

IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.5930/MUM/2025
(Assessment Year : 2017-18)

Amit Satpathy,

Flat No.404, Tower A,

Imperial Heights,

Oshirwara, Goregaon (West)

Mumbai - 400104

PAN: ARRPS8419D

..... Appellant

v/s

Deputy Commissioner of Income Tax,

Central Processing Centre,

Assistant Director of Income Tax,

Central Processing Centre,

Income Tax Department,

Bengaluru - 560500

.....Respondent

Assessee by : Shri Siddhesh Chaugule

Revenue by : Shri Krishna Kumar, Sr. DR

Date of Hearing - 13/02/2026

Date of Order - 27/02/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 30.07.2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Additional / Joint Commissioner of Income Tax (Appeals) - 1, Surat [*"learned Addl./Joint CIT(A)"*], which in turn arose from the intimation issued under section 143(1) of the Act, for the assessment year 2017-18.

2. The revised grounds of appeal filed by the assessee are as follows: -

"The below mentioned grounds of appeal are independent of and without prejudice to one another.

1.1 In the facts and circumstances of the case and in law, the learned ADDL/JCIT (A) - 1 Surat herein referred as "the Ld. CIT (A) has erred in upholding the appellant as Resident of India under Article 4(2) of Double Taxation Avoidance Agreement between India and United Kingdom (UK) ("DAA") and including the salary income earned in UK for the period upto 17 July 2016 in the total income for Assessment Year (AY') 2017-18 and not accepting the validly filed return.

1.2 In the facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in disallowing salary exclusion claim of INR 41,79,095 claim made by the appellant towards salary income earned in UK ("UK sourced income"), as per section 90(2) of the Income Tax Act, 1961 ("the Act') read with the Article 16(1) of DTAA between India and UK, despite producing the Tax Residency Certificate issued by UK Authorities during the course of appeal proceedings.

1.3 In the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in determining the taxability as per Article 16(2) of the DTAA between India and UK instead of Article 16(1) of the DTAA between India and UK.

1.4 Without Prejudice to the above grounds of appeal, the learned Jurisdictional Assessing Officer / Central Processing Unit be directed to allow credit for taxes paid in United Kingdom by the Appellant for AY 2017-18 as per the provisions of Article 24 of the Double Taxation Avoidance Agreement between India and UK.

1.5 In the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in upholding the action of the Ld. AO in levying additional interest under section 234B and 234C of the Act.

1.6 Any consequential relief, to which the appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted."

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual and for the year under consideration filed his return of income on 05.08.2017, declaring a total income of Rs. 61,75,680/- and claiming a refund of Rs. 6,24,550/-. The return filed by the assessee was processed vide

intimation dated 27.03.2019 issued under section 143(1) of the Act, assessing total income of the assessee at Rs. 1,03,54,780/- after making an addition of Rs. 41,79,095/- on account of variance between the income as per the income tax return and the details available in Form 26AS.

4. In its appeal before the learned CIT(A) against the intimation issued under section 143(1) of the Act, the assessee submitted that he was on assignment to the UK from 06.01.2014 to 17.07.2016 with Vodafone Group Services Limited. The assessee submitted that while on assignment to the UK, he continued to receive his entire salary (including bonus) in India from Vodafone India Limited, for the UK services. It was submitted that for the financial year 2016-17, the assessee received a gross salary amounting to Rs. 1,17,47,931/- from Vodafone India Limited, on which TDS of Rs. 23,49,038/- was withheld. The assessee submitted that out of the above salary, the bonus amounting to Rs. 24,98,066/- received in June 2016 pertained to services rendered in the UK from 01.04.2015 to 31.03.2016, and the salary amounting to Rs. 26,51,776/- pertained to services rendered in the UK from 01.04.2016 to 17.06.2016. The assessee submitted that he qualified as a tax resident of the UK for the period from 01.04.2015 to 17.06.2016 as per the provisions of Article 4 of the India-UK Double Taxation Avoidance Agreement ("DTAA"). Accordingly, the assessee submitted that the salary (including bonus) amounting to Rs. 51,49,842/- pertaining to services rendered in the UK can only be taxed in the UK as per the provisions of Article 16 of the India-UK DTAA. The assessee also submitted that the salary income received in India with respect to services rendered in the UK has already been offered to tax in

the UK. In support of the submission, the assessee also furnished a copy of his UK tax return for the UK tax year 2016-17.

5. The learned CIT(A), vide impugned order, disagreed with the submissions of the assessee and dismissed the ground of appeal raised on this issue. The learned CIT(A) held that the assessee is a resident in India and, as per the provisions of Article 16(2) of the India-UK DTAA, the salary can only be taxed in India. The learned CIT(A) also rejected the reliance placed by the assessee on the Tax Residency Certificate of the UK issued up to the period 17.07.2016. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: -

"5.3 I have carefully perused the submission of the appellant. The appellant has relied upon Article-16(1) of the treaty between UK and India for claiming exclusion of income in India for taxation. Therefore, it is necessary to go through the content of Article-16(1) of the tax treaty between UK and India. Article 16(1) of the tax treaty (DTAA) between India and United Kingdom (UK) is reproduce as under:-

ARTICLE 16 - Dependent personal services - 1. Subject to the provisions of Article 17 (Directors' fees), 18 (Artistes and athletes), 19 (Governmental remuneration and pensions), 20 (Pensions and annuities), 21 (Students and trainees) and 22 (Teachers) of this Convention, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

5.3.1 In view of the Article-16(1) of the tax treaty between UK and India, the appellant has offered the salary income received in India from Vodafone India for taxation in UK for the services rendered/exercised in UK. In this regard, it is to verify whether the appellant is eligible for exercising employment in UK for the period upto 17/07/2016 pertaining to F.Y: 2016-17. For the same, it is necessary to look Article-16(2) of the tax treaty wherein exception has been drawn. The contents are reproduced hereunder: -

Article-16(2). Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall not be taxed in that other State if: -

(a) he is present in the other State for period or periods not exceeding in the aggregate 183 days during the relevant fiscal year,

(b) the remuneration is paid by, or on behalf of an employer who is not resident of that other State; and

(c) the remuneration is not deductible in computing the profits of an enterprise chargeable to tax in that other State.

