

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.464/Ahd/2020
(Assessment Year: 2016-17)

Parag Bhikhubhai Patel B-53, Sundaram Tower, Someshwar-1, Satellite, Ahmedabad-380015 C/o. M.S. Chhajed & Co. “Kamal Shanti” Besides Bank of Baroda, Nr. Sardar Patel Under Bridge, Naranpura, Ahmedabad-380014	Vs.	ITO Ward-1, International Taxation, Ahmedabad
[PAN No.AVKPP6565G]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Hem Chhajed, A.R.
Respondent by:	Shri Aashish Rajesh Revar, Sr. D.R.

Date of Hearing	06.06.2023
Date of Pronouncement	07.06.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-13, (in short “Ld. CIT(A)”) Ahmedabad, in Appeal No. CIT(A)-13/Intl. Taxn./Ahd/82/2018-19 vide order dated 25.08.2020 passed for Assessment Year 2016-17.

2. The assessee has taken the following grounds of appeals:-

“1. *The order passed by Ld CIT(A) is against law, equity and natural justice.*”

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2. *The Ld CIT(A) has erred in law and on facts by upholding the order of Ld CPC to levy tax at maximum marginal rate instead of applicable rate as per DTAA on interest income.*

3. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.”*

3. The brief facts of the case are that the assessee is a U.S. citizen and a Non-Resident Indian (NRI). The assessee e-filed his return of income on 02.08.2016 declaring total income of Rs. 1,10,30,613/- (comprising of interest amounting to Rs. 41,18,783/- which was offered to tax at the special rate of 15% under the India – USA Tax Treaty). The return of income was processed by CPC and intimation under Section 143(1) of the Act was issued, in which CPC levied tax at “normal rate” on interest income and did not apply the rate prescribed under the India – USA Tax Treaty, and accordingly raised a tax demand of Rs. 16,46,640/- on the assessee. The assessee filed rectification application under Section 154 of the Act with a request to re-compute the interest income at the tax rate applicable in accordance with India – USA Tax Treaty. However, the Ld. Assessing Officer passed the order under Section 154 of the Act levying tax at maximum marginal rate on the interest income.

4. The assessee filed appeal before Ld. CIT(Appeals) and submitted that in the instant facts, the Ld. Assessing Officer erred in levying tax at maximum marginal rate on interest income in lieu of applicable rate of 15% as per DTAA between India and USA on such interest income. However, Ld. CIT(Appeals) dismissed the appeal of the assessee on the ground that

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the assessee has not been able to establish that he is a tax resident of USA. Despite being provided several opportunities, the assessee has not been able to produce the Tax Residency Certificate (in short “TRC”) to substantiate that he is a tax resident of USA. Further, the assessee has only provided copy of United States Passport indicating date of arrival into India and departure from India, which is not adequate to establish that the assessee is a tax resident of USA. Accordingly, in absence of TRC, the Ld. CIT(Appeals) held that the assessee is not entitled to avail the benefit of the concessional rate of tax as provided in the India – USA Tax Treaty. While dismissing the appeal of the assessee the Ld. CIT(Appeals) made the following observations:-

“5.6 In my considered opinion mere holding of US Passport (which makes him a US citizen) and being NR in India and do not necessarily establish that he has tax residency of USA as is required u/s 90 for availing the benefit of the beneficial provisions of the DTAA. The Ld AR has not brought to attention any case laws to the effect that the TRC would not be required in the case of a US Passport holder. Even the copy of return of income in USA has been submitted. It is noted that two e-notices through ITBA System for hearing were issued on 23.07.2020 and 11.08.2020 but no communication has been received and it appears that the appellant is not interested in furnishing the TRC.

5.7 Under the circumstances, the appellant, in absence of TRC, is not entitled for benefit of DTAA and therefore I do not find any basis to interfere in the rectification order impugned in appeal.”

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5. The assessee is in appeal before us against the aforesaid order passed by the Ld. CIT(Appeals). Before us, the Counsel for the assessee admitted that the assessee has not been able to provide copy of Tax Residency Certificate since despite several applications, the concerned authorities in USA has still not issued TRC in favour of the assessee. However, the Counsel for the assessee submitted that in the case of **Skaps Industries Pvt. Ltd. vs. ITO in ITA Nos. 478 & 479/Ahd/2018** for A.Ys. 2013-14 & 2014-15, ITAT Ahmedabad has held that non-production of Tax Residency Certificate by itself would not disentitle the assessee to claim the benefits of India – USA Tax Treaty. Further, the Counsel for the assessee requested that the matter may be restored to the file of CIT(Appeals) so as to enable the assessee to place adequate documentation in support of fact that during the impugned year under consideration, the assessee was a tax resident of USA, and accordingly was entitled to the beneficial rate of taxation on such interest income under the India – USA Tax Treaty. In response, Ld. D.R. placed reliance on the observations made by the Ld. CIT(A) in the appellate order.

6. We have heard the rival contentions and perused the material on record. Admittedly in the instant case, even as on date of this hearing, copy of Tax Residency Certificate is not available with the assessee, so as to able to validate that the assessee is a tax resident of USA. Further, we are of the considered view, that Ld. CIT(Appeals) has correctly observed that copy of US Passport containing details of travel into India and departure from India by itself, is not enough to confirm / demonstrate that the assessee was a tax resident of USA during the impugned year under consideration.

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Accordingly, in the interest of justice, the matter is being restored to the file of Ld. CIT(Appeals) in order to allow the assessee to provide supporting documents to validate that the assessee was a tax resident of USA during the impugned year under consideration and hence eligible for beneficial rate of tax on interest income under the India – USA Tax Treaty. Accordingly, the matter is being restored to the file of Ld. CIT(Appeals) with the aforesaid directions.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 07/06/2023

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Ahmedabad; Dated 07/06/2023

TANMAY, Sr. PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad