

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, D: NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.- 4037/Del/2025
[Assessment Year: 2017-18]**

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| Sachin Saxena, F-1707, Shriram Greenfields, Bommenahalli Village, Bidarahalli Hobli, Near Prestige Tranquility, Mundur B.O., Bommenahalli, Bangalore Rural, 560049, Karnataka, Bangalore-560049. | Vs | DCIT/ACIT,(International Taxation) Noida, Uttar Pradesh, 201301. |
| PAN- CEWPS2075C | | |
| Assessee | | Revenue |

| | |
|-------------|----------------------------------|
| Assessee by | Ms. Preeti Goel, Adv. |
| Revenue by | Shri Vikram Singh Sharma, Sr. DR |

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|------------------------------|-------------------|
| Date of Hearing | 13.04.2026 |
| Date of Pronouncement | 29.05.2026 |

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order dated 24.04.2025 of the Commissioner of Income Tax, (Appeal), Noida-2, [hereinafter referred to as the ‘Ld. CIT(A)] arising out of the Assessment Order dated 21.12.2019 passed under section 143 (3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘the Act’)

by the DDIT / ADIT, International Taxation, Noida, (hereinafter referred to as the 'AO') pertaining to Assessment Years (A.Y.) 2017-18.

2. Brief facts of the case: During the course of assessment proceedings, it was noticed by the AO that the assessee had filed his original return of income on 23.07.2017 declared income of Rs. 23,94,420/- from Salary and House property but later on, the assessee revised his ITR and showed loss of Rs. 1,63,489/- In this regard, notice u/s 142(1) alongwith questionnaire dated 04.12.2019, 14.12.2019 and 19.12.2019 were issued by the AO and served upon the assessee, in which it was specifically asked to furnish details regarding large refund claim and showing Nil income in revised ITR alongwith supporting documents and evidences. The AO noted that the assessee in his submission made through email stated that he was sent on international assignment to the UK and was exercising employment in the UK and claimed exemption under Article 16 of India-UK DTAA of Rs. 27,10,163 and the balance salary income of Rs 35,506/- was offered to tax in the revised ITR. Thereafter, a notice dated 19.12.2019 was issued and served upon the assessee, through which the assessee was asked to explain the reasons for difference in revised ITR in India and income shown in UK and why the difference may not be added back to your income. The AO noticed the assessee made his online submission, in which he stated that:-

"During the period of international assignment, my payroll remained in India and the employer withheld Income Tax on the salary received by me in India for the period I

April 2016 to 31 March 2017 for the employment exercised in UK for EY, LLP, UK. A copy of the Form 16 taxes withheld is enclosed as Annexure-2.

As per details filed in my submission dated 7 October 2019. I am entitled to exemption of my salary income in India as I am eligible to claim the benefit of Article 16(1) of the India- UK DTAA.

As per Article 16(1) of India-UK DTAA, salaries wages and remuneration derived by a Resident of UK shall be taxable only in UK if the employment is exercised in the UK.

Since my employment is exercised in UK and I was Resident of UK during FY 2016-17 (Tax Residency Certificate (TRC) has been duly submitted before your good self vide submission dated 6 December 2019), my salary income received in India is exempt from tax in India.

It is pertinent to mention that the exemption of my salary income in India is Independent of and unrelated to taxability of the salary income in UK as per domestic tax laws of UK."

2.1 The submission of the assessee was not found acceptable/tenable by the AO in the light of section 5(2)(a) of the Income Tax Act, 1961 which discusses about scope of total income and which was reproduced by the AO as below-

"Section 5(2): Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever sources derived which -

1. is received or deemed to be received in India in such year by or on behalf of such person."

2.2 Further the AO noticed that during the assessment proceedings, in his reply assessee submitted copy of UK ITR for A.Y 2017-18 in which income from salary was 12151 (GBP) and the AO further noted that the conversion of UK salary in INR comes out to Rs. 9,84,231 (1 GBP= Rs. 81). In his original return the assessee had shown income from salary of Rs. 27,45,669 and in revised return income from salary shown was Rs. 35,506. Accordingly, the reduction of Income from salary

amounting to Rs. 17,25,932/- [Rs. 27,45,669- (9,84,231+35,506)] was disallowed and was added back to the total income of the assessee by the AO.

3. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee. The relevant extracts of the said order are reproduced as under:

“5.1.3 As per above reproduced submission the appellant has claimed that total income of Rs. 10,84,068/- was taxed in UK after allowing deduction of Per-Diem of Rs. 16,17,724 as claimed exempt in UK. However, on perusal of the UK tax return submitted by the appellant, it is seen that no such amount was claimed exempt by the appellant in UK tax return. The appellant declared Rs. 10,48,562/- equivalent to 12,151£ as salary income in UK tax return. The appellant has out of this amount further claimed benefit of deduction of 11,000£ as personal allowance in UK tax return. Thus, the taxable income reported by the appellant in UK tax return was 1,151£ only. Hence, it is inferred that the appellant has nowhere mentioned the per-diem allowance in UK tax return.

5.1.4 During the appeal proceedings, the appellant also submitted copy of Form 16 issued by the employer of the appellant and copy of assignment letter wherein terms and conditions are mentioned for rendering services in UK. On perusal of assignment letter, it is noticed that the employer has clearly mentioned that per-diem allowances will be in the currency of host country and are subject to tax. It is further noticed that Form 16 issued by the employer does not show the payment of perquisites/reimbursement or per-diems to the appellant. As per Form 16, payment of Rs. 27,67,269/- has been made to the appellant as salary as per the provisions contained in section 17(1) of the Act. Furthermore, despite being specifically asked, the appellant has not submitted any form or certificate issued by the employer in UK or by UK tax Authorities to substantiate the total payment received by the appellant in UK

5.1.5 Looking into the totality, all the facts are against the appellant's claim that he had offered the total income as received in India in UK tax return. If appellant's claim is assumed to be correct for an instance that total income of Rs. 27,67,269/- received by the appellant in India includes per diem of Rs. 16,17,724/- which are exempt in UK, the appellant should have claimed such exemption or made mention of same in UK tax return, as per diem payments are not automatically exempt from tax. Taxability of per-diem depends on what the payment is for and how its handled. The appellant was required to declare the payment received against per-diem in UK tax return and subsequently claim the eligible amount as exempt.

5.1.6 In view of the above discussion, it is held that the appellant failed to substantiate his claim that income earned by him was fully offered to tax in UK. In this backdrop, it is construed that the appellant neither disclosed the full receipts/salary in UK tax return nor in Indian Income Tax Return. Hence, the addition made by the AO in assessment order dated 21.12.2019 is upheld.”

(emphasis supplied by us)

4. Aggrieved with the said order, the assessee is in appeal before us, on the following grounds of appeal.

“1. The Hon'ble CIT(A) in the facts and circumstances of the case and in law erred in issuing the impugned Appeal Order dated 24 April 2025 under Section 250 of the Act disallowing the exemption of INR 17,25,932 claimed by the Appellant under Article 16(1) of the India-UK Double Taxation Avoidance Agreement (DTAA) read with Section 90 of the Act.

2. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred in disregarding the facts, documentary evidence, statutory provisions and judicial precedents cited in support of the exemption claimed under Article 16(1) of the India-UK DTAA vide submissions dated 26 August 2022, 20 September 2023, 18 October 2024 and 13 December 2024.

3. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred in not granting an opportunity of hearing to the appellant and issued the impugned order in violation of the principles of natural justice.

4. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred in disallowing the exemption under Article 16(1) of the India-UK Double Taxation Avoidance Agreement (DTAA) read with Section 90 of the Act merely on the ground that the appellant failed to substantiate his claim that income earned by him for services provided in UK was fully offered for tax in UK.

Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may be thus granted. The Appellant may kindly be given an opportunity of being heard as per the principles of natural justice.

The Appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of appeal, to enable the Hon'ble Income-tax Appellate Tribunal decide the appeal as per law.”

5. During the course of hearing the Ld. AR submitted that a reconciliation of the income offered for tax as per the UK Tax Return with total income/payments received in India and UK was filed before the Ld. CIT (A) vide letter dated 12.12.2024 (copy placed at 154 to 156 of the paper book) and stated that as per the said reconciliation the entire salary income as received in India was offered for tax in UK except for the bonus of Rs. 65,477/- received on account of non-working UK days. The relevant extracts of the said submissions before the Ld. CIT (A) are reproduced as under

'Reconciliation of the income offered for tax in UK tax return with the total income/payments received in India and UK both.

A reconciliation of the salary income received in India and income offered for Tax as per the UK tax return is as under: -

| <i>Particulars</i> | <i>Amount Taxed in India (in INR)</i> | <i>Amount Taxed in UK (in INR)</i> | <i>Amount Taxed in UK (in GBP)</i> |
|---|---------------------------------------|------------------------------------|------------------------------------|
| <i>Salary Income</i> | <i>27,67,269</i> | <i>27,67,269</i> | |
| <i>Less-Per-diem claimed as exempt in UK</i> | <i>-</i> | <i>16,17,724</i> | |
| <i>Gross Taxable Income</i> | <i>27,67,269</i> | <i>11,49,545</i> | |
| <i>Less-Bonus not taxed in UK (Non-UK workdays)</i> | | <i>65,477</i> | |
| <i>Net Taxable Income</i> | <i>27,67,269</i> | <i>10,84,068</i> | <i>12,151</i> |

| | | | |
|---|---|-----------|---|
| <i>Less- Exemption Claimed in India under Article 16(1) of India -UK DTAA</i> | 27,10,163 | - | - |
| <i>Total Taxable Income</i> | 57,106 | 10,84,068 | 12,151 |
| <i>Less- Standard Deduction in India</i> | 21600 | - | - |
| | 35,506 (<i>As per Revised India Tax Return</i>) | 10,84,068 | 12,152* (<i>As per UK Tax Return</i>) |

Please note that as mentioned in the above reconciliation, entire salary income as received in India is offered for tax in UK except for the bonus of INR 65,477 received on account of non-working UK days.

"Reference for the amount taxed in UK can be drawn from the Page no. 2 of schedule of Remuneration of UK Tax Return attached as Annexure 3.

The following documents are enclosed for your reference in this regard: -

- 1. Copy of Form 16 (Annexure 2).*
- 2. Copy of UK Tax Return (Annexure 3) (Please refer schedule to the Return).*
- 3. Copy of Assignment Agreement (Annexure 4)."*

5.1 Further, the Ld. AR submitted that the copy of the UK Tax return of the assessee was placed on page no. 7-23 of the paper book and the computation of income was placed at page no. 22 and 23 of the paper book , which showed that the assessee had offered a sum of 12,151/-,(sterling value) equivalent to Rs. 10,84,068/- as his taxable income in UK.

6. On the other hand, the ld. Sr. DR supported the orders of the authorities below.

7. We have heard both the parties and perused the material available on record.

In this case, during the year the assessee was an employee of Ernst & Young LLP, INDIA and was assigned to United Kingdom to work with Ernst & Young, UK from 01.04.2016 to 31.03.2017. The copy of the said assignment agreement for the said employment is placed at page no. 1-6 of the paper book. Further, the assessee had stayed in India for less than 60 days during the financial 2016-17 and accordingly the assessee qualified as a non-resident in India for the AY 2017-18 as per Explanation to 6 (1) of the Act. Further, the assessee has filed a copy of the passport of the assessee evidencing the stay details in India at page no. 26-57 of the paper book in support of his non-resident status. The assessee also filed a copy of Tax Residency Certificate of the UK issued to the assessee for the period 06.04.2016 to 05.04.2017 by HM Revenue and Customs placed at page no. 95 of the paper book.

7.1 In this case, the only dispute is with respect to taxability of Rs. 16,17,724/- received as per-diem by the assessee in India. In this case, it is undisputed that the amount of Rs. 16,17,724/- has been paid to the assessee by virtue of his assignment with Ernst & Young UK during the period in which the assessee was a non-resident. In this regard, Article 16 of India UK Double Taxation Avoidance Agreement (DTAA) regarding the taxability of salary is reproduced as under :

ARTICLE 16

Dependent personal services

1. Subject to the provisions of Article 17 (Directors' fees), 18 (Artistes and athletes), 19 (Governmental remuneration and pensions), 20 (Pensions and annuities), 21 (Students and trainees) and 22 (Teachers) of this Convention, 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.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall not be taxed in that other State if: (a) he is present in the other State for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year; (b) the remuneration is paid by, or on behalf of, an employer who is not resident of that other State; and (c) the remuneration is not deductible in computing the profits of an enterprise chargeable to tax in that other State.

7.2 Thus, by virtue of Article 16(1) of India UK DTAA and section 90 of the Act, the amount of Rs. 16,17,724/- being received on account of per-diem if at all will be taxable in UK and not in India. Therefore, we hold that the amount of Rs. 16,17,724/- will not be taxable in India. Further, in above reconciliation only amount of Rs. 16,17,724/- has been claimed as non-taxable on account of per-diem and the balance

salary of Rs. 35,506/- has been offered to tax in India. Further, an amount of Rs. 64,577/- has been claimed to be non-taxable in UK on account of bonus for (non UK working days). Therefore, in the given facts of the case the addition of Rs. 17,25,932/- made by the AO is not sustainable and the same is deleted. Grounds No. 1 to 4 of appeal are allowed.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 29.05.2026.

Sd/-
[VIKAS AWASTHY]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated- 29.05.2026.

Pooja.

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,