Income Tax Appellate Tribunal - Kolkata
Shri Tapan Krishna Pattanaik, ... vs Assessee on 10 June, 2016

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'C', KOLKATA
(Before Shri P. M. Jagtap, A.M. & Shri S.S.Viswanethra Ravi, J.M.)

ITA No.68/Kol/2016 : Assessment Year: 2011-12

Shri Tapan Krishna Pattanaik
PAN: AELPP 9540B
Vs
D.D.I.T.(TT)-3(1),
Kolkata
(APPELLANT)

(RESPONDENT)

Appellant by : Shri Manish Tiwari, FCA
Respondent by : Shri A.H.Choudhury, JCIT, Sr,DR

Date of Hearing : 13.04.2016

Date of Pronouncement :10.06.2016

ORDER

Shri P.M.Jagtap, A.M.

This appeal filed by the assessee is directed against the order of ld. CIT(A)-22, Kolkata, dated 02.11.2015 for the assessment year 2011-12 and the solitary issue involved therein relates to the addition of Rs.21,56,683/- made by the AO and confirmed by the ld. CIT(A) to the total income of the assessee on account of the amount remitted to his bank account by M/s. BW Fleet Management Ltd., Singapore

2. The assessee in the present case is an individual who is a Marine Engineer. During the year

under consideration, he was engaged with M/s. BW Fleet Management Ltd., Singapore in the capacity as a Marine Engineer and was a non-resident in India, as per the Income Tax Act. The return of income for the year under consideration was filed by him on 11.05.2011 declaring total income of Rs.1,193/-. During the course of assessment proceedings, it was noticed by the AO from the bank account of the assessee maintained with HSBC, Dalhousie Square branch, Kolkata that various amounts aggregating to Rs.21,56,683/- paid by M/s. BW Fleet Management Pvt. Ltd. were credited therein. According to the AO, the said amount was taxable in India in the hands of the assessee as per the provisions of section 5(2)(a) of the Income Tax Act, 1961 and the assessee was therefore called upon by him to explain why the same should not be brought to tax in his hand. In reply, a certificate issued by M/s.BW Fleet Management Pvt. Ltd., Singapore was filed by the assessee which read as under:

"We are hereby confirming that Mr. Tapan Krishna Pattanaik holder of Passport no. F 2020607 dt. 06.04.2005 served with our company as a second Engineer from 18.05.2010 to 11.11.2010, again from 20.11.2010 to 20.12.2010 as per contract dated 16.05.2010.

We paid total remuneration to him for the above period aggregating to US $ 58146.00 duly discharging payment vouchers executed on board during voyage before the master of the ship from outside India.

We also confirm that we have allotted out of his above mentioned total remuneration for his family maintenance to his SB A/c No.025-136979-006 HSBC Bank (NRE) Shakespeare Sarani Branch in India time to time on his request..."

On the basis of the above certificate, it was submitted by the assessee that the entire remuneration was initially received by him in US dollar from on board (outside India) and the same was remitted directly to his NRE account in India from time to time to meet his family expenses. It was contended by the assessee that the provisions of section 5(2)(a) thus were not applicable in the facts of his case and the amount in question could not be assessed in his hands by applying the said provision.

3. The contention of the assessee was not found acceptable by the AO. According to him, the provisions of section 5(2)(a) implied that if any income of non- resident was received in India, the same was taxable in India. He held that since the amount in question representing salary income of the assessee was remitted by his employer to his bank account maintained in India, the assessee got the money under his control for the first time in India. In this regard, he relied on the Third Member decision of Mumbai bench of the Tribunal in the case of Capt. A.L.Fernandes -vs- ITO 81 ITD 203, wherein it was held that the salary received by the assessee in India was taxable under the provisions of section 5(2)(a) of the Income Tax Act on receipt basis. Accordingly, the amount in question was added by the AO to the total income of the assessee in the assessment completed under section 143(3) vide order dated 20.12.2013.

4. Aggrieved by the order passed by the AO, an appeal was preferred by the assessee before the CIT(A). During the course of the appellate proceedings before the CIT(A), the following submissions were made by the assessee in support of its case that the amount in question remitted to his NRE account in India by M/s. BW Fleet Management Pvt. Ltd. is not taxable in India under section 5(2)(a) of the Income Tax Act, 1961.

"The interpretation of the department that the income is received in India as because the payments have been made by the foreign company in the non-resident assessee's NRE account is against the intention of the legislature to render benefit to a non-resident not chargeable to tax. The point of contention is that any non-resident shall be receiving the payments and credited to the account of the non-resident in India would render such payments to be as income taxable in India. Such interpretation of law is meaningless and the benefits given to the non-resident becomes meaningless and absurd. The clause (a) which reads as income is received or deemed to

be received in India has to be understood in the context of whether the payments are made in India whereby the recipient is receiving the payments in India from the payer. Any other interpretation to the provisions of Section 5(2)(a) would render the section otiose. Reference may be drawn to the taxability in respect of deduction of tax at source for payments made outside India and services rendered outside India. The Hyderabad Tribunal in the case of ACIT v. Avon Organics Ltd. reported in 55 SOT 260 (2013) on the interpretation of the provision of Section 5, 9, 195 wherein the question arose in respect of commission payments received by foreign agents in India through telegraphic transfer and held that "Only because the remittances towards commission were telegraphically transferred to the foreign agents from the banks in Hyderabad will not lead to the inference that the income to the foreign agents accrued or arose in India."

4.2 The meaning of the word 'received in India' within the meaning of section 5(2)(a) should be interpreted only in the context of income received in Indian currency in India. There is a distinction between receiving money and transfer of money. The distinction is that where a foreign company makes payment to the non-resident for services rendered outside India the foreign company is transferring the money or remitting the money in foreign currency to the assessee who is a non resident and the money is being received by the assessee not in India as because the point of payment by the foreign company is in foreign land and the point of receipt by the assessee should be taken from the point of payment. Mere remittance or transfer of the payments by the foreign company in the NRE account of the assessee in India that also in foreign exchange shall not be considered as income received in India and any larger interpretation to the section would render it otiose. The assessee is relying upon the following decisions on this issue: DIT (IntI.Tax) & Anr vs. Prahlad Vijendra Roa reported in 198 Taxman 0551; CIT vs. Avtar Singh Wadhwan reported in 247 ITR 260(Bom) and the order of the Ld.CIT(A) in the case of Mr. Gautam Bhattacharya dated 4.8.2014 in I.T.Appeal No.7/CIT(A)-VI/lntI.Tax/00IT-(IT)-1(1) /2014-15/Kol. The appellant has also relied on the Hon'ble supreme Court, in the case of CIT vs. Hyundai Heavy Industries Limited (291 ITR 482), which dealt with the connotations of this expression income accruing or arising in India' under Section 5(2). The appellant has summarised his arguuments as under:

a) The assessee is a non resident and rendering services outside India.

(b) The payments are being made by a foreign company outside India and the foreign company does not have any permanent establishment in India.

(c) The point of payment is to be taken into consideration for determining the provisions of clause 5(2)(a) of the Income Tax Act and the point of payment shall be considered as the point of receipt.

(d) It is immaterial that the payment is being transferred by the foreign company or remitted by the foreign company to the NRE account in foreign exchange in India as because payment have been made by the foreign company outside India and the point of payment is to be taken as the point of receipt.

(e) Without prejudice to the above the amount which is received by the assessee from the foreign company is in foreign exchange and therefore income cannot be said to have been received in India where payments have been received in foreign currency.

(f) The provisions of Section 5(2)(a) has to be interpreted in the manner that it does not render the section meaningless. If interpretation as made out by the department is adopted, then definitely the section would be otiose and meaningless as because no benefit would be given to the non residents even if all the conditions have been satisfied.

(g) The true interpretation to the provisions of section 5(2)(a) is that the meaning which is to be adopted for income received or deemed to be received in India, that the payments have been

made in India in Indian currency and the recipient of the payments has received the payments in Indian currency."

4.1 The ld. CIT(A) did not find merit in the submissions made by the assessee and after discussing the scheme of taxation of income as laid down in the relevant provisions of the Income Tax Act, 1961 in detail, he finally dealt with the applicability of provisions of section 5(2)(a) in the case of the assessee vide paragraph nos.6 to 7.5 of his impugned order which read as under:

"6. The appellant contention that "the point of payment is to be taken into consideration for determining the provisions of clause 5(2)(a) of the Income Tax Act and the point of payment shall be considered as the point of receipt" is contrary to the intention of the legislature as the stature uses the term 'received in India' and it cannot be artificially made to mean as 'payment made' in India. The Hon'ble Supreme Court, in the case of CIT Vs Djharamdas Hargovandas [1961] 42 ITR 427 (Se) has commented that lithe words 'are received' are not terms of art and their meaning must receive colour from the context in which they are used. In the context of section 5{l)(a) these words could only refer to the first receipt". In the case of Keshav Mills Ltd Vs CIT[1653] 231TR 230(SC), the Hon'ble Bench of the Supreme Court observed that 'The word receipt of Income refers to the first occasion when the appellant gets the money under his own control'. Similarly Hon'ble SC had observed in the case of CIT Vs Ashokbhai Chimanbhai [1965] 56 ITR 42 (SC) that "Income is said to be received when it reaches the appellant. Thus the term 'received' has to be understood in the context of salary having been received and not beyond.

6.1 Another of the appellant's contention that lithe amount which is received by the assessee from the foreign company is in foreign exchange and therefore income cannot be said to have been received in India where payments have been received in foreign currency" is again contrary to the provisions of the statute. The Income Tax Act nowhere stipulates the nature of currency to be determinative of income of the appellant. The scheme of the Act is such that charge of tax is made independent of territoriality and residency and currency. All the separate charging sections are also made free of territorial nexus and status based on residence. Income from whatever source (including from 'salaries') can accrue or arise anywhere in the world and on the basis of section 5(2)(a) has to be included in the total income of a non-resident if it is received in India.

7. The case law cited by the appellant in the case of DIT (lntl.Tax) & Anr vs. Prahlad Vijendra Roa reported in 198 Taxman 0551; CIT vs. Avtar Singh Wadhwan reported in 247 ITR 260{Bom) and the order of the Ld.CIT{A) inthe case of Mr. Gautam Bhattacharya relying on the above decisions do not deliberate upon fact that the receipt of the income has been in India nor they ponder over the fact that the charge of tax is made independent of territoriality and residency. The reliance in the case of Hyundai Heavy Industries Ltd. decided by Hon'ble Supreme Court is misplaced as the Hon'ble Court was dealing with the meaning of 11 Income accruing and arising In India" as per section 5(2)(b) and not income' received or deemed to be received in India" as per section 5(2)(a). On the contrary, the case of Capt. A.L. Fernandes vs Income Tax Officer(2002) 81 ITD 203 Mum, which is a Third Member decision, has held that the receipt of salary in India by seaman are taxable in India. The appellant's attempt to distinguish the case by stating that the assessee in that case is under employment of government of India undertaking is misplaced as this fact does not alter nature of transaction an its nature of interpretation under the IT Act. The fact of the case is being discussed below.

7.1 In this case, the assessee was an employee of the Mogul Lines Ltd., a Government of India undertaking. He rendered services on the ship "LokNayak" from 1st May, 1982 to 9th Sept., 1982 and on "Lok Vi nay" from 15th Oct., 1982 to 31st March, 1983. On these dates above named ships were floating outside the territorial water of India. It was mentioned on the certificate dt. 27th July, 1983, issued by the Mogul Lines Ltd. that during this period, the assessee rendered services outside India. The assessee originally filed return of income under the status 'resident' which was later revised as 'non resident'.

7.2 The AO held that the claim of the assessee was not tenable since the employer of the assessee M/s The Mogul Lines Ltd. was a Central Government undertaking. The contract of the employment was entered in India. The services had been rend red by the assessee in accordance with the terms of employment. The final settlement of accounts regarding the payment had also been settled in India. The assessee was on board of an Indian vessel flying the Indian flag and, therefore, according to him, the payment deemed to be accrued and arising in India. On this factual backdrop the entire salary income was held exigible to tax in India. The order of the AO was later confirmed by Ld. CIT(A) also.

7.3 On further appeal, Ld. Judicial Member, in his order, referred to section 9(l)(ii) read with the Explanation and held that the amount of salary in question which was received by the assessee for rendering services on the board of a ship, while the ship was floating outside the territorial water of India, was not taxable in the facts of the present case. However, Ld. A.M. referred both to section 5(2)(a) and section 9(l)(ii) and held that the appeal of the assessee needed to be dismissed.

7.4 The matter was referred to Ld. President who appointed Ld. Third Member to resolve the issue. Ld. TM held that:

"8. In my opinion, the salary is includible in the assessment under Section 5(2)(a) of the Act, which says that any income received by a non-resident in India is taxable in India. There is a clear finding in the order of the learned AM, that there is no dispute that the salary was received in India. This should put an end to the controversy. I may add, that the learned AM has not disputed the correctness of the learned JM's finding that under International law, the floating island theory has undergone a change and it is no longer correct to regard the Indian ships as floating islands. Therefore, the position accepted by the learned members is that the services were rendered outside India, the ships not being considered as part of India. However, since the salary was received in India, it was rightly held taxable in India under Section 5{2){a). I agree with the learned AM in this respect." (emphasis supplied) on the facts of the case, Ld. TM also held that the income had accrued or arisen to the assessee in India under Section 5(2)(b). Ld. TM also found that section 9(l)(ii) read with Explanation thereto was not relevant for the controversy.

7.5 It needs to be pointed out here that as decided in the case of DCIT vs. Padam Prakash (HUF) (2007) 288 ITR (AT) l(Del.) (SB), Ld. Special Bench of Delhi ITAT decided that the majority decision in a Third Member case is entitled to as much weight and respect as a decision of a Special Bench and it should be followed and applied by the regular Benches. The reliance on the CIT(A) decision in the case of Mr. Gautam Bhattacharya is therefore misplaced as it did not consider the decision in the case of Padam Prakash while deciding the issue at hand. Further, as the Third Member decision is equivalent to decision of special Bench, the decision in case of Capt. A.L. Fernandes has far greater weight than the decision in the case of Ranjeet Kumar Bose decided by Hon'ble Kolkata ITAT."

4.2 In view of the above discussion, the ld. CIT(A) held that the salary received by the assessee for the services rendered outside India for which payments had been remitted by the foreign company to the NRE account in India was chargeable to tax in India as his income. Accordingly, the addition of Rs.21,56,683/- made by the AO was confirmed by the ld. CIT(A). Aggrieved by the order of the ld. CIT(A), the assessee has preferred this appeal before this Tribunal.

5. The ld. Counsel for the assessee reiterated before us the submissions made before the ld. CIT(A) on this issue. The main plank of his argument was that the amount in question received for the services rendered outside India having been paid by the employer to the assessee on board of the ship outside India and the same having been thereafter transferred to the NRE account of the assessee in India, the provisions of section 5(2)(a) of the Act are not applicable.

5.1 In support of his contention, the ld. Counsel for the assessee relied mainly on the decision of

Agra bench of this Tribunal in the case of Arvind Singh Chauhan -vs- ITO 147 ITD 509. As regards Third Member decision of Mumbai bench of this Tribunal in the case of Captain A.L. Fernandez -vs- ITO (supra) relied upon by the CIT(A) in his impugned order, he contended that the same is distinguishable on facts in as much as the employer in the said case was Central Govt. Undertaking and the amount in question towards salary was received by the assessee in India. He contended that the ld. CIT(A) however has not appreciated this distinguishable features and wrongly placed reliance on the decision in the case of Captain A.L. Fernandez (supra) ignoring completely the fact that the amount in question towards salary was initially received by the assessee outside India.

6. The ld. DR, on the other hand, submitted that there is no proof brought on record by the assessee to establish that the amount in question towards salary was received by him outside India. In this regard, he invited our attention to the relevant observations recorded by the ld. CIT(A) in his impugned order to point out that the assessee never had any control over the salary amount before it got credited to his NRE account maintained in India. He contended that it is thus a clear case of receipt of salary by the assessee in India which is chargeable to tax in India as per the provisions of section 5(2)(a) of the Act which are clearly applicable. He, therefore strongly supported the impugned order of the CIT(A) on the issue under consideration and urged that the same may be upheld.

7. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the Coordinate Bench of this Tribunal in the case of Shri Tapas Kr. Bandopadhyay-vs- DDIT(IT) in ITA No.70/Kol/2016 had an occasion to consider the similar issue involving identical facts and circumstances and after discussing all the relevant aspects of the matter and dealing with all the submissions made on behalf of both the parties, which are similar to the submissions made before us in the present case, the Tribunal decided the issue vide paragraph no. 10 (including paragraph nos. 10.1 to 10.6) of its order dated 01.06.2016 as under:

"10. We have heard the rival submissions and perused the materials available on record. The scheme of the Act is such that charge of tax is made independent of territoriality and residency and currency. The Ld. DR argued that the assessee though rendered services outside India had received salary in India by way of fund transfer from foreign company in abroad directly to NRE account of the assessee in India. The character of receipt of salary does not change according to Ld. DR. He argued that the receipt contemplated u/s. 5(2)(a) of the Act is actual receipt. Hence, income which is actually received in India is taxable in India u/s. 5(2)(a) of the Act and hence, the Third Member decision relied on by the Ld. CIT(A) is directly in favour of the revenue. When the decisions of both Bombay and Karnataka High Courts were put across to the Learned DR, he argued that both the Courts did not frame question of law and it was rendered in the context of taxability u/s. 5(2)(b) of the Act and not section 5(2)(a) of the Act. The Learned DR on the reliance placed by the Learned AR on the decision of Agra Bench of ITAT in the case of Arvind Singh Chauhan, supra argued that the said decision had not considered the Third Member decision, cited supra and hence to be ignored.

10.1. We find that the assessee was only trying to introduce one more layer to the entire transaction that the assessee had the control over his money in the form of salary income in international waters and for the sake of convenience, he instructed the foreign employer to send the monies to his NRE account in India. It was argued by the assessee that income was actually earned by the assessee outside India and assessee had only brought those amounts into India. In other words, what was brought into India is not the salary income but only the salary amount. But we find that no evidence has been brought on record to prove that the assessee had the control over his salary income in international waters. Moreover, we find that if this argument of the assessee is to be accepted, then the assessee goes scot free from not paying tax anywhere in the world on this salary income. The provisions of section 5(2)(a) of the Act are probably enacted keeping in mind that income has to suffer tax in some tax jurisdiction . We believe that such

provisions would exist in tax legislation of all countries. We hold that if the argument of the assessee is accepted, then it would make the provisions of section 5(2)(a) of the Act redundant. It is only elementary that a statutory provision is to be interpreted ut res magis valeat quam pereat, i.e. to make it workable rather than redundant. From the provisions of section 5(1) of the Act, in the case of a resident, the global income is taxable in India. In case of non-residents, the scope of total income has four modes, one of which is receipt in India, 'from whatever source derived'. If this is construed to mean that income from whatever source, should first accrue or arise in India and then it should be received in India to be included under section 5(2)(a), then section 5(2)(a) will lose its independence and will become a subset of section 5(2)(b) and there would not be any need for having section 5(2)(a) on the statute.

