IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH MUMBAI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
SHRI MAKARAND V MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 7988/Mum/2025
A.Y:2018-19

Mrigesh Gaurav Flat No. 812-A, Block Knights bridge Apt, Kundalahalli ITPL, Main Road, Bengaluru – 560037.	Vs.	ITO, Ward 42(2)(2) Mumbai
PAN/GIR No. AJFPG6901Q		
(Applicant)		(Respondent)

Assessee by	Shri Balaji V. (Virtually Present)
Revenue by	Shri Annavaram Kosuri, Sr. DR

Date of Hearing	25.02.2026
Date of Pronouncement	05.03.2026

आदेश / ORDER

PER MAKARAND V MAHADEOKAR, AM:

This appeal is filed by the assessee against the order dated 17.09.2025 passed by the Ld. Commissioner of Income Tax (Appeals), Addl. JCIT (Appeals)-2, Surat [hereinafter referred to as "CIT(A)"], under section 250 of the Income-tax Act, 1961, for the Assessment Year 2018–19. The impugned order arises out of the intimation issued under section 143(1) of the Act dated 04.11.2019 by the Centralised Processing Centre (CPC), Bengaluru.

2. The assessee is an individual deriving income primarily from salary. For the year under consideration, the assessee filed his return of income declaring total income of Rs. 2,38,160/-. The return was processed by the CPC, Bengaluru under section 143(1) of the Act on 04.11.2019. In the said intimation, the CPC granted credit of Tax Deducted at Source (TDS) of Rs. 1,62,025/- as against TDS of Rs. 24,75,737/- claimed by the assessee in the return of income and reflected in Form 26AS, resulting in short grant of TDS credit of Rs. 23,13,712/-.

3. Aggrieved by the aforesaid intimation issued under section 143(1), the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee submitted that he was employed with Shell India Markets Private Limited (SIMPL) and during the relevant period he was deputed on a short-term international assignment to the United States of America from 29.05.2017 to 30.11.2018. It was contended that although the salary was processed through the Indian payroll and reflected in Form-16 issued by the employer, the assessee was a non-resident in India during the relevant year in terms of the provisions of section 6 of the Act and was resident of the United States for the calendar years 2017 and 2018 under the domestic tax laws of the USA. The assessee submitted that salary attributable to services rendered outside India during the said assignment period was not chargeable to tax in India in view of the provisions of section 5(2) of the Act and section 9(1)(ii) read with Article 16(1) of the India–USA Double Taxation Avoidance Agreement (DTAA). According to the

assessee, only the portion of salary relatable to services rendered in India was offered to tax in the return of income. The assessee furnished the following computation in the return of income:

i. Salary earned from SIMPL India – Rs. 81,80,208/-
ii. Less: Salary relating to services rendered outside India – Rs. 76,73,076/-
iii. Net taxable salary – Rs. 5,07,132/-

4. After considering other heads of income and deductions under Chapter VI-A, the assessee declared total income of Rs. 2,38,160/-.The assessee further submitted that though TDS of Rs. 24,75,737/- was deducted by the employer and reflected in Form 26AS, the CPC while processing the return under section 143(1) allowed credit of only Rs. 1,62,025/-, thereby granting short credit of Rs. 23,13,712/-. The assessee contended that TDS credit should be granted in full. In support of this contention, reliance was placed on judicial precedents including PILCOM v. CIT (Supreme Court) [Civil Appeal No. 5749 of 2012], DCIT v. Escorts Ltd.[15 SOT 368 (Del)], and Arvind Murjani Brands (P) Ltd. v. ITO [137 ITD 173 (Mum)], wherein it was held that credit of TDS cannot be denied merely because the corresponding income is claimed to be exempt or not chargeable to tax in India.

5. The Ld. CIT(A), after considering the submissions of the assessee and examining the material placed on record, observed that the assessee was an employee of Shell India Markets Pvt. Ltd. and though he was deputed to the USA for a

short-term international assignment, the salary continued to be paid through the Indian payroll and was reflected in Form-16 issued by the employer. The employer had deducted tax at source on the entire salary income and deposited the same with the Government. The Ld. CIT(A) further observed that the assessee had not produced sufficient evidence to demonstrate that the salary income for services rendered outside India had been offered to tax in the United States or that relief under the provisions of the India–USA DTAA was applicable. According to the Ld. CIT(A), since the salary was paid in India and the employment continued with the Indian employer, the same was taxable in India. On this reasoning, the Ld. CIT(A) held that the assessee had wrongly excluded a portion of salary income from taxation in India. Accordingly, the Ld. CIT(A) directed the Assessing Officer to tax the entire salary receipts as reflected in Form-16 and grant credit of TDS as per Form-16 and Form 26AS. Consequently, the appeal of the assessee was partly allowed subject to the above directions.

6. Aggrieved by the aforesaid order of the Ld. CIT(A), the assessee is in appeal before us raising various grounds challenging the jurisdiction exercised by the Ld. CIT(A), the adjudication of issues beyond the scope of proceedings arising from intimation under section 143(1), alleged enhancement of income without issuing notice under section 251(2), and the finding that salary earned for services rendered outside India is taxable in India without considering the provisions of section 90 of the Act and Article 16(1) of the India–USA DTAA.

The grounds raised by the assessee are reproduced hereunder:

Ground No.1:

On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in adjudicating the appeal although the appellant had submitted that he was a Non-Resident during the year and the appeal should be transferred to the CIT(A) handling International Taxation.

Ground No. 2:

On the facts and circumstances of the case and in law, the Learned Additional/Joint Commissioner of Income Tax (Appeals), Surat [Ld. ADDL/JCIT (A)], has erred in deciding the taxability of the income earned by the appellant, instead of restricting himself to the sole matter raised before him, namely short grant of TDS credit.

Ground No. 3:

On the facts and circumstances of the case and in law, the Ld. ADDL/JCIT (A) has erred in not appreciating the fact the appeal is against the intimation and 143(1) of the Act, wherein debatable issues cannot be adjudicated.

Ground No. 4:

On the facts and circumstances of the case and in law, the the Ld. ADDL/JCIT (A) erred in enhancing the income of the appellant against the intimation under section 143(1) of the Act, whichever is not permissible as per Section 251(1) read with Section 246A(1) of the Act and also without issuing the mandatory notice under section 251(2) of the Act.

Ground No. 5:

On the facts and circumstances of the case and in law, the Ld. ADDL/JCIT (A) has erred in treating the salary earned for services rendered outside India by a non-resident is liable to tax without considering section 90 of the Act and also the

provisions of Article 16(1) of the India-USA Double Taxation Avoidance Agreement (DTAA)

Ground No. 6:

The Appellant craves leave to add, amend, alter, substitute, withdraw all or any of the above Grounds of Appeal anytime either before or during the hearing of the Appeal.

7. During the course of hearing, the Ld. Authorised Representative (AR) reiterated the facts as recorded in the orders of the lower authorities and submitted that the Centralised Processing Centre (CPC) while processing the return under section 143(1) has accepted the income declared by the assessee but has not granted the full credit of TDS as reflected in Form 26AS. The Ld. AR submitted that the grievance of the assessee before the Ld. CIT(A) was limited to short grant of TDS credit, whereas the Ld. CIT(A), instead of confining himself to the issue raised in appeal, proceeded to examine the taxability of the salary income and ultimately directed the Assessing Officer to tax the entire salary income as reflected in Form-16 and Form 26AS and thereafter grant TDS credit accordingly. The Ld. AR contended that such a direction issued by the Ld. CIT(A) effectively results in enhancement of the assessed income, which was not the subject matter of the intimation issued under section 143(1). It was further submitted that the Ld. CIT(A) has passed the impugned order without issuing any show cause notice as required under section 251(2) of the Act, before enhancing the income of the assessee. According to the Ld. AR, the action of the Ld. CIT(A) in deciding the taxability of salary income and

directing taxation of the entire salary is beyond the scope of appellate proceedings arising from an intimation under section 143(1) and also violates the mandatory requirement of giving an opportunity before enhancement.

8. In support of the contention, the Ld. AR placed reliance on the decision of the co-ordinate bench in the case of ***Mridula Jha Jena v. ITO (ITA No. 4844/Mum/2024 dated 07.01.2025)***, wherein on similar facts the Tribunal held that salary earned for services rendered outside India by a non-resident is not taxable in India merely because the salary is credited to a bank account in India.

9. The Ld. Departmental Representative (DR), on the other hand, relied upon the findings recorded by the Ld. CIT(A). The Ld. DR submitted that the assessee had not produced any evidence to demonstrate that the salary income in question had been offered to tax in the United States or that the conditions of the relevant Double Taxation Avoidance Agreement were satisfied. It was therefore contended that the Ld. CIT(A) was justified in holding that the salary received by the assessee from the Indian employer and reflected in Form-16 is taxable in India, and accordingly directing the Assessing Officer to tax the entire salary and grant TDS credit as per Form-16 and Form 26AS.

10. We have heard the rival submissions of both the parties and perused the material placed on record. The controversy arising in the present appeal emanates from the intimation

issued under section 143(1) of the Act and the order passed by the Ld. CIT(A) under section 250 of the Act.

11. The first aspect which arises for consideration is the scope of adjudication in an appeal arising from an intimation issued under section 143(1). It is a settled principle that the processing of return under section 143(1) is a limited exercise involving only prima facie adjustments permissible under the statute. The adjustments contemplated under section 143(1) are restricted to the categories specifically enumerated therein such as arithmetical errors, incorrect claims apparent from the return, disallowance of certain deductions, etc. In the present case, the intimation issued under section 143(1) had resulted in short grant of TDS credit to the assessee. The grievance raised by the assessee before the Ld. CIT(A) was primarily confined to the said adjustment relating to non-grant of full TDS credit reflected in Form 26AS. Thus, the controversy before the first appellate authority arose in the context of the adjustment made during processing of return under section 143(1).

12. On perusal of the impugned order, it is noticed that the Ld. CIT(A), while adjudicating the appeal, proceeded to examine the taxability of the entire salary income reflected in Form-16 and eventually directed the Assessing Officer to tax the entire salary receipts and grant TDS credit accordingly. In our considered view, such a direction effectively results in enhancement of income, because the assessee had originally offered only a portion of salary income to tax on the ground

that the balance salary related to services rendered outside India during the period of international assignment.

13 The provisions of section 251(1) confer powers upon the CIT(A) to confirm, reduce, enhance or annul the assessment. However, section 251(2) specifically mandates that before enhancing the assessment, the assessee must be given a reasonable opportunity of being heard by way of a show cause notice. In the present case, nothing has been brought on record to demonstrate that the Ld. CIT(A) had issued any specific show cause notice proposing enhancement of the income of the assessee before directing the Assessing Officer to tax the entire salary receipts. In the absence of such notice, the direction issued by the Ld. CIT(A) cannot be sustained to the extent it amounts to enhancement of income without complying with the mandatory requirement of section 251(2) of the Act.

14 Nevertheless, since the Ld. CIT(A) has also examined the merits of the claim regarding taxability of salary earned during the overseas assignment, we deem it appropriate to examine the substantive issue as well.

15. The assessee has contended that during the relevant year he was deputed by his employer to the United States of America on an international assignment, and that the salary attributable to services rendered outside India is not chargeable to tax in India having regard to the provisions of section 5(2) read with section 9(1)(ii) of the Act and Article 16 of the India–USA DTAA. In support of this contention, reliance

has been placed on the decision of the co-ordinate bench in the case of ***Mridula Jha Jena v. ITO*** wherein the Co-ordinate Bench held that salary earned by a non-resident for services rendered outside India cannot be brought to tax in India merely because the salary is credited to a bank account in India.

16. At the same time, the Revenue has contended that the assessee has not produced any material to demonstrate that the salary income in question has been offered to tax in the United States or that the benefit of the Double Taxation Avoidance Agreement is otherwise available.

17. On careful consideration of the rival submissions and the material available on record, we find that the factual aspect regarding taxation of the impugned salary income in the United States has not been properly verified by the lower authorities. The applicability of the provisions of the Act as well as the benefit under the India-USA DTAA would necessarily depend upon the factual verification regarding:

i. the residential status of the assessee during the relevant year;
ii. the period of stay outside India;
iii. the nature of services rendered during the overseas assignment; and
iv. whether the salary income attributable to such services has been offered to tax in the United States in accordance with the provisions of the relevant tax treaty.

18. Since these aspects require verification of factual evidence, we are of the view that the matter requires examination at the level of the Assessing Officer.

19. The grievance of the assessee originally arose on account of short grant of TDS credit while processing the return under section 143(1). It is well settled that credit of tax deducted at source is to be granted in accordance with section 199 of the Act read with Rule 37BA, subject to verification of the corresponding income and the details reflected in Form 26AS or other relevant records. Therefore, once the issue regarding taxability of the salary income is examined and determined, the Assessing Officer shall grant appropriate credit of TDS as reflected in Form-16 and Form 26AS, in accordance with law.

20. Considering the totality of facts and circumstances of the case, we deem it appropriate to set aside the issue relating to taxability of salary income and grant of TDS credit to the file of the **Jurisdictional Assessing Officer** for limited verification. The assessee is directed to produce necessary evidences before the Jurisdictional Assessing Officer to demonstrate that the salary income attributable to services rendered outside India has been offered to tax in the United States or is otherwise eligible for relief under the provisions of the India–USA DTAA.

21. The Jurisdictional Assessing Officer shall verify the evidences furnished by the assessee and decide the issue in accordance with law after providing adequate opportunity of being heard to the assessee. The Jurisdictional Assessing Officer shall also take into consideration the judicial

precedents relied upon by the assessee, including the decision of the co-ordinate bench cited before us, while adjudicating the issue afresh.

22. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05.03.2026

Sd/-	**Sd/-**
(SAKTIJIT DEY)	**(MAKARAND V MAHADEOKAR)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai, Dated 05/03/2026

KRK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai