. With regard to the income arising in India as per provisions of section 9(1)(i) of the Act, Ld.AR submitted that Ld. AO has erred in invoking the deeming provisions stating that the assessee has business connection in India on account of Significant Economic Presence. He submitted that assessee does not have any business connection in India and hence the income cannot be taxed in India.

9. Per contra, Ld. Departmental Representative [hereinafter in short "Ld.DR"] placed heavy reliance on the order of the Ld. AO.

10. We have heard both the sides and perused the material available on record. It is an undisputed fact that the assessee was a salaried employee with ZBL till 30.09.2020 and after termination of employment he was appointed as consultant from 01.10.2020. The relevant consultancy agreement has been placed in paper book filed by the assessee. Based on the information available on record, we find that the assessee has claimed an income of Rs.8,28,36,296/- as exempt under the India-UAE DTAA. The contention of the Ld. AO is that assessee has been appointed as a consultant w.e.f 01.10.2020 in order to avoid paying tax in India which was arising to him in the earlier assessment years as salaries. Ld. AO further observed that the assessee performed the same

functions as he was performing during his employment with ZBL. These observations of the Ld. AO do not have any merit due to the fact that change of the employment to consultant is with regard to the agreement between the concerned parties. However, we find from the records, assessee has been appointed as a consultant based on the agreement for the period from 01.10.2020 to 30.09.2022.

11. The only solitary issue is with respect to the taxability of the income in India, whether the beneficial provisions under section 90(2) of the Act can be invoked for availing the benefit of India-UAE DTAA. We extract below the Explanation 2A(a) to section 9(1)(i) of the Act.

> *"Income deemed to accrue or arise in India.*
>
> *9.(1) The following incomes shall be deemed to accrue or arise in India:—*
>
> *(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.*
>
> *Explanation 1.—For the purposes of this clause—*
>
> *(a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India ;*
>
> *……..*
>
> *Explanation 2A.—For the removal of doubts, it is hereby clarified that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—*

(a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not,—

(i) the agreement for such transactions or activities is entered in India; or

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India:

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India."

12. From the plain reading of the above explanation and proviso, we are of the considered view that income shall deemed to accruing or arising in India to the assessee since he has a business income in India on account of Significant Economic Presence with crossing the threshold limit of Rs.2 Crores.

13. Now the question arises is whether the Article 14 of India-UAE DTAA covered the professional services rendered by the assessee or not. We extract below Article 14 of the India-UAE DTAA

"1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, except in the following circumstances when such income may also be taxed in the other Contracting State :

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants."

14. Article 14 to India-UAE DTAA defines professional services, it is an inclusive definition. The professional services provided by the assessee is covered under the term professional services as defined in Article 14(2) of DTAA. We therefore of the view that assessee is entitled to avail the benefit under 90(2) of the Act, where the income of the assessee shall not be taxable in India in the absence of permanent establishment in India. Accordingly, grounds raised by the assessee is allowed.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 05th December, 2025.

Sd/-	**Sd/-**
(रवीश सूद)	**(एस बालाकृष्णन)**
(RAVISH SOOD)	**(S. BALAKRISHNAN)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated: 05.12.2025
Giridhar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1. निर्धारिती/ The Assessee : **Vijay Mariappan Austin Prakash**
201, Pooja Apartment No. 42
Vittal Mallya Road
Bangalore - 560001

2. राजस्व/ The Revenue : **ACIT (International Taxation)**
Income Tax Office
Infinity Towers
Sankaramattam Road
Visakhapatnam– 530016
Andhra Pradesh

3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam