

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

BEFORE

**SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 351/Del/2023
Asstt. Year: 2020-21

Piyush Mathur, 102, 1 st Floor, N Blk Renaissance Exotica, Jakkur Village, Yelahankahobl, North Taluka, Bangalore-560064, Karnataka. PAN AAYPM2759G	Vs.	ACIT, Circle Int. Tax 2(2)(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Piyush Kumar Mathur (Assessee)
Department by:	Shri Vizay B. Vasanta, CIT- DR
Date of Hearing:	19.07.2023
Date of pronouncement:	04.08.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 28.12.2022 of the Ld. Asstt. Commissioner of Income Tax, Circle Int. Tax 2 (2) (1) New Delhi ("**AO**") pertaining to Assessment Year ("**AY**") 2020-21.

2. The assessee has taken the following grounds:-]

"1. *DRP does not take the cognizance of our petition though filed in time*

2. *The order is infructuous and consequently unenforceable in law.*
3. *I am non-resident and my income earned outside India.*
4. *The salary income of Rs. 62.49.989/- is not liable for tax as salary income earned abroad and received abroad, hence not liable for tax.*
The section shown at the time of return was inadvertently mentioned as portal has no facility to show the income as such.
Thus, the above salary income earned abroad was reiterated many times.
5. *Our petition is to delete the addition of salary income of Rs. 62.49.989/- as it is accrued and arise outside India(Worked in South Sudan) and received in Dubai.*
6. *Detail petition is explained at page no. 24 & 25”*

3. The facts in brief are that the assessee is an individual. For the AY 2020-21, he filed his return in the status of NRI declaring salary income of Rs. 16,97,490/- from M/s. ONGC Videsh Ltd. for service rendered in South Sudan. His case was selected through CASS for scrutiny. During assessment proceedings, statutory notices were issued and served upon him. In response he submitted the requisite details.

4. The Ld. AO found that the assessee had claimed exemption of Rs. 62,49,989/- under section 10(10CC) of the Income Tax Act, 1961 (**the “Act”**) being tax paid by employer on non-monetary perquisite from salary of Rs. 84,24,780/- paid by the employer as per 26AS for the AY 2020-21. The assessee was show caused as to why salary claimed exempt under section 10(10CC) of the Act be not disallowed and taxed as income for the year as per the Act.

5. The assessee submitted explanation that he had received salary for service rendered in South Sudan as he was on assignment there and that salary received was claimed as exempt. He also stated that his salary is not taxable in India and that he had not claimed DTAA benefit. It was also his case before the Ld. AO that salary was received by him in Dubai bank

account and provided copy of bank statement. The Ld. AO perused Form 16 and found that the assessee has not received any perquisite under section 17(2) of the Act and that no tax was paid by the employer on behalf of the assessee. He, therefore held that benefit of section 10(10CC) is not available to the assessee.

6. The Ld. AO applied the provisions of section 9(1)(i) of the Act to the assessee's case and observed, inter alia that salary paid to the assessee by Indian Employer viz M/s. ONGC Videsh Ltd. whose management and control are in India is deemed to accrue or arise to him in India. Hence, it is taxable in India in the absence of information provided by the assessee that the salary income from Indian employer is included in return filed in Sudan and reconciliation with 26AS. The scope of double taxation is, therefore, also ruled out. Accordingly with aforesaid findings the Ld. AO, rejecting the assessee's claim of exemption of Rs. 62,49,989/- under section 10(10CC) added the same to his income in the proposed draft assessment order passed on 17.03.2022 under section 144C(1) r.w. section 143(3) of the Act.

7. The assessee filed objections before the Ld. Dispute Resolution Panel ("**DRP**") which was not entertained by the Ld. DRP, the objection filed before the Ld. DRP not being in accordance with section 144C(2)(b) of the Act and filed beyond the prescribed time limit. The Ld. AO therefore passed final assessment order on 28.12.2022 determining the total income of the assessee at Rs. 79,47,479/- including therein addition of Rs.62,49,989/-.

8. Aggrieved, the assessee is in appeal before the Tribunal. The assessee himself appeared before us. He submitted that he is a retired employee of ONGC. The dispute pertains to his NRI status for AY 2020-21. He stated that his stay outside India is for more than 180 days which is duly evidenced by his passport. He submitted extract of his passport in support of his claim according to which he was 222 days outside India during the previous year. He also relied on CBDT Circular No. 2 of 2021 dated 3rd March, 2021 where 60 days condition has been relaxed for Covid period. He pointed out that at

the time of assessment before the Ld. AO this circular was not available to him. He explained that salary was paid to him outside India (Sudan) in dollar for services rendered abroad. Supporting documents e.g passport and bank passbook were submitted before the Ld. AO. No income is deemed to accrue or arise to him in India under section 9(1)(i) as alleged by the Ld. AO. He, therefore, urged that the impugned addition be deleted. As to the claim of exemption under section 10(10CC) he submitted that it was due to the fact that the portal did not allow exemption of salary received abroad. Section 10(10CC) is inadvertently mentioned because of inability to file the return in Income Tax Portal.

9. The Ld. DR did not contradict the submission of the assessee. He had no objection to allow the status of the assessee as that of NRI.

10. We have considered the facts and circumstances of the assessee's case and perused the records. We are of the view that the assessee brought on record evidence to establish his NRI status which has altogether been ignored by the Ld. AO. In earlier years also his NRI status was accepted and assessment made accordingly. In our opinion, the assessee's claim of being non-resident in AY 2020-21 deserves to be accepted. Having observed so, it is directed that the Ld. AO shall complete the assessment considering the status of the assessee as a non-resident for the year under consideration.

11. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 4th August, 2023.

sd/-
(G.S. PANNU)
PRESIDENT

Dated: 04/08/2023

Veena

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	