5.3.2 Applying the above criterion in the case of the appellant, it is noticed that all three conditions of Article 16(2) are fulfilled in his case, viz:

(a) the appellant was in UK only upto 17/07/2016 i.e. period not exceeding 183 days during relevant fiscal i.e. F.Y: 2016-17 and

(b) has drawn entire salary/remuneration/bonus by an employer i.e. Vodafone India Limited which is not resident of that other state i.e. U.K and

(c) also the remuneration is not deductible in computing the profits of Vodafone India Limited chargeable to tax in that other State i.e. UK.

Therefore, the case of the appellant falls under Article-16(2) of the tax treaty between UK and India and not Article-16(1) as claimed by the appellant. Hence, It is clear that taxability of income of assessee shall be in Indian Tax jurisdiction as per chargeability and specific provisions of income-tax Act.

Chargeability: As per section 5(1) of the Income tax Act "Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which-

- 1. Is received or is deemed to be received in India in such year by or on behalf of such person; or*
- 2. Accrues or arises or deemed to accrue or arise to him in India during such year; or*
- 3. Accrues or arises to him outside India during such year;*

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

As per return of income filed by the appellant for the assessment year 2017-18, the appellant is resident in India. However, in submission the appellant has claimed that he qualifies as 'resident and not ordinarily resident in India' stating that he was physically present in India for more than 181 days in FY 2016-17 and more than 729 days in previous 7 tax years. In this regard, to ascertain the resident status of the appellant, I have to go through the provisions under section 6 of the Income tax Act. As per Section 6(6)(a) "A person is said to be "not ordinarily resident" in India in any previous year if such person is-(a)an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less'.

The appellant has himself accepted that he was present for more than 729 days in previous 7 tax years in India and therefore does not fall under the criteria of 'resident and not ordinarily resident in India' as defined in section 6(6)(a) of the I.T Act. Thus, it is clearly established that the appellant is

resident and ordinary resident in India for tax purpose and is squarely covered under section 5(1) of the Act for taxability of entire income either accrued and received in India.

5.3.3. In view of the above facts, it is clearly established that the appellant is a resident in India and his case does not falls under Article-16(1) of the tax treaty but falls under Article-16(2) of the tax treaty between UK and India. The income of the appellant accrues and arises in India and therefore is liable to be taxed in India. Though, the appellant has submitted tax residence certificate of UK for the period upto 17/07/2016 and claimed to have exercised employment upto the said period in UK but the appellant is not eligible to do so as per Article-16(2) of the tax treaty between UK and India. I therefore find no grounds for interference in the order passed by the Assessing officer, CPC and confirm the addition of Rs.41,79,095/- to the income of the appellant. Thus, the ground of appeal is dismissed."

6. During the hearing, the learned Authorised Representative ("*learned AR*"), without prejudice to the submissions made before the learned CIT(A), *inter alia*, submitted that since the assessee has already paid taxes in UK on the salary (including bonus) with respect to services rendered in UK, the credit of such taxes be granted to the assessee as per the provisions of Article 24 of the India-UK DTAA. Thus, the learned AR submitted that the other issues, i.e., whether the assessee was a resident in the UK during the period from 01.04.2016 to 17.06.2016, and therefore, the salary pertaining to the services rendered during the aforesaid period is taxable in the UK under Article 16(1) of the India-UK DTAA, can be left open.

7. On the other hand, the learned Departmental Representative ("*learned DR*") submitted that the claim of the assessee seeking tax credit in respect of the taxes paid in the UK on salary in respect of services rendered in the UK needs to be examined as per law.

8. Having considered the submissions of both sides and perused the material available on record, we find that in support of its claim that the

assessee duly offered the salary in respect of services rendered in UK from 01.04.2016 to 17.06.2016 in his UK tax return, the assessee has placed on record his tax return for the tax year 2016-17, which forms part of the paper book at pages 19-118. Further, the assessee has also placed on record the UK assignment letter issued by Vodafone India Limited. Therefore, without going into other aspects of the matter, we deem it appropriate to restore the matter to the file of the AO for examination of the assessee's claim for credit of taxes paid in the UK for the financial year 2016-17, as per the provisions of Article 24 of the India-UK DTAA. Since the matter is restored to the file of the AO, the assessee is directed to furnish any other information as may be sought by the AO for examining the claim of the assessee as per law. Accordingly, Ground No. 1.4 raised in assessee's appeal is allowed for statistical purposes, while Grounds No. 1.1 to 1.3 raised in assessee's appeal are kept open in view of the submissions of the learned AR.

9. Ground No. 1.5, raised in assessee's appeal, pertains to the levy of interest under sections 234B and 234C of the Act, which is consequential in nature. Therefore, this ground needs no separate adjudication.

10. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27/02/2026

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/02/2026
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai