IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.1650, 1653 to 1655/Del/2024
[Assessment Year :2017-18 to 2020-21]

Sanjay Bhaskar Tribhuwan Complex, 10th Milestone, Mathura Road, Ishwar Nagar, Delhi-110065 ***PAN-AFCPB7690G***	vs	DCIT Central Circle-13 New Delhi
APPELLANT		**RESPONDENT**

Appellant by	Shri Ankit Kumar, Adv.
Respondent by	Ms. Rupinder Kaur, CIT DR
Date of Hearing	17.11.2025
Date of Pronouncement	30.12.2025

ORDER

PER MANISH AGARWAL, AM :

The captioned appeals are filed by assessee against the different orders of Ld. CIT(A)-26, New Delhi u/s 250 of the Income Tax Act, 1961 ["the Act"] all are dt. 21.03.2024 arising out of different assessment orders for various assessment years tabulated as below:

Sr. Nos.	ITA Nos.	Asstt. Year	Assessment Order dated	Assessment Order under section
1	ITA No.1650/Del/2024	2017-18	18.04.2022	153A r.w.s. 143(3) of the Income Tax Act, 1961.
2.	ITA No.1653/Del/2024	2018-19	18.04.2022	- do -
3.	ITA No.1654/Del/2024	2019-20	18.04.2022	- do -
4.	ITA No.1655/Del/2024	2020-21	06.05.2022	- do -

2. The issues in all these appeals being common, interlinked and related to the same assessee for various assessment years,

therefore, all these by the assessee have been heard together and accordingly, adjudicated by a common order.

3. First we take the appeals of the assessee in ITA No.1650, 1653 & 1654/Del/2024 [Assessment Years 2017-18 to 2018-19].

ITA Nos.1650, 1653 & 1654/Del/2024 c
[Assessment Years 2017-18 to 2018-19]

4. Brief facts of the case are that a search and seizure operation u/s 132 was carried out on 30.03.2021 and on subsequent dates at different business and residential premises of "Sanjay Bhaskar Group Companies and other". During the course of search various incriminating papers/documents were found and seized. Thereafter notice u/s 153A was issued on 15.11.2021, in response which, assessee filed his return of income, declaring total income of INR 2,23,910/- as was declared in the return filed u/s 139(1) of the Act. Statutory notices u/s 143(2) issued on 07.12.2021, followed by notices u/s 142(1) alongwith questionnaire were issued from time to time. In response to notices, there was no compliance by the assessee. Again, notice u/followed s 142(1) dated 19.12.2021 was issued. In response, assessee filed submissions wherein it is claimed that during the previous years relevant to AY 2017-18 to 2019-20, assessee was in India for period of less than 182 days and therefore, the status of the assessee is non -resident, however, inadvertently in the return of income filed the status was shown as Resident. However, the AO has not accepted the contention of the assessee and computed the total number of days stay in India by taking both the date of arrival and date of departure and hold that assessee was in India for more than 182 days.

5. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 31.03.2024, dismissed the appeals of the assessee.

6. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1- ***BECAUSE***, *the search operation cannot be said to have validly initiated on 30/03/2021 in the case of the Appellant, as there existed no material (prior to the authorization) which could lead to the formation of belief that his case falls in any of the three categories mentioned in section 132(1) of the Act and consequently the assessment order passed in pursuance of such proceedings is wholly illegal and without jurisdiction.*

WITHOUT PREJUDICE TO ABOVE

2- ***BECAUSE***, *the appellant denies its liability to be assessed in terms of Assessment order dated 18/04/2022 passed by the AO under section 153A of the Act and confirmed by the Ld. CIT(A).*

3- *BECAUSE, in the facts and circumstances of the case, material on record and submission made, the ld. CIT (Appeals) has grossly erred in confirming the action of the AO in changing the status of the Appellant from 'Non Resident' to RESIDENT, which is wrong and has been made arbitrarily without bringing any material/ evidence on record.*

4- *BECAUSE, the rejection of explanation given by the Appellant during the course of appellate proceedings, by the Ld. CIT (A) is arbitrary without bringing any evidence on record. The confirmation of action of the Assessing officer by the Ld. CIT(A) is entirely an exercise, based on unfounded presumption, assumptions, surmises and pure guess work which cannot take the place of evidence.*

5- *BECAUSE, the Ld. CIT (A) has grossly erred in confirming the action of the AO in changing the status of the Appellant from 'Non Resident' to RESIDENT purely on wrong understanding of Law and facts of the case. The Appellant was having the status "Non Resident" in the relevant Assessment year in view of clause (b) of explanation 1 to section 6(1)(c) the Income Tax Act, however the Ld. CIT (A) has incorrectly mentioned that the explanation (1) is not applicable in the case of Appellant. The order passed by the ld CIT (A) is erroneous and based on wrong understanding of law and facts of the case and without bringing anything material on record.*

6- *The confirmation of action of the Assessing officer by the Ld CIT(A) is entirely an exercise, based on unfounded presumption, assumptions, surmises and pure guess work which cannot take the place of evidence.*

7- *The appellant craves leave to add or alter one more ground(s) during the course of proceedings.*

7. During the course of hearing vide letter dated 29.10.2024, assessee has filed an application for admission of additional grounds of appeal and for the admission of the same, relied upon the judgement of Hon'ble Supreme Court in the case of ***NTPC vs CIT 229 ITR 383 (SC)*** and submits that both the additional grounds of appeal are legal in nature and requires no further verification of facts therefore, the same be admitted for adjudication. The additional grounds raised by the assessee read as under:-

"1. That the Ld. CIT(A) has erred in law and facts of the case in confirming the decision of Ld. AO in changing residential status of the appellant from "Non Resident" to "Resident" without bringing any incriminating material or evidence on record which is highly arbitrary' unlawful and bad in law.

2. That the Ld. CIT(A) has erred in law and facts of the case by alleging that the appellant was not engaged in gainful employment outside India by completely disregarding the employment contract with DMCC which is completely unjustified uncalled for and bad in law.

3. The appellant craves the right to add, amend, modify the grounds of appeal."

8. Before us, Ld.AR submits that the assessee during the previous year under appeal stayed in India for less than 182 days and therefore, has enjoyed the status of 'non-resident' in terms of clause (b) of explanation 1 to section 6(1)(c) the Income Tax Act, however, the AO has held the assessee as 'resident'. Ld.AR also submits that during the course of assessment proceedings, a chart

was submitted before the AO in support of the claim that he stayed in India for a period less than 182 days in all the three previous years and therefore, his status is 'non-resident'. He prayed accordingly. Ld. AR also filed a written submission which reads as under:

SYNOPSIS IN BRIEF

S. No.	AY	Appeal No.
1.	2017-18	ITA 1650/DEL/2024
2.	2018-19	ITA 1653/DEL/2024
3.	2019-20	ITA 1654/DEL/2024
4.	2020-21	ITA 1655/DEL/2024

Brief Facts

Search and seizure operation under section 132 of the Act was conducted on 30.03.2021 in business and residential premises of "Sanjay Bhaskar Group Companies and other". Thereafter, the assessment of the appellant was completed under section 153A r.w.s 143(3) of the Act at returned income of the appellant without making any addition to the income of the appellant. However, the Ld/- AO has changed the residential status of the appellant from "Non Resident" to "Resident" for AY 2017-18, AY 2018-19 & AY 2019-20. Thereafter, the Ld/- CIT(A) has also confirmed the decision of Ld/- AO vide order dated 21.03.2024.

With regard to AY 2020-21, it is submitted that during the search and seizure operation conducted, indiscriminate seizure of documents, computer data and loose paper was made. The assessment proceedings of the case were completed under section 153A r.w.s 143(3) of the Act at an assessed income of Rs. 9,31,480/- after making addition of Rs. 5,00,000/- under section 69A of the Act. Thereafter, the Ld/- CIT(A) has also confirmed the said addition vide order dated 21.03.2024.

There are 4 matters before the Hon'ble Members which can be classified in two broad issues which are tabulated as under:

Assessment Year	Issue Involved
AY 2017-18, AY 2018-19 & AY 2019-20	Alleged categorization of residential status as "Resident" whereas the appellant has claimed his residential status as "Non-Resident"
AY 2020-21	Alleged addition on the basis of statement recorded under section 132(4) of the Act which had been retracted in due course, without any corroborating evidence to support such addition.

Issues concerning AY 2017-18, AY 2018-19 & AY 2019-20:

The facts of the cases in all the 3 AYs as mentioned above are similar, hence taking the first year i.e AY 2017-18 for our arguments:

Residential Status of the Appellant historically:

Status	Financial Years	Number of days in India	Return Filed	Jurisdiction
Non Resident	1998 to 2007	No record kept	NR	United Kingdom
Resident	2007 to 31st March 2016	No record kept	Resident	India
Non Resident	01/04/2016 to 31/03/2017	~~178~~ 180	NR	UAE
Non Resident	01/04/2017 to 31/03/2018	~~171~~ 175	NR	UAE
Non Resident	01/04/2018 to 31/03/2019	~~174~~ 173	NR	UAE
Non Resident	01/04/2019 to 31/03/2020	126	NR	UAE
Non Resident	01/04/2020 to 31/03/2021	48	NR	UAE

Sequence of Events and dates (AY 2017-18)

S. No.	Event	Date of Event	Pg. No. of PaperBook
1	Date of Search & Seizure	30.03.2021	
2	Date of case centralized with DCIT CC vide order u/s 127 of Act	13.10.2021	
3	Date Notice issued u/s 153A	15.11.2021	11
4	Date of filing return u/s 153A reflecting residential status as **"NOR- Resident but not Ordinarily Resident"**	24.11.2021	4-9
5	Date of Letter filed for changing of Residential Status from RNOR to Non Resident	22.12.2021	10
6	Date of Notice issued u/s 143(2)	07.12.2021	
7	Date of Show cause notice issued	25.03.2022	19-22
8	Date of Reply filed in response to SCN dt. 25.03.2022	26.03.2022	23-24
9	Letter submitted clarifying the residential status as Non-resident relying on the various judgements	07.04.2022	
10	Date of Assessment Order passed	18.04.2022	
11	Date of CIT(A) Order	21.03.2024	

- The Ld/- AO held that the residential status of the appellant as Resident for the purpose of Income Tax Act, 1961 alleging that the appellant has stayed for more than 182 days in India for the relevant year and allegedly covered under section 6(1)(a) of the Act.
- On appeal filed before the Ld/- CIT(A), the Ld/- CIT(A) upheld the order of Ld/- AO though accepting that the appellant did not stay for a period beyond 182 days and as such not covering the appellant under section 6(1)(a) of the Act, however, alleging that the benefit extended to the appellant in Explanation 1 to Section 6(1)(c) of the Act shall not be available to the appellant as the appellant has not been found to be gainfully employed outside India during the year(s) under consideration.

4

Submission against allegations made by the Ld/- AO:

Comparison between computation of number of days by the Ld/- AO & appellant forming part of assessment proceedings are tabulated as follows:

Computation of Stay in India as per Assessment Order:
TABLE 'A'

S. No	Departure from India	Arrival in India	No. of days outside India	Remarks
1.	11-04-2016	16-04-2016	4	The Ld/- AO included both the days of arrival and departure in the computation ignoring the already set judicial view.
2.	25-04-2016	03-05-2016	7	
3.	16-05-2016	20-05-2016	3	
4.	30-05-2016	02-06-2016	2	
5.	21-06-2016	24-06-2016	2	
6.	12-07-2016	15-07-2016	2	
7.	26-07-2016	01-08-2016	5	
8.	09-08-2016	16-08-2016	6	
9.	22-08-2016	25-08-2016	2	
10.	07-09-2016	28-09-2016	20	
11.	02-10-2016	05-10-2016	2	
12.	23-10-2016	27-10-2016	3	
13.	05-11-2016	18-11-2016	12	
14.	01-12-2016	18-12-2016	16	
15.	23-12-2016	10-02-2017	48	
16.	23-02-2017	02-04-2017	36	
	Total days when appellant was outside India		**170**	
	Total No Of Days Stayed in India		(365-170) = 195	

Computation of Stay in India as per the Appellant:
TABLE 'B'

S. NO.	Date Of Entry In India	Date Of Exit From India	No. Of Days Stay in India	Remarks
1.	27-03-2016	11-04-2016	11	The appellate, relying on the judicial pronouncement of Hon'ble Karnataka High Court which has been followed by various benches of the
2.	16-04-2016	25-04-2016	9	
3.	03-05-2016	16-05-2016	13	
4.	20-05-2016	30-05-2016	10	
5.	02-06-2016	21-06-2016	19	
6.	24-06-2016	12-07-2016	18	
7.	15-07-2016	26-07-2016	11	

8.	01-08-2016	09-08-2016	8	Hon'ble Tribunal excluded the day of arrival in computing No. of days stay in India.
9.	16-08-2016	22-08-2016	6	
10.	25-08-2016	07-09-2016	13	
11.	28-09-2016	02-10-2016	4	
12.	05-10-2016	23-10-2016	18	
13.	27-10-2016	05-11-2016	9	
14.	18-11-2016	01-12-2016	13	
15.	18-12-2016	23-12-2016	5	
16.	10-02-2017	23-02-2017	13	
	Total No Of Days Stayed in India		**180**	

The above mentioned tables have been drawn for AY 2018-19 & AY 2019-20 also which are placed on record as per **Annexure 1 & 2** for your reference.

There is only single dispute on the computational aspect with respect to the inclusion of date of arrival in India while computing the total number of days stayed in India.

The appellant has followed the accepted judicial view in excluding the date of entry (i.e the first day of the visit) and includes the date of departure (i.e the last day of visit) taking guidance from the ruling in the matter of **Manoj Kumar Reddy v. ITO (International Taxation) Ward-1(3), Bangalore [2009] 34 SOT 180 (Bangalore)** by the Hon'ble Bangalore ITAT. The relevant extract from the judgement is reiterated as under:

> *"3.24 Thus, there are two views in respect of ignoring the fraction of a day. However, we can look at the issue from a different angle. When one has to compute the period for which an assessee is in India, one has to start the counting from a particular day and to end the same with specific day. The period is to be counted from the date of arrival of the assessee in India to the date he leaves India. Thus, the words 'from' and 'to' are to be inevitably used for ascertaining the period though these words are not mentioned in the statute. Section 9 of the General Clauses Act is as under :—*
>
> > *"(1) In any (Central Act) or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from", and, for the purpose of*

including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all (Central Acts) made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

3.25 As per the General Clauses Act, the first day in a series of a day is to be excluded if the word 'from' is used. Since for computation of the period, one has to necessarily import the word 'from' and, therefore, accordingly, the first day is to be excluded. In the instant case, if the first day, i.e., 31-1-2005 is excluded then the period of stay will be 59 days. Since the period of stay will be less than 60 days, therefore, section 6(1)(c) will not be applicable and the status of the assessee will be non-resident. We, therefore, accept the second alternate contention of the appellant and hold that the status of the assessee will be non-resident."

The aforesaid ruling has also been affirmed by the Hon'ble Karnataka High Court in the case of **Director of Income-tax, International Taxation, Bangalore v. Manoj Kumar Reddy Nare [2011] 12 taxmann.com 326 (Karnataka).**

The decision of the Hon'ble ITAT Bangalore has been followed by various benches, few of the matters are listed as under, having similar findings:

1. Pradeep Kumar Joshi v. Income-tax Officer, Ward-1, International Taxation, Ahmedabad [2021] 133 taxmann.com 283 (Ahmedabad - Trib.)

2. Shri Sharad Mishra v. Income Tax Officer, 3(4), Kanpur (Lucknow-Tribunal) ITA No.599/LKW/2012

3. Income Tax Officer (IT)-1(1) v. Fausta C. Cordeiro [2012] 24 taxmann.com 193 (Mum.)

Submission against the allegations made by the Ld/- CIT(A) in its order dated

The appellant has claimed his residential status as Non Resident, placing reliance on Explanation 1(a) for AY 2017-18 and Explanation 1(b) for AY 2018-19 and AY 2019-20 of Section 6(1)(c) of the Act.

As per the provisions of Section 6(1)(c) of the Act, an assessee is said to be resident if he has been,

a) within 4 years, preceding the relevant year, has been in India for a period of 365 days or more, and

b) in India for a period of 60 days or more, in the relevant year

Now, explanation 1(a) & 1(b) further extends the period of 60 days and substitutes the same with 182 days in the case of citizen who has left India for the purpose of employment outside India. In the present case, the appellant left for the purpose of employment with M/s Ardennes Projects DMCC for an unlimited period.

The appellant was appointed as Manager in the said company at a monthly salary of AED 25,000/-. The appellant has furnished the following documents before the Ld/- CIT(A) in order to establish that the appellant has been gainfully employed with M/s Ardennes Projects DMCC.

1. Copy of Employment Contract dated 11.04.2016 *(PB pg. 28-39)*
2. Copy of Work Permit issued by the Government of UAE, acknowledging the employment of the appellant with Ardennes Projects DMCC as a Manager *(PB pg. 25)*
3. Copy of Residential Identity card issued by the Government of UAE. *(PB pg. 26-27)*
4. Copy of Foreign Bank Account Statement from September 2016 to March 2017 (on sample basis) to establish receipt of salary from its Employer, Ardennes Projects DMCC. *(PB pg. 40-48)*

The Ld/- CIT(A) has disregarded the aforesaid documents and alleged that the appellant has not been under a gainful employment to satisfy the criteria of Explanation 1 to Section 6(1)(c) of the Act.

The question of "Employment outside India" has been examined by the Hon'ble Kerala High Court in the matter of **Commissioner of Income-tax v. O. Abdul Razak [2011] 198 Taxman 1 (Kerala)** wherein the Hon'ble Court while deciding the issue in favor of the taxpayer. Taking into consideration the CBDT Circular No. 346 dated 30.06.1982 and held that no technical meaning can be assigned to the word, ***"Employment"*** used in the explanation.

The Hon'ble High Court has interpreted the term Employment in wide terms, stating that employment should not mean going outside India for purpose such as tourists, medical treatment, studies or the like. The relevant findings of the Hon'ble Kerala High Court in the aforesaid decision are reproduced as under:

> *"6. During hearing, learned senior counsel for the revenue has relied on the decision of the Supreme Court in Lakshminarayan Ram Gopal & Son Ltd. v. Government of Hyderabad [1954] 25 ITR 449. We do not think the decision is applicable to the facts of this case. Learned senior counsel for the assessee has relied on the Memorandum explaining the provisions of the Finance Bill introducing the Explanation, contained in 134 ITR 137 (St.) [Para 35 of the Finance Bill], which reads as follows :—*
>
> *"(iii)It is proposed to provide that where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the 'test' of residence in (c) above will stand modified to this extent in such cases."*
>
> *Similarly the Central Board of Direct Taxes issued Circular No. 346, dated 30-6-1982, which reads as follows:*
>
> *"7.3 With a view to avoiding hardship in the case of Indian citizens, who are employed or engaged in other avocations outside India, the Finance Act has made the following modifications in the tests of residence in India :—*
>
> *(iii)Where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the test of residence in (c) above will stand modified to that extent in such cases."*

> *7. What is clear from the above is that no technical meaning is intended for the word "employment" used in the Explanation. In our view, going abroad for the purpose of employment only means that the visit and stay abroad should not be for other purposes such as a tourist, or for medical treatment or for studies or the like. Going abroad for the purpose of employment therefore means going abroad to take up employment or any avocation as referred to in the Circular, which takes in self-employment like business or profession."*

Further coordinate benches of the Hon'ble Tribunal have similar findings in the following decisions:

1. *ACIT, Central Circle-5(4), Mumbai Vs. Shri Nishant Kanodia [ITA no.2155/Mum./2023]*
2. *K. Sambasiva Rao vs. ITO, [2014] 42 Taxmann.com 115 (Hyd-Trib.)*
3. *ACIT vs. Jyotinder Singh Randhawa, [2014] 46 Taxmann.com 10 (Delhi-Trib.)*
4. *ACIT vs. Col. Joginder Singh, [2014] 45 Taxmann.com 567 (Del- Trib.)*

Arguments for AY 2020-21:

In regard to the same, it is submitted that for AY 2020-21, the addition amounting to Rs. 5,00,000/- has been made to the income of the appellant without bringing any corroborative material on record which is unsustainable in law. Reliance is placed on the following judicial pronouncements:

In the case of **ACIT v. Shanker Nebhumal Uttamchandani [2024] 161 taxmann.com 536 (Surat-Trib.),** it was held that:

> *"7. We have independently examined the facts of the case. We find that the Assessing Officer has not recorded in the assessment order whether such image/photo was received by assessee in WhatsApp image or it was sent. The source of image was not investigated by Assessing Officer. Assessing Officer nowhere mentioned whether such image was*

confronted to the assessee during the search action or his statement was recorded for such image. Thus, in absence of any corroborative evidence, we do not find any justification for making such addition. Hon'ble Supreme Court in Common Cause v. Union of India (2017) 394 ITR 220 SC also held that loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34, so as to constitute evidence with respect to transaction mentioned therein being of no evidentiary value. Thus, we affirm the order of ld. CIT(A) on our aforesaid additional observation."

Further coordinate benches of the Hon'ble Tribunal have similar findings in the following decisions:

1. *CIT vs. D.K. Gupta reported in [2009] 308 ITR 230 (Delhi)*
2. *D.A. Patel v. Dy. CIT [2000] 72 ITD 340 (Mumbai-Tribunal)*
3. *CIT v. Atam Valves (P.) Ltd. [2009] 184 Taxman 6 (Punjab & Haryana HC)*
4. *Addl. ITO v. T. Mudduveerappa Sons [1993] 45 ITD 12 (Bangalore)*
5. *Asstt. CIT v. Karodilal Agarwal [1994] 50 TTJ (Jab.) 393*
6. *M.V. Mathew v. ITO [1993] 46 TTJ (Coch.) 353*
7. *ITO v. W.D. Estate (P.) Ltd. [1993] 45 ITD 473 (Bom.)*
8. *ITO v. Kranti Impex (P.). Ltd. [IT Appeal No. 1229 (Mum.)*
9. *Asstt. CIT v. Layer Exports (P.) Ltd. [2017] 88 taxmann.com 620*
10. *Pr. CIT v. Umesh Ishrani [2019] 108 taxmann.com 437 (Bom.)*
11. *CIT v. Shadiram Ganga Prasad, 2010 UPTC 840*

In view of the above, it is prayed to kindly consider the above submission and delete addition of Rs. 5,00,000/-under section 69A of the Act for AY 2020-21 and grant necessary relief to the appellant for relevant AYs.

For M/s Arora and Bansal
Chartered Accountants

Siddhant Arora

Authorized Representatives

Annexure 1

Computation of Stay in India as per Assessment Order (AY 2018-19):

S. No	Departure from India	Arrival in India	No. of days outside India	Remarks
1.	30-04-2017	08-05-2017	7	The Ld/- AO included both the days of arrival and departure in the computation ignoring the already set judicial view.
2.	14-05-2017	23-06-2017	39	
3.	06-07-2017	15-07-2017	8	
4.	30-07-2017	10-08-2017	10	
5.	14-08-2017	25-08-2017	10	
6.	04-09-2017	06-09-2017	1	
7.	07-09-2017	17-09-2017	9	
8.	30-09-2017	05-10-2017	4	
9.	20-10-2017	25-10-2017	4	
10.	03-11-2017	08-11-2017	4	
11.	03-12-2017	17-12-2017	13	
12.	22-12-2017	04-01-2018	12	
13.	21-01-2018	07-02-2018	16	
14.	17-02-2018	07-03-2018	17	
15.	12-03-2018	01-04-2018	19	
	Total days when assessee was outside india		**173**	
	Total No Of Days Stayed in India		**(365-173)= 192**	

Computation of Stay in India as per the Appellant (AY 2018-19):

S. No.	Date Of Entry In India	Date Of Exit From India	No. Of Days Stay in India	Remarks
1	02-04-2017	30-04-2017	28	The appellate, relying on the judicial pronouncement of Hon'ble Karnataka High Court which has been followed by various benches of the Hon'ble Tribunal excluded the day of arrival in computing No. of days stay in India.
2	08-05-2017	14-05-2017	6	
3	23-06-2017	06-07-2017	13	
4	15-07-2017	30-07-2017	15	
5	10-08-2017	14-08-2017	3	
6	25-08-2017	04-09-2017	10	
7	06-09-2017	07-09-2017	1	
8	17-09-2017	30-09-2017	13	
9	05-10-2017	20-10-2017	15	
10	25-10-2017	03-11-2017	9	
11	08-11-2017	03-12-2017	25	
12	17-12-2017	22-12-2017	5	
13	04-01-2018	21-01-2018	17	
14	07-02-2018	17-02-2018	10	
15	07-03-2018	12-03-2018	5	
Total No Of Days Stayed in india			**175**	

Annexure 2

Computation of Stay in India as per Assessment Order (AY 2019-20):

S. No.	Departure from India	Arrival in India	No. of days outside India	Remarks
1	21-04-2018	26-04-2018	4	The Ld/- AO included both the days of arrival and departure in the computation ignoring the already set judicial view.
2	03-05-2018	04-07-2018	61	
3	11-07-2018	19-07-2018	7	
4	06-08-2018	09-08-2018	2	
5	11-08-2018	15-08-2018	3	
6	19-09-2018	23-09-2018	3	
7	30-09-2018	06-10-2018	5	
8	05-12-2018	18-12-2018	12	
9	23-12-2018	03-01-2019	10	
10	07-01-2019	07-02-2019	30	
11	12-02-2019	02-03-2019	17	
12	04-03-2019	05-04-2019	27	
Total days when assessee was outside india			181	
Total No Of Days Stayed in india			(365-181)= 184	

Computation of Stay in India as per the Appellant (AY 2019-20):

S. No.	Date Of Entry In India	Date Of Exit From India	No. Of Days Stay in India	Remarks
1	01-04-2018	21-04-2018	20	The appellate, relying on the judicial pronouncement of Hon'ble Karnataka High Court which has been followed by various benches of the Hon'ble Tribunal excluded the day of arrival in computing No. of days stay in India.
2	25-04-2018	03-05-2018	8	
3	04-07-2018	11-07-2018	7	
4	19-07-2018	06-08-2018	18	
5	09-08-2018	11-08-2018	2	
6	15-08-2018	19-09-2018	35	
7	23-09-2018	30-09-2018	7	
8	06-10-2018	05-12-2018	60	
9	18-12-2018	23-12-2018	5	
10	03-01-2019	07-01-2019	4	
11	07-02-2019	12-02-2019	5	
12	02-03-2019	04-03-2019	2	
	Total No Of Days Stayed in india		173	

9. On the other hand, Ld. Sr. DR for the Revenue vehemently supported the orders of the lower authorities and submits that in the assessment order, the AO has correctly aworked out number of days stayed in India and further at page 5 of the appellate order,

there is a table according to which, total number of days stay in India by the assessee was mentioned, according to which his stay in India was more than 182 days therefore, Ld. CIT(A) held that the status of the assessee as "Resident". Ld. CIT(A) further observed assessee had not submitted copy of salary receipt from the employer i.e. DMCC, Dubai and as per bank statement, he has not received salary on regular basis from the employer and accordingly, Ld. CIT(A) held that Explanation (1) to section (6) of the Act, is not applicable in the case of the assessee since he was not found to be gainfully outside India and further as per provision of section 6(1)(c) of the Act, the assessee has been found resident in India therefore, Ld.CIT(A) upheld the status of the assessee as 'resident' which orders deserves to be upheld. He prayed accordingly.

10. Heard the contentions of both parties and perused the material available on record. From the facts, it transpired that for Assessment Years 2017-18 to 2019-20, the AO treated the assessee as 'resident' and for AY 2020-21 as 'non-resident'. The sole dispute is regarding calculation of period of stay in India during these three assessment years. As per AO, assessee had stayed more than 182 days in India in all the three previous years relevant to AYs 2017-18 to 2019-20 whereas as per assessee, his stay in India was for a period of 180 days in FY 2016-17; 175 days in FY 2017-18; and 173 days in FY 2018-19. As observed above, the dispute is with respect to the calculation of number of days stayed in India where the AO has taken both the days i.e. arrival and departure for computing the number of days stayed in India however, as per assessee, the day of arrival should be excluded for this purpose. For this,

assessee placed reliance on the judgment of Hon'ble Karnataka High Court in the case of ***Director, International Taxation, Bangalore vs Manoj Kumar Reddy*** reported in ***[2011] 12 taxmann.com 326 (Karnataka)*** wherein the hon'ble Court had confirmed the order of the Co-ordinate Bench of ITAT, Bangalore reported in ***[2009] 34 SOT 180.*** The coordinate Bangalore bench of ITAT in para 3.24 & 3.25 of the order, observed as under:-

> *3.24 Thus, there are two views in respect of ignoring the fraction of a day. However, we can look at the issue from a different angle. When one has to compute the period for which an assessee is in India, one has to start the counting from a particular day and to end the same with specific day. The period is to be counted from the date of arrival of the assessee in India to the date he leaves India. Thus, the words 'from' and 'to' are to be inevitably used for ascertaining the period though these words are not mentioned in the statute. Section 9 of the General Clauses Act is as under :—*
>
> > *"(1) In any (Central Act) or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".*
> >
> > *(2) This section applies also to all (Central Acts) made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."*
>
> *3.25 As per the General Clauses Act, the first day in a series of a day is to be excluded if the word 'from' issued. Since for computation of the period, one has to necessarily import the word 'from' and, therefore, accordingly, the first day is to be excluded. In the instant case, if the first day, i.e., 31-1-2005 is excluded then the period of stay will be 59 days. Since the period of stay will be less than 60 days, therefore, section 6(1)(c)will not be applicable and the status of the assessee will be non-resident. We, therefore, accept the second alternate contention of the appellant and hold that the status of the assessee will be non-resident.*

11. The CO-ordinate Bench of ITAT, Ahmadabad Bench in the case of ***Pradip Kumar Joshi vs ITO [2021] 133 taxmann.com***

283 (Ahmedabad Trib.) has followed the aforesaid judgement of the Hon'ble Karnataka High Court and held as under.

> *9. It appears that though it has already been held by different benches that while counting days of stay in India for considering the status of "Resident" the days of arrival has to be excluded, the Ld. CIT(A) while counting days of stay in India purportedly counted the date of arrival of the assessee in India without giving any cogent reason thereon which in our considered opinion having no basis.*
>
> *10. We do not find any reason to deviate from the ratio laid down by the Honb'le Bangalore Bench as narrated thereinabove and relying upon the identical facts in the case in hand we exclude the date of arrival in counting the days of stay in India in the case of the assessee.*
>
> *11. We, thus, hold that the assessee stayed in India during the year under consideration for less than 182 days and finally cannot be considered as the resident of India in the year under consideration. In that view of the matter the impugned assessment made against the assessee considering him as the resident of India is not sustainable in the eye of law and thus deleted.*
>
> *12. In the result, the appeal preferred by the assessee is allowed.*

12. Thus, by respectfully following the judgement of hon'ble Karnatka high court and of the coordinate benches, if the day of arrival in India is excluded, the total number of days in India during these three assessment years, is as under:

Assessment Year	**Total No. of Visits**	**Total no. of days in India (As per AO)**	**Total No of Days in India (After excluding day of arrival)**
2017-18	16	195	180
2018-19	15	192	175
2019-20	12	184	173

13. In view of the above, stay of the assessee in Inida for the total number of days is less than 182 days in all the three assessment years.

14. Now, coming to the provisions applicable in the instant case, the definition of "resident" in India as provided in section (6) has been reproduced as under:-

Residence in India.

6. *For the purposes of this Act,—*

(1) An individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(b) [***]

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation 1*.—In the case of an individual,—*

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted and in case of such person having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted.

Explanation 2.—For the purposes of this clause, in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

(1A) ….

(2) …
(3) …
(4) …
(5) …
(6) ….

15. In the instant case the assessee was non resident since 1998 and he took up the permanent residence in UK for which a detailed chart showing yearwise residential status of the Appellant was filed before the AO and therefore, he was non-resident in terms of the provision of Explanation (e) to Section 115C and this fact was not in dispute. Thus, as per clause (b) to Explanation 1 to sub-section (1) of section (6) of the Act as reproduced above, if he is in India for a period of less than 182 days, the assessee cannot be treated as 'resident' for these three assessment years AY 2017-18, 2018-19 & 2019-20. As per the chart given by the assessee where the numbers of days stays in India are calculated by excluding the day of arrival as held by the Hon'ble Karnataka High Court in the case of Manoj Kumar Reddy (supra), total stay of the assessee in India was less than 182 days (180 days in FY 2016-17, 173 days in FY 2017-18 and 175 days in FY 2018-19). Therefore, in our considered opinion in the Three previous years relevant to Assessment years 1017-18 to 2019-20, the status of assessee should be 'non-resident'. Regarding observations of Ld.CIT(A) that the assessee was not engaged in the gainful employment on regular basis outside India, we find that it is not the allegation of the AO that the assessee was outside India for the purposes of tourist visit or medical treatment or for studies. The Hon'ble Kerala High Court in the case of ***CIT vs Abdul Razzaq 337 ITR 350 (Kerala)*** has held as under:-

6. During hearing, learned senior counsel for the revenue has relied on the decision of the Supreme Court in Lakshminarayan Ram

Gopal & Son Ltd. v. Government of Hyderabad [1954] 25 ITR 449. We do not think the decision is applicable to the facts of this case. Learned senior counsel for the assessee has relied on the Memorandum explaining the provisions of the Finance Bill introducing the Explanation, contained in 134 ITR 137 (St.) [Para 35 of the Finance Bill], which reads as follows :—

> *"(iii) It is proposed to provide that where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the 'test' of residence in (c) above will stand modified to this extent in such cases."*

Similarly the Central Board of Direct Taxes issued Circular No. 346, dated 30-6-1982, which reads as follows:

> *"7.3 With a view to avoiding hardship in the case of Indian citizens, who are employed or engaged in other avocations outside India, the Finance Act has made the following modifications in the tests of residence in India :—*
>
> *(i) & (ii) *******
>
> *(iii) Where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the test of residence in (c) above will stand modified to that extent in such cases."*

7. What is clear from the above is that no technical meaning is intended for the word "employment" used in the Explanation. In our view, going abroad for the purpose of employment only means that the visit and stay abroad should not be for other purposes such as a tourist, or for medical treatment or for studies or the like. Going abroad for the purpose of employment therefore means going abroad to take up employment or any avocation as referred to in the Circular, which takes in self-employment like business or profession.

So much so, in our view, taking up own business by the assessee abroad satisfies the condition of going abroad for the purpose of employment covered by Explanation (a) to section 6(1)(c) of the Act. Therefore, we hold that the Tribunal has rightly held that for the purpose of the Explanation, employment includes self-employment like business or profession taken up by the assessee abroad.

We therefore dismiss the appeal filed by the revenue.

16. Under identical circumstances, the Co-ordinate Bench of Mumbai in the case of ***ACIT vs Nishant Kanodia in ITA No.2155/Mum/2023 & C.O.No.115/Mum/2023*** vide order dated ***08.01.2024*** has held as under:-

12. We find that the issue of whether the term ―employment outside India‖ includes ―doing Business‖ by the taxpayer, came up for consideration before the Hon'ble Kerala High Court in CIT v/s O. Abdul Razak, [2011] 337 ITR 350 (Ker.) wherein the Hon'ble Court while deciding the issue in favour of the taxpayer took into consideration the CBDT Circular no.346 dated 30/06/1982 and held that no technical meaning can be assigned to the word ―employment‖ used in the Explanation and thus going abroad for the purpose of employment also means going abroad to take up self–employment like business or profession. Therefore, the Hon'ble Kerala High Court has interpreted the term ―employment‖ in wide terms. The Hon'ble Kerala High Court, however, held that the term ―employment‖ should not mean going outside India for purposes such as tourists, medical treatment, studies, or the like. The relevant findings of the Hon'ble Kerala High Court, in the aforesaid decisions, are reproduced as under:–

6. During hearing, learned senior counsel for the revenue has relied on the decision of the Supreme Court in Lakshminarayan Ram Gopal & Son Ltd. v. Government of Hyderabad [1954] 25 ITR 449. We do not think the decision is applicable to the facts of this case. Learned senior counsel for the assessee has relied on the Memorandum explaining the provisions of the Finance Bill introducing the Explanation, contained in 134 ITR 137 (St.) [Para 35 of the Finance Bill], which reads as follows:-

"(iii) lt is proposed to provide that where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the 'test' of residence in (c) above will stand modified to this extent in such cases."

Similarly the Central Board of Direct Taxes issued Circular No. 346, dated 30-6-1982, which reads as follows:

"7.3 With a view to avoiding hardship in the case of Indian citizens, who are employed or engaged in other avocations

outside India, the Finance Act has made the following modifications in the tests of residence in India:

*(i) & (ii) ***

(iii)Where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the test of residence in (c) above will stand modified to that extent in such cases."

7. What is clear from the above is that no technical meaning is intended for the word "employment" used in the Explanation. In our view, going abroad for the purpose of employment only means that the visit and stay abroad should not be for other purposes such as a tourist, or for medical treatment or for studies or the like. Going abroad for the purpose of employment therefore means going abroad to take up employment or any avocation as referred to in the Circular, which takes in self-employment like business or profession.

So much so, in our view, taking up own business by the assessee abroad satisfies the condition of going abroad for the purpose of employment covered by Explanation (a) to section 6(1)(c) of the Act. Therefore, we hold that the Tribunal has rightly held that for the purpose of the Explanation, employment includes self-employment like business or profession taken up by the assessee abroad.

We therefore dismiss the appeal filed by the revenue.

13. We further find that similar findings have been rendered by the Coordinate Bench of the Tribunal in the following decisions:–

i) K. Sambasiva Rao v/s ITO, [2014] 42 Taxmann.com 115 (Hyd–Trib.);

ii) ACIT v/s Jyotinder Singh Randhawa, [2014] 46 Taxmann.com 10 (Del–Trib.);

iii) ACIT v/s Col. Joginder Singh, [2014] 45 Taxmann.com 567 (DelTrib.).

14. Therefore, even if the taxpayer has left India for the purpose of business or profession, in the aforesaid decisions, the same has been considered to be for the purpose of employment outside India under Explanation–1(a) to section 6(1) of the Act. Accordingly, even if it is accepted that the assessee went to Mauritius as an Investor in Firstland Holdings Ltd., Mauritius, in which he holds 100% shareholding, we are of the considered view that by applying the ratio of aforesaid decisions the assessee is entitled to claim the benefit of the extended period of 182 days, as provided in Explanation-1(a) to section 6(1) of the Act, for the determination of residential status. Since it is undisputed that the assessee has

> *stayed in India only for a period of 176 days during the year, which is less than 182 days as provided in Explanation 1(a) to section 6(1) of the Act, the assessee has rightly claimed to be a "Non-Resident" during the year for the purpose of the Act. Accordingly, we find no infirmity in the findings of the learned CIT(A) on this issue. As a result, the grounds raised by the Revenue are dismissed. 15. In the result, the appeal by the Revenue is dismissed.*

17. Accordingly, in view of the above and by respectfully following the judgements of Hon'ble Karnataka High Court and Hon'ble Kerala High Court, we are of the view that the status of the assessee was "non-resident" for AY 2017-18 to 2019-20 as he was enjoying the status of Non-resident in terms of Explanation (e) to Section 115C and during these assessment years he was out of India for the purpose of employment. Therefore, we allow the additional grounds of appeal in all these three appeals taken by the assessee.

18. Since, we have already allowed the additional grounds of assessee, the other grounds of appeal raised by the assessee became academic.

19. In the result, all the three appeals for Ay 2017-18 to 2019-20 of the assessee are allowed.

ITA No.1655/Del/2024 [Assessment Year 2020-21]

20. Brief facts of the case are that the assessment was completed u/s 153A r.w.s.143(3) of the Act wherein an addition of INR 5 Lakhs was made by holding that assessee had received INR 5 Lakhs as advance against the sale of property as found in digital form in the mobile of the assessee. The AO has made the addition on the basis of the statement of the assessee wherein the assessee accepted the receipt of INR 5 Lakhs during the year under appeal.

21. Heard the contentions of both parties and perused the material available on record. The sole issue leading to this addition is that there was a hand-written paper recovered from the mobile of the assessee which was unsigned and when the assessee was confronted with the said paper, he admitted the same as his additional income. Thereafter the assessee has retracted from the said statements, however, the AO had made the addition for the same.

22. From the perusal of orders of lower authorities, it is seen that though the statements of assessee were recorded u/s 132(4) of the Act wherein he admitted that the said amount as receipt of cash however, later he denied receipt of cash and retracted from the statement. The AO solely based on such retracted statement made the addition by ignoring the fact that except this admission, there is no evidence whatsoever available with him or brought on record after making independent enquiry or investigation to support the allegation that the assessee has received INR 5 Lakhs. Hon'ble Supreme Court in the case of ***Pullangode Rubber Produce Co. Ltd. vs. State of Kerala*** reported in ***91 ITR 18 (SC)*** observed as under:

> *"It is no doubt true that entries in the account books of the assessee amount to an admission that the amount in question was laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income was derived during the previous year. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect."*

23. The Hon'ble High Court of Rajasthan in the case of ***Mantri Share Brokers Pvt. Ltd.*** reported in ***96 taxmann.com 279*** as under:

> *"Section 69B of the Income-tax Act, 1961- undisclosed investments (Burden of proof)- whether where except statement of director of assessee-company offering additional income during survey in his premises, there was no other material either in form of cash, bullion, jewellery or document or in any other form to conclude that statement made was supported by some documentary evidence, said sum could not be added in hands of assessee as undisclosed investments - Held, yes [Paras 10-11] 1In favour of assessee]. Para 10 & 11 of the order is as under:*
>
> *10. Before proceeding with the matter, it will not be out of place to mention that except the statement in the letter, the AO has no other material on record to assess the income of Rs. 1,82,00,000/-.*
>
> *11. It is settled proposition of law that merely on the statement that too also was taken in view of threat given in question No.36 as narrated by Mr. Gupta and the same sought to have been relied upon, there is no other material either in the form of cash, bullion, jewellery or document in any other form which can come to the conclusion that the statement made was supported by some documentary evidence. We have gone through the record and find that the CIT (A) has rightly observed as stated hereinabove, which was confirmed by the Tribunal."*

24. The aforesaid judgement stood confirmed by the Hon'ble Supreme Court.

25. The ***Hon'ble Delhi High Court*** in case of ***CIT Vs. Harjeev Agarwal*** reported in ***241 Taxmann199 (Delhi)*** held as under:

> *"...A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act. However, as stated earlier, a statement on oath can only be recorded of a person who is*

found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 158BB (1) read with Section 1588 (b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded...."

26. The ***hon'ble Delhi High Court*** in case of ***PCIT Vs. Best Infrastructure*** reported in ***84 Taxmann.com 287*** by following the aforesaid judgement of Harjeev Agarwal observed that "…statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material…..".

27. In the instant case, merely for the reason that assessee has admitted the receipt of such cash without any corroborative material, the same could not be treated as the income of the assessee solely on the basis of the retracted statements. Therefore, in our considered opinion, the addition made is without any basis and we direct the AO to delete the same. Thus, all the grounds of appeal raised by the assessee are allowed.

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

29. In the final result, all appeals of the assessee in **ITA Nos. 1650, 1653 to 1655/Del/2024 [Assessment Years 2017-2018 to 2020-21]** are allowed.

Order pronounced in the open Court on 30.12.2025.

Sd/-	Sd/-
(SATBEER SINGH GODARA)	**(MANISH AGARWAL)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 30.12.2025
**Amit Kumar, Sr. P.S*

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