

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Aakash Deep Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6121/Del/2018 : Asstt. Year: 2013-14

ITA No. 6122/Del/2018 : Asstt. Year: 2014-15

Natasha Chopra, 192/40, GF, Chittranjan Park, New Delhi-110019	Vs	DCIT, Circle-17(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ADPPC2225D		

**Assessee by : Sh. Satish Aggarwal, CA
Sh. Dharender Kumar, CA
Revenue by : Sh. N. K. Bansal, Sr. DR**

Date of Hearing: 12.05.2022	Date of Pronouncement: 30.06.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the Assessee against the orders of the Id. CIT(A)-6, Delhi dated 20.07.2018.

2. Since, the issues involved in both appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 6121/Del/2018, following grounds have been raised by the assessee:

"(1) That the order passed by the Learned Commissioner of Income Tax (Appeals) 6 is arbitrary, biased and bad in law in so far as it confirms the additions made by the Assessing Officer.

(2) That the Learned CIT (Appeals) has grossly erred in confirming the action of the Assessing Officer in including income from rented properties held by the appellant in Australia and UK, in her Indian income despite her having declared such rental income in her income tax returns filed in U.K and Australia as under:

- i) For property owned in U.K at No. 3, Alexander House, London, W21SF, England of Rs. 9,55,136/-.*
- ii) For property at 5, Hunter Street, Sydney, Sydney NSW 2000, Australia and D 2103, Quay West, The Rock, Sydney 2000, Australia for Rs. 17,25,674/- .*

(3) That the Learned CIT (Appeals) has grossly erred in confirming the action of the AO in making an addition of Rs. 26,80,810/- under the head Income from House Property for rental income earned by her from properties held in U.K. and Australia.

(4) That the Learned CIT (Appeals) has grossly erred in disregarding the provisions of section 90(2) while purportedly invoking the provisions of section 90(3) and in confirming the action of the Assessing Officer of including income from property held abroad by the assessee in her assessable income in India.

(5) That the Learned CIT (Appeals) has grossly erred in confirming the action of the Assessing Officer in including the income from properties held abroad in her income in India by incorrectly observing that the same was to be included in view of income from house property held abroad being not taxable in the respective countries and that the provisions of section 90(2) of the Act and Double Taxation Avoidance Agreement (DTAA) were not applicable in respect of Income from House Property (Refer para 4.1.4 page 15 of CIT (Appeals) order).

(6) That the Learned CIT (Appeals) has grossly erred in confirming the action of the Assessing Officer in including income from properties held abroad in her Indian income disregarding the provisions of DTAA entered into between two sovereign states by applying the unilaterally inserted provision in section 90(3) purportedly empowering the Indian Central Government to define any term not defined either in the Indian Income Tax Act or in the respective DTAA which is against international jurisprudence.

(7) That the Learned CIT (Appeals) has grossly erred in confirming the action of the Assessing Officer that the income from properties held abroad was not taxable under the Income Tax Act of the respective countries and that the facts of the case were not covered within the scope of the provisions of section 90(1)(a)(i), 90(1)(a)(ii) and 90(1)(b) and hence provisions of section 90(2) and the DTAA shall not be applicable in respect of income from house property.

(8) That the Learned CIT (Appeals) has grossly erred in directing the assessing officer to verify the payment of interest of Rs. 27,25,126/- incurred on housing loan availed in Australia in spite of the fact that the appellant had furnished requisite documentary evidence for payment of interest before the assessing officer a copy of which was furnished during the appellate proceedings in which no discrepancy was noticed by the AO and CIT(A) herself."

4. The assessee is a Director in N&N Chopra Consultants Private limited and has derived salary and rental income from this company. During the year under consideration, the assessee has also earned income from house property and income from other sources being bank interest. The assessee was also earned income from house property situated in Australia and United Kingdom.

5. The pertinent points required for adjudication of the issue are that,

6. The assessee is a tax resident of India received rental income from the properties outside India held by her in England and Australia and declared the rental income received by her in her return of income filed in Australia and United Kingdom. The AO has brought the amount of the rental income to tax notwithstanding the fact that the assessee has declared rental income from properties situated in England and Australia.

7. While making the addition, the AO relied on the Article 6(1) of DTAA with UK which reads "*income from immovable property may be taxed in contracting state in which such property situated*". The AO referred to the Notification No. 91/2008 dated 28.08.2008 and construed the words "may be taxed" as "shall be taxed"

8. We have gone through the provisions of Section 90(1) and Section 90(3), and the notification of the CBDT and impact of MLIs.

Agreement with foreign countries or specified territories.

90. (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—

(a) for the granting of relief in respect of—

(i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, 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 are more beneficial to that assessee.

(2A) [***]

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the

context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

9. Thus, we find that in the absence of an express provision, the right of the resident country to tax its residents cannot be taken away under the DTAA. Therefore, the expression "may be taxed" cannot be construed to mean "shall be taxable only in the resident state", unless it is expressly stated. Provisions of Section 90(1)(a)(i) is clearly applicable to the facts of the case.

10. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 30/06/2022.

Sd/-

(Aakash Deep Jain)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 30/06/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR