

**ITAT KOLKATA: DEBARGHYA CHATTOPADHAYA VERSUS DCIT,
INTERNATIONAL TAXATION, CIRCLE-1 (1) , KOLKATA, I.T.A. No.
24/Kol/2023**

Dated.- February 9, 2024

Salary income from foreign company for short term foreign assignment - salary income and interest income was not offered to tax in India on the ground that the assessee is a non-resident Indian and taxed on his total income in the country of residence - AO denied the claim because the assessee failed to furnish a tax residency certificate from United Kingdom which is required in order to claim DTAA benefit u/s 90 -

Held , The assessee is admittedly a non-resident Indian and received salary from IBM India Pvt. Ltd. while working in United Kingdom. The appellant is a tax resident in United Kingdom. Income at Rs. Nil declared in the e-return for AY 2014-15 electronically furnished on 21.07.2014. After the case was selected for scrutiny through CASS and notice was issued u/s 143(2) and 143(1) of the Act. The Ld. AO called for various details about the income earned during the year. We notice that the assessee received salary of Rs. 50,53,721/- from IBM India Pvt. Ltd. he was sent to United Kingdom for short term foreign assignment. The salary income of Rs. 50,53,221/- and interest income of Rs. 22,576/- was not offered to tax in India on the ground that the assessee is a non-resident Indian and taxed on his total income in the country of residence. The Ld. AO denied the claim because the assessee failed to furnish a tax residency certificate from United Kingdom which is required in order to claim DTAA benefit u/s 90 of the Act. Further we notice that the assessee carried the matter before the Ld. CIT(A) and placed the copy of tax residency certificate of United Kingdom. Since this document was filed for the first time the Ld. CIT(A) called for a remand report. In the remand report dated 17.08.2022, the AO accepted that copy of tax residency certificate has been received on 31.08.2017 and the same was issued by HM Revenue and Customs,

UK in which it was declared that the assessee was a resident of the UK during the period from 06.04.2013 to 05.04.2014. The Ld. AO also stated in the remand report that claim of DTAA benefit of the assessee is valid and therefore the salary income received for the work during stay at United Kingdom is exempt. The Ld. CIT(A) called for a report from Ld. CIT(A)-OSD(IT) Range-2, Kolkata but the fact mentioned by the AO in the remand report stood uncontroverted. Surprisingly Ld. CIT(A) has still not allowed the ground of appeal. Before us, the Ld. Counsel for the assessee has placed reliance on the evidences and after considering the same and also the remand report issued by the AO , we are inclined to hold that the assessee possesses tax residency certificate of United kingdom for a period from 06.04.2013 to 05.04.2014 and the instant year under the appeal pertains to FY 2013-14 and therefore since the assessee has offered to tax for the year in United kingdom, assessee deserves DTAA benefit u/s 90 of the Act. Thus the claim made by the assessee is found to be correct. We therefore set aside the finding of Ld. CIT(A) and delete the addition of Rs. 50,53,221/-. Accordingly ground of appeal raised by the assessee are allowed.