आयकर अपीलीय अधिकरण "ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गाराव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.174/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2019-20)

Income Tax Officer Ward-2(1), International Taxation, Chennai.	**बनाम** / Vs.	**Shri Mani Rajesh** No.35 (Old No.23), Ranganathan Garden, Anna Nagar, Chennai-600 040.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AABPR-9043-F**		
(अपीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri B.V. Anil Kumar, (JCIT)-Ld.Sr. DR
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri S.P. Chidambaram & Shri Rajesh (Advocates)-Ld. ARs

सुनवाईकीतारीख**/Date of Hearing**	:	10-10-2023
घोषणाकीतारीख /**Date of Pronouncement**	:	06-11-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2019-20 arises out of the order of learned Commissioner of Income Tax (Appeals)-16, Chennai [CIT(A)] dated 17-11-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 27-09-2021. The grounds taken by the Revenue read as under:

1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.
2. The Ld. CIT(A) erred in observing that the assessee is a salaried employee with M/s. Master Card India Services Pvt. Ltd. during AY 2019-20 and was sent on a long-term international assignment to Singapore. During FY 2018-19, the assessee was on the

payrolls of M/s. Master Card India Services Pvt. Ltd. and also received salary from the company in India which establishes the employee-employer relationship. Since the salary is received in India and the assessee is on the pay rolls of Indian employer. Therefore, applicability of deeming provisions of section 9(1)(ii) of the Act will not apply once salary received in India is squarely covered by section 5(2) of the I.T.Act

3. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is right in holding that income earned by the assessee as salary from Indian employer is not taxable in India.

4. The Ld. CIT(A) erred in observing the fact that on reading of Article 15 with Article 25 of the DTAA between India and Singapore implies that DTAA relief, if any has to be given is by the resident country. The assessee is resident of Singapore and being non-resident in India, the assessee is not eligible for relief under Article 15 of DTAA between India and Singapore in India.

As is evident, the sole issue that arises for our consideration is taxability of foreign salary earned by the assessee during the year.

2. The Registry has noted delay of 20 days in the appeal, the condonation of which has been sought by the revenue. Considering the period of delay, the delay is condoned and the appeal is admitted for adjudication on merits.

3. The Ld. Sr. DR supported the assessment order and submitted that the assessee was non-resident and therefore, not eligible to claim the treaty benefit. The Ld. AR, on the other hand, relied on various judicial decisions rendered on similar facts and submitted that foreign salary has been offered to tax in Singapore and no credit of tax deducted at source in India has been taken by the assessee. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

Assessment Proceedings

4.1 During assessment proceedings, it transpired that the assessee was salaried employee with M/s. Master Card India Service Pvt Limited and was sent on Singapore on a long-term international assignment. During this period, the salary was paid by Indian employer and he remained on the payroll of its Indian Employer. The assessee received

gross salary of Rs.445.88 Lacs which was not offered to tax in India on the ground that no part of the services was rendered in India and the salary so received by him was already offered to tax in Singapore. However, Ld. AO maintained that the assessee did not shift its employer and was always on the payroll of Indian employer. The employer-employee relationship continued and the assessee was working at the direction of Indian employer only. Therefore, considering the provisions of Sec.15 r.w.s. 5(2), the salary would be taxable in India only and accordingly, Ld. AO show-caused the assessee.

4.2 The assessee submitted that it qualified to be resident of Singapore as per India-Singapore DTAA and therefore, the provisions of Article 15(1) would apply according to which the income so received would be taxable in Singapore only unless the employment was exercised in India.

4.3 The Ld. AO, upon combined reading of Article 15 and Article 25, held that DTAA relief was to be given by the resident country. In the instant case, the assessee was resident in Singapore and being non-resident in India, the assessee was not eligible for relief under Article 15 of the treaty. Accordingly, the salary so received by the assessee was brought to tax.

Appellate Proceedings

5.1 During appellate proceedings, the assessee relied on various judicial pronouncements to lay claim on the treaty benefit. The assessee also pointed out that its stay in India during this year was less than 60 days and therefore, it qualified to be non-resident during this year. In other words, the assessee qualifies to be resident of Singapore as per Article 4(1) of DTAA which was evidenced by tax residency certificate (TRC) issued by the Singapore tax Authorities. The copy of the same

was also furnished during appellate proceedings. In the said background, the assessee submitted that as per Article 15(1), the salary so received would be taxable in Singapore only. The assessee also referred to the provisions of Sec.90 which provide an option to be governed by more beneficial provisions. Another factor brought to the notice was that the salary was received in India from Indian entity for administrative convenience only. The salary cost was cross-charged by Indian entity to Singapore entity.

5.2 The Ld. CIT(A) concurred with assessee's submissions and allowed the claim of the assessee by observing as under: -

5.1 However, as seen from the facts emanating from the record and the evidence submitted by the appellant:
(a) The appellant is a tax resident in Singapore as per the TRC issued by Singapore Tax Authorities.
(b) The appellant is a non-resident in India.
(c) The appellant filed tax returns in Singapore
(d) The appellant has taken the support of Article 15(1) of India- Singapore DTAA which reads as under:-
"Subject to the provisions of Articles 16,18,19,20 and 21, 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 therefore may be taxed in that Other State".
5.2 In order to claim the above treaty benefit, appellant needs to satisfy the following conditions as stipulated under section 90(2) and 90(4) which are reproduced below:
Sec. 90(2) - Where the Central Government has entered into an agreement with the Government of any other country outside India or specified territory outside India as the case maybe, under sub-section (1) for granting relief of tax or as the case may be, avoidance of double taxation, then in relation to the assessee, to whom such agreement applies, the provisions of this Act shall apply to the extent they more beneficial to the assessee.
Sec. 90(4) - An assessee, not being a resident, to whom an agreement referred in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless (a certification of his being a resident) in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory).
5.3 As the above conditions are satisfied, it is seen that the appellant is eligible to claim relief on the salary received in India of Rs.4,12,38,268 as the above said salary income of the appellant had accrued outside India by way of his employment in India and on the terms of which, he has been given a long-term assignment. Moreover, the appellant received the remuneration in India for the employment exercised in

Singapore and as the income had already suffered tax in Singapore, the provisions of Article 15 to claim relief under DTAA between India and Singapore is applicable. Thus, the only substantive ground of appeal raised in point no.1 (1.1 to 1.5) by the appellant is allowed. In result, the appeal stands **allowed.**

Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

6. From the facts, it emerges that the assessee was employed with Indian entity but sent on a foreign assignment. Thought the salary has been received in India for administrative reasons, the employment has been exercised in Singapore only. The assessee is non-resident in India and resident of Singapore which is evidenced by Tax Residency certificates as furnished by the assessee. It is also the submission that this income has already been offered to tax in Singapore and the assessee has paid taxes thereon. It has further been stated that no credit of Tax paid in India has been taken in Singapore. On these facts, the assessee, in our considered opinion, would be entitled for the benefit of Article 15 of relevant DTAA which provides that the salary would be taxable in the country wherein the employment is exercised. The same would be subject to verification by Ld. AO that this income has already been offered to tax in Singapore and the assessee has paid due taxes thereon. The Ld. AO would also verify that no credit of Taxes paid in India has been taken by assessee in Singapore. The corresponding grounds stand disposed-off accordingly.

7. We further find that similar view has been expressed by Chennai Tribunal in **Shri Kanagaraj Shanmugam vs. ITO (ITA No.2936/Chny/2018 dated 07.09.2022)** as under: -

> **Our findings and Adjudication**
> 5. From the fact it emerges that the assessee has stayed in India for 63 days during this year and his status, as per law, is non-resident. The assessee has

worked in India for 21 days and offered proportionate salary to that extent to tax. For remaining period, the work has been performed in UK though the salary has been received in India from existing employer. It is also a fact on record that this salary, for work performed in UK, has been offered to tax in UK which is evident from Tax Returns filed in UK. The assessee submit the as per Article 16(1) of DTAA, this income would be taxable in UK only. Alternatively, the assessee relies on the provisions of Sec.15 read with Sec.5(2) and Sec.9(1)(ii) which provides for taxability of salary on accrual basis and not on receipt basis. However, Ld. CIT(A) has held that the assessee would not be eligible for the benefit of DTAA since DTAA relief is to be given by resident country which is UK in the present case.

6. We find that an identical issue has been addressed by coordinate bench of Chennai Tribunal in **Shri Paul Xavier Antonysamy V/s ITO (ITA No.2233/Chny/2018 dated 28.02.2020).** In this decision, the bench has held that the provisions of Sec.5(2) are subjected to other provisions of the Act. The regular salary accrued to any assessee is chargeable to tax in terms of Sec.15(a). Even as per the provisions of Sec.9(1)(ii), salary income could be deemed to accrue or arise in India only if it is earned in India in respect of services rendered in India. The bench, reading down Article-1 and Article-15 of India-Australia DTAA, held that Treaty benefit shall be applicable to persons who are residents of both India as well as Australia. Therefore, the contention of the revenue that the assessee being a non-resident and hence treaty benefit cannot be extended to assessee, is incorrect. Accordingly, it was held by the bench that the salary so earned for work performed in Australia would be taxable in Australia. The case law of Swaminathan Ravichandran V/s ITO (ITA No.2911/Mds/2016 dated 05.08.2016) was held to be factually distinguished on the ground that in that case the assessee was claiming foreign tax credit relief for taxes paid on doubly taxed income which was not the case in that appeal. In para-7, the bench found the issue to be covered in assessee's favor by various judicial precedents including the decision of Hon'ble Karnataka High Court in DIT V/s Prahlad Vijendra Rao (198 Taxman 551); decision of Hon'ble Bombay High Court in CIT V/s Avtar Singh Wadhawan (247 ITR 260); decision of Hon'ble Calcutta High Court in Sumanabandyopadhyay V/s DDIT (TS-281-HC-2017) as well as CBDT Circular No.13/2017 dated 11/04/2017.

7. We find that facts are pari-materia the same before us and the ratio of this decision is squarely applicable to the present case. Therefore, we would hold that salary income as accrued to the assessee for work performed in UK would not be taxable in India. However, the salary received for work performed in India would be taxable in India. Accordingly, we direct Ld. AO to re-compute the income of the assessee. The above proposition is also supported by the fact that upon perusal of UK tax return, it could be seen that the assessee has offered earnings from employment for£24184 on net basis which has been tax grossed up for £6046. This is in view of the fact that OFSSL has paid provisional payment of £9062 to UK revenue authorities since the employer has undertaken to meet the UK income tax liability arising from employee's earnings in UK. Accordingly, the assessee has claimed refund of £3016. On the basis of the above, it could be seen that separate tax payment has been made by OFSSL to UK revenue authorities to discharge the tax liability of the assessee in that country.

8. The assessee has also placed on record Tax Residency Certificate (Page nos. 192-193 of paper book). As per this certificate, the assessee has claimed relief for foreign earning not taxable in UK for £7952. The same shall be considered by

> Ld. AO while computing the quantum of income taxable in India as directed by us in preceding para-7.
> 9. The appeal stands partly allowed in terms of our above order.

In the above decision, we have held that salary income as accrued to the assessee for work performed in a foreign jurisdiction would not be taxable in India whereas the salary received for work performed in India would be taxable in India. The benefit of DTAA would be available to the assessee as per the decision of coordinate bench of Chennai Tribunal in **Shri Paul Xavier Antonysamy V/s ITO (ITA No.2233/Chny/2018 dated 28.02.2020)** wherein it was held by the bench that the provisions of Sec. 5(2) are subjected to other provisions of the Act. The regular salary accrued to any assessee is chargeable to tax in terms of Sec. 15(a). Even as per the provisions of Sec. 9(1)(ii), salary income could be deemed to accrue or arise in India only if it is earned in India in respect of services rendered in India. The bench, reading down Article-1 and Article-15 of India-Australia DTAA, held that Treaty benefit shall be applicable to persons who are residents of both India as well as Australia. Therefore, the contention of the revenue that the assessee being a non-resident and hence, treaty benefit cannot be extended to assessee, is incorrect. Accordingly, it was held by the bench that the salary so earned for work performed in Australia would be taxable in Australia. The case law of **Swaminathan Ravichandran V/s ITO (ITA No.2911/Mds/2016 dated 05.08.2016)** was held to be factually distinguishable.

8. We find that similar fact exists before us in the present appeal. Therefore, we confirm the adjudication of Ld. CIT(A) subject to aforesaid verification by Ld. AO.

9. The appeal stand partly allowed for statistical purposes.

Order pronounced on 6th November, 2023

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्याय□यिक सदस्य/JUDICIAL MEMBER	**लेख□सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 06-11-2023
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT 4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF