

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.3353/M/2023
Assessment Year: 2018-19**

&

**ITA No.3352/M/2023
Assessment Year: 2018-19**

Shri Sharangpani Dinkar Pant, 402, Bhoomi Oscar, Plot No.16/17, Sector-9, Ghansoli, Navi Mumbai - 400 701 PAN: AIPPP0288E	Vs.	ITO IT 3(3)(1), International Tax Ward- 3(3)(1), Air India Building, Mumbai – 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Balaji V, A.R.
Revenue by : Shri Anil Sant, D.R.

Date of Hearing : 13 . 02 . 2024
Date of Pronouncement : 26 . 02 . 2024

O R D E R

Per : Amarjit Singh, Accountant Member:

Both these appeals are filed by the assessee for the same assessment year i.e. 2018-19 against the two different orders of the Ld. CIT(A) passed under section 250 of the Act on the common issue of allowability of TDS credit of Rs.17,59,258/- which was not allowed by the AO vide order passed under section 154 of the Act and under section 143(1) of the Act. The assessee vide ITA

No.3352/M/2023 has raised the following grounds before us:

“Ground No.1

On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals - 57 Mumbai [CIT (A)] has erred in not directing the Ld. Jurisdictional Assessing Officer (JAO) to grant credit of Tax Deducted at Source (TDS) of Rs.17,59,258 as claimed in the Return of Income (ROI) and reflected in Form 26AS as against TDS credit of Rs.1,28,924 allowed in the intimation under Section 143(1) of the Income Tax Act, 1961 (the Act).

It is prayed that the position taken by the Ld. Centralised Processing Unit (Ld. CPC) in the Intimation under Section 143(1) of the Act as well as by the Ld CIT (A) is contrary to the position taken by the Ld JAO in Appellant's own case in the Assessment Order under Section 143(3) of the Act for the immediately succeeding year Le AY 2019-20 wherein the Returned Income has been accepted and the TDS credit as claimed in the ROT and reflected in Form 26AS has been granted. It is, therefore, prayed that the Ld. JAO be directed to allow credit of TDS of Rs. 17,59.258 as claimed in the ROI and reflected in Form 26AS as against TDS credit of Rs. 1,28,924 allowed in the intimation under Section 143(1) of the Act.

Ground No. 2:

On the facts and circumstances of the case and in law, the Ld CIT (A) erred in not directing the Ld. JAO to allow the TDS credit of Rs. 17,59,258 as required by Section 143(1)(c) of the Act which provides that the amount of refund due to the assessee is required to be determined after adjustment of tax as computed in Section 143(1)(b) of the Act by the TDS

It is prayed that the order of the Ld. CIT (A) is contrary to the decision of the Hon'ble Supreme Court in the case of PILCOM v. CIT 425 ITR 312 (SC) as well as the following Orders of the Hon'ble ITAT:

Ernst & Young Merchant Banking Services LLP v. ADIT, CPC (ITA No. 2333/Mum/2022)

DCIT v. Escorts Ltd. [2007] 15 SOT 368 (Del.)

Arvind Murjani Brands (P.) Ltd. v. ITO [2012] 137 ITD 173 (Mum.)

It is, therefore, prayed that the Ld. JAO be directed to allow credit of TDS of Rs. 17,59,258 as claimed in the ROI and reflected in Form 26AS as against TDS credit of Rs. 1,28,924 allowed in the intimation under Section 143(1) of the Act.

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.”

2. The appeal vide ITA No.3353/M/2023 is arisen out of the order of the Ld. CIT(A) pertaining to the order passed under section 154 of the Act by the CPC Bangalore dated 14.07.2020 and the other appeal vide ITA No.3352/M/2023 is also arisen out of the order of the Ld. CIT(A) pertaining to the order passed under section 143(1) of the Act passed by the CPC Bangalore dated 05.11.2019 on the similar grounds of appeal. Since common issue on identical facts is involved in both these appeals filed by the assessee therefore for the sake of convenience both these appeals are adjudicated together.

3. The fact in brief is that the assessee is a non resident and has filed e-return of income for the assessment year 2018-19 on 31.08.2018 declaring total income of Rs.1,54,310/-. The CPC Bangalore has processed the return filed under section 143(1) of the Act on 05.11.2019. In the return filed the assessee has claimed refund of Rs.17,70,270/- on account of TDS of Rs.17,59,258/- and self assessment tax of Rs.11,007/-, since there was no tax payable by the assessee as per the information provided by the assessee in the return filed. However, the CPC vide intimation under section 143(1) dated 31.08.2018 has computed refund amount payable to the assessee to the amount of Rs.1,41,814/- as against refund amount claimed by the assessee to the amount of Rs.17,70,270/-.

4. The aggrieved assessee filed appeal before the Ld. CIT(A) against short grant of tax deducted at source of Rs.16,30,334/- and non grant of self assessment tax of Rs.11,007/-. However, the

Ld. CIT(A) has dismissed the appeal of the assessee on the ground that identical issue has been adjudicated by him in the appeal filed by the assessee against the order of AO-CPC under section 154 dated 14.07.2020.

5. We have perused the order of the Ld. CIT(A) dated 27.07.2023 and found that the Ld. CIT(A) has dismissed the appeal of the assessee holding that the assessee has not filed tax resident certificate and copy of the agreement between the assessee and the employer company.

6. During the course of appellate proceedings before us the Ld. Counsel vehemently contended that the assessee was a salaried individual employed with Nilsen (India) Pvt. Ltd. and for the period 01.08.2016 to 31.07.2019 he had rendered services in Sri Lanka. Since the assessee was non resident during the previous year under consideration therefore as per the provision of section 6 of the Act only the salary income for the number of days spent in India for working with the Nilsen (India) Pvt. Ltd. of 23 days to the amount of Rs.3,91,162/- was offered to tax in India and the remaining salary which was earned for working in Sri Lanka to the amount of Rs.56,78,097/- had been offered to tax in Sri Lanka. In support of his contention the Ld. Counsel has filed paper book comprising copies of document and detail of submission made before the lower authorities. The assessee has also filed copy of tax residency certificate from the department of Inland Revenue, Sri Lanka and tax certificate -2018 dated 04.07.2018 from Department of Inland Revenue.

7. On the other hand, the Ld. D.R. relied on the order of lower authorities.

8. Heard both the sides and perused the material on record. Without reiterating the fact as elaborated above, the Ld. CIT(A) has dismissed the appeal of the assessee stating that the assessee has not filed tax residency certificate and the copy of agreement between the assessee and the employer company. However, we have perused the submissions of the assessee filed before the Ld. CIT(A) during the course of appellate proceedings before him. The relevant extract of the submissions furnished by the assessee before the Ld. CIT(A) is reproduced as under:

"Short Grant of credit for Tax deducted at Source (TDS) of Rs. 1,630,334/- and non-grant of e-Assessment Tax (SAT) of Ra. 11,007/-

I was a Non Resident ('NR') for AY 2018-19 as per Section 6 of the Act. I had filed my Return Of Income (ROI) declaring income of Rs. 1,54,310. In the ROI, I had claimed credit for TDS of Rs. 17,59,258 and SAT of Rs. 11,007 as reflected in Form 26AS. In the Intimation under Section 143(1) of the Act, the Ld. CPC accepted the Returned Income of Rs. 1,54,310. However, the Ld. CPC granted credit for TDS of Rs. 1,28,924 only as against TDS of Rs. 17,59,258 and did not grant credit for SAT of Rs. 11,007 claimed in the ROI as reflected in my Form 26AS. Further, I had filed a rectification application in response to the said intimation. I observed that the rectification request was rejected by CPC as per order dated 14 July 2020 under Section 154 of the Act. The only grievance in this appeal is about short grant of TDS of Rs. 1,630,334 (Rs. 17,59,258 | less Rs. 1,28,924) and non-grant of SAT of Rs. 11,007 in the order under Section 154 of the Act. Copy of the Intimation issued under Section 143(1) of the Act is at Paperbook page nos. 5 to 15, Rectification Order under Section 154 of the Act is at Paperbook page nos. 4 to 4 and Form 26AS is enclosed herewith as Paperbook page nos. 16 to 19).

The action of the Ld. CPC of allowing short grant of TDS is not in accordance with the decision of the Hon'ble Supreme Court in the case of PILCOM v CIT 425 ITR 312 (SC) wherein the Hon'ble Apex Court has held that the obligation to deduct tax under Section 194E is not affected by the relevant treaty. In case of treaty benefit, the taxpayer is eligible for the refund of the tax along with interest. This decision supports the view that even if the income on which tax is deducted, is

not taxable in India, credit is to be given for the TDS on such income and the excess TDS is to be refunded to the taxpayer. The relevant extract from the decision is reproduced below:

"The obligation to deduct Tax at Source under Section 194E of the Act is not affected by the DTAA and in case the eligibility to tax is disputed by the assessee on whose account the deduction is made, the benefit of DTAA can be pleaded and if the case is made out, the amount in question will always be refunded with interest (emphasis supplied)

As mentioned earlier, I was a NR in India as per Section 6 of the Act. Further, I was a Resident of Sri Lanka (SL) for the period of my assignment as per the domestic tax laws of SL. As per Article 15(1) of the India-SL Double Taxation Avoidance Agreement ('DTAA'), income of a Resident of SL, for services rendered in SL, is taxable only in SL. Therefore, in my ROI, I had not offered to tax salary income of Rs. 56,78,097 for services rendered in SL. As my returned income has been accepted in the intimation (i.e. the case made out by me of not offering salary income for services rendered in SL to tax in view of Article 15(1) of India-SL DTAA read with section 90 of the Act and read with CBDT circular 333 dated 2 April 1982 has been accepted in the intimation), short grant of TDS in the intimation was not in accordance with the decision of Hon'ble Apex Court in PILCOM (supra) and therefore the Ld. CPC should have allowed the said credit for TDS of Rs. 17,59,258 as well SAT of Rs. 11,007 in the order under Section 154 of the Act. As the action of the Ld. CPC is contrary to the decision of the Hon'ble Apex Court, I request your Honours to direct the Ld. Jurisdictional Assessing Officer to allow credit for TDS of Rs. 17,59,258 and SAT of Rs. 11,007 as reflected in Form 26AS as against TDS credit of Rs. 1,28,924 allowed in the Intimation as well as Rectification Order."

9. After perusal of the aforesaid submission made by the assessee before the Ld. CIT(A) it is evident that the assessee has categorically explained that he was a non resident Indian as per section 6 of the Act. He also explained that he had not offered to tax salary income of RS.56,78,097/- for services rendered in Sri Lanka and therefore requested for granting credit of TDS made on the impugned salary which was not taxable in India and the self assessment tax paid by the assessee since the income earned in India was below the taxable limit. The assessee has also submitted that income of a resident of Sri Lanka as per Article 15(1) of the India–Sri Lanka Double Taxation Avoidance Agreement (DTAA)

is taxable only in Sri Lanka. However, from the findings of the Ld. CIT(A) it is noticed that without disproving the above material fact the Ld. CIT(A) has dismissed the appeal of the assessee. The Ld. Counsel also submitted that during the course of appellate proceedings the Ld. CIT(A) has never asked the assessee to furnish the copy of resident certificate. In this regard, we find that the Ld. CIT(A) has not at all referred in his order that the assessee was asked to produce the copy of tax resident certificate. In the light of the above facts and circumstances, we find that the lower authorities have not brought any material on record to disprove the material fact that the assessee was a non resident during the year under consideration and had rendered services outside India from 01.08.2016 to 31.07.2019 and he was sent to Sri Lanka by Nilsen Company (India) Pvt. Ltd. As per article 15(1) of India–Sri Lanka DTAA salary income earned by the resident of Sri Lanka for employment in Sri Lanka is taxable only in Sri Lanka. The relevant clause of article 15(1) of India–Sri Lanka DTAA is reproduced as under:

"1. 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 therefrom may be taxed in that other State."

10. Further, it is also evident from the copy of tax residency certificate dated 23.12.2019 submitted by the assessee from Department of Inland Revenue Sri Lanka certifying that the assessee was a resident in Sri Lanka for the assessment year 2017-18 within the meaning of Double Taxation Avoidance Agreement between Sri Lanka and India. Further vide tax certificate-2018

dated 04.07.2018 the Department of Inland Revenue Sri Lanka has also certified that the assessee has earned gross remuneration of LKR 23,350,192/- as per this tax certificate issued to “The Nilsen Lanka Pvt. Ltd.” After considering the above said facts and information, the AO is directed to allow the credit of TDS amount and self assessment tax to the assessee after examination of the copy of tax residency certificate and copy of tax certificate as referred above submitted by the assessee. Therefore, both the appeals of the assessee are allowed for statistical purposes.

11. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 26.02.2024.

**Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.02.2024.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.