10.2. We find that heavy reliance has been placed by the Learned AR on the decision of the Hon'ble Bombay High Court in the case of CIT vs Avtar Singh Wadhwan reported in 247 ITR 260 (Bom) which was in turn followed by Hon'ble Karnataka High Court in the case of DIT (Intl Taxn) vs Prahlad Vijendra Rao reported in 239 CTR 107 (Kar). We find that the question before the Hon'ble Bombay High Court was to decide the place of accrual of income. The Court held that the income accrues in the place where the services were rendered which was admittedly outside India. We find that the Court did not have an occasion to deliberate upon the fact that the receipt of the income has been in India as the issue decided by them was only the place of accrual of income in the context of section 5(2)(b) of the Act. Hence the decision relied upon by the Learned AR are factually distinguishable.

10.3. The argument of Learned AR was that the salary was received on the high seas and by way of a convenient arrangement , the same was directed to be deposited in the NRE account of the assessee in India. The question that arises for consideration is can a person receive salary on high seas. The only possibility of receiving salary on board of a ship on high seas is to receive in hot currency. It is not the case of the assessee that the hot currency got deposited in the NRE account. On the other hand, the money was transferred from the employer's account outside India to the assessee's NRE account in India. In such circumstances, it is difficult to accept the contention of the Learned AR that salary was not received in India. The decision rendered by the Agra Tribunal in the case of Arvind Singh Chauhan vs ITO in ITA Nos. 319 & 320/Agra/2013 dated 14.2.2014 is based on the decision rendered by the Hon'ble Madras High Court in the case of CIT vs A.P.Kalyankrishnan 195 ITR 534 (Mad) . The facts before the Hon'ble Madras High Court were that the assessee in that case received pension from the Malaysian Govt and claimed it as not taxable. The AO found that the assessee received the pension in India through the Accountant General Madras directly and hence the pension received is liable to tax in India on receipt basis. The first appellate authority found that the pension amount received by the assessee had been subjected to assessment in Malaysia in the status of non-resident and that clearly pointed out that the pension had accrued to the assessee only in Malaysia. It was further held that pension had accrued to assessee only in Malaysia and the Accountant General Madras was merely authorized to arrange for the payment of pension to the assessee rendering the amount of pension received in India by the assessee not liable to tax. On further appeal by the revenue, the Tribunal found that there was a letter dated 23.6.1969 addressed by the Accountant General of the Federation of Malaya to the Accountant General Madras and that letter indicated an arrangement for payment in India and the circumstance that the pension of the assessee had also been assessed to tax in Malaya in the status of noncitizen and non-resident would clearly establish that the pension of the assessee had been remitted to India by arrangement with the Accountant General Madras. On further appeal, the Hon'ble Madras High Court firstly held that the Malaysian Govt had assessed the assessee to income tax on the pension. The Hon'ble High Court also found that the Malaysian Govt had deducted tax at source which clearly indicated that the income had accrued to assessee in Malaysia and therefore not assessable in the hands of the assessee in India. The Hon'ble Court found that the accrual of pension and receipt of pension had already been taken place in Malaya. The Hon'ble Court held that the letter dated 23.6.1969 addressed by the Accountant General

Federation of Malaya Kuala Lumpur to the Accountant General Madras was only intended as an arrangement for the payment of pension to the assessee and the said letter was couched in the form of a request, requesting payment to the assessee to be made at the nearest treasury and the rate of exchange was also indicated therein. Further the letter also stated that the payment requested to be made was in respect of the pension payable to the assessee and at the rate of exchange indicated therein and the amount so paid, should , according to the letter, be charged to the Govt of Federation of Malaya in the usual manner. Taking note of the contents of the aforesaid letter, the Hon'ble Court held that payment in India was only an arrangement to ensure the prompt payment of pension which had already suffered tax in India. The Hon'ble High Court therefore held that the income should be construed as having been received outside India and the fact that the pension had been remitted or transmitted to the place where the assessee was living was a matter of convenience and that would not constitute receipt of pension in India by the assessee falling within section 5(1)(a) of the Act.

10.3.1. The above explanation would clearly prove that the facts before the Hon'ble Madras High Court (supra) are distinguishable from the facts of the present case in as much as the income in the present case did not suffer tax in any other jurisdiction nor was it received in any other tax jurisdiction. The receipt in the NRE account in India is the first point of receipt by the assessee and prior to that it cannot be said that the assessee had control over the funds that had deposited in the NRE account from the employer.

10.4. The facts in the case decided by the Agra Tribunal supra were that the assessee received salary cheques by way of credit to his bank account with HSBC Mumbai. The Agra Tribunal took the view that the assessee had a lawful right to receive the salary as an employee at the place of employment i.e at the location of its foreign employer and it was a matter of convenience that the monies were thereafter transferred to India. As we have already seen that in section 5(2)(a) of the Act, right to receive salary is not the relevant criterion but the relevant criterion is the receipt of payment which is admittedly in India. Therefore, we have our own doubts as to the applicability of the decision of High Court in the case of A. P. Kalyankrishnan (supra) to the facts of the present case.

10.5. Now what we are left with is the decision relied upon by the Learned DR on the Third Member decision of Mumbai Tribunal in the case of Captain A. L. Fernandez Vs. ITO reported in 81 ITD 203 (TM) wherein it was held as below:-

8. In my opinion, the salary is includible in the assessment under s. 5(2)(a) of the Act, which says that any income received by a non-resident in India is taxable in India. There is a clear finding in the order of the learned AM, that there is no dispute that the salary was received in India. This should put an end to the controversy. I may add, that the Ld. AM has not disputed the correctness of the Ld. JM's finding that under International law, the floating island theory has undergone a change and it is no longer correct to regard the Indian ships as floating islands. Therefore, the position accepted by the learned members is that the services were rendered outside India, the ships not being considered as part of India. However, since the salary was received in India, it was rightly held taxable in India under section 5(2)(a). I agree with the Ld. AM in this respect. This decision clearly lays down that the receipt in India of salary for services rendered on board a ship outside the territorial waters of any country would be sufficient to give the country where it is received the right to tax the said income on receipt basis. Such a provision is found in section 5(2)(a) of the Act which was applied in the aforesaid decision. It is trite that decision of a Third Member would be equivalent to a decision of a Special Bench and thereby would become a binding precedent on the division bench.

10.6. We may also point out that the decision of the Third Member in the case of Capt A.L. Fernandes supra was not brought to the notice of the Agra Tribunal. We therefore prefer to follow the decision of the Third Member case in the facts and circumstances of the present case."

7.1 As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of Shri Tapas Kumar Bandopadhyay (supra), we respectfully follow the decision of the Coordinate Bench of this Tribunal rendered in the said case and uphold the impugned order of the ld. CIT(A) confirming the addition of Rs.21,56,683/- made by the AO under section 5(2)(a) of the Income Tax Act, 1961 towards the amount in question representing salary income received in India.

8. In the result, the appeal filed by the assessee is dismissed.

Order Pronounced in the Open Court on 10th June,2016.

Sd/- Sd/-

(S.S.Viswanethra Ravi) (P.M.Jagtap)

JUDICIAL MEMBER ACCOUNTANT MEMBER

Dated: 10/06/2016

Talukdar/Sr.PS

Copy of order forwarded to:

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D.D.I.T. (International Taxation)- 3(1), Aayakar Bhawan, Poorva, 110 Shanti Pally, Kolkata-700 107

The CIT(A),

CIT,

5. D.R.

True Copy, By order,

Asstt. Registrar, ITAT, Kolkata

Shri Tapan Krishna Pattanaik

Assessment Year

2011-12