



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBERAND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.68/RJT/2024

निर्धारणवर्ष /**Assessment Year: (2018-19)**

Anil Dhansukhlal Vakhat Niwas 10, Divan Para Rajkot -360 001	बनाम Vs.	Income Tax Officer (Int.Txn), Gandhidham, Amruta Estate Building, Jheelwas, Sadar, Rajkot- 360 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJYPD6405F		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

निर्धारितकीओरसे/Assessee by : Shri Bharat Kumar, AR

राजस्वकीओरसे/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाईकीतारीख/Date of Hearing : 16/10/2024

घोषणाकीतारीख/Date of Pronouncement : 10/01/2025

आदेश/**Order**

PerDr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2018-19, is directed against an assessment order passed by the Learned Assessing officer under section 147 r.w.s.144C(13) of the Act, by following order of the Learned Dispute Resolution Panel[in short 'DRP'], under section 144C(5) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 28.12.2023.

2.The grounds of appeal raised by the assessee are as follows:

"1. On the facts and circumstances of the case in law, the Ld.assessing officer erred in making addition of Rs.2,97,63,459/- on account of unexplained investment in purchase of immovable property u/s 69 by following order of DRP.



2. The assessee craves leave to add, alter or amend the existing grounds of appeal on or before the hearing of hearing."

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual and has not filed his return of income for the year under consideration in due course. As per the information and details available on record with the Department, it was noticed by the assessing officer that the appellant assessee had made considerable transactions for purchase of property of Rs.2,97,63,459/- at Mumbai, having tax and revenue implications, however, the appellant did not disclose the said transactions by filing return of income within the stipulated time limit provided u/s 139 of the Act. Therefore, the assessing officer after following due process u/s 148A of the Act and recording reasons, notices u/s 148 of the Act was issued and served upon the appellant. In response thereof, the appellant assessee filed return of income declaring the total income at Rs.480/-. The assessing officer issued the draft assessment order dated 24.03.2023 u/s 144C of the Act by making an addition of Rs.2,97,63,459/-, on account of unexplained investment in purchase of immovable property u/s 69 of the Act and proposing assessment of total income at Rs.2,97,63,940/-.

3. Aggrieved by the proposed addition of the assessing officer, the assessee has filed objections against the proposed assessment on 24.04.2023 before the dispute regulation panel – 2, Mumbai. Before the DRP, the assessee's grievance was that the assessing officer did not consider the submissions made by him during the course of assessment,



therefore, the assessing officer was again requested to give his comments on the submission of the assessee, by way of remand report, which also contained additional evidences in the form of bank statement of Chetna Chandrakant Mehta (assessee's wife) for the relevant year and also copies of income tax return and computation of income of Chetna Chandrakant Mehta for AYs 2013-14 to 2017-18. It was assessee's contention that all the payments were made from the account of his wife as it is a joint property purchased in the name of the assessee and his wife and that only a meager parts of the payment were made during earlier years. The details were sent to the assessing officer, who sent his remand report on 04.12.2023 to the DRP. In his remand report, the assessing officer has mentioned that the assessee has only produced the bank account statement of Chentna Chandrakant Mehta and that being an NRI account, the credits appearing in the account has not been properly explained by the assessee. In rejoinder, the assessee again reiterated that the payments have been made through bank account and all sum have been reflected in bank statement. Further, it was assessee's contention that for the FY 2017-18, only an amount of Rs.2,24,760/- has been paid for which there is sufficient source in the hands of Smt. Chetna Chandrakant Mehta. Hence, it was contention of the assessee that as per the wordings of the section 69 of the Act, only the investment made by the assessee has to be taken into account and as the above amount of Rs.2,24,760/- is a investment made by the assessee and that too has been explained properly, no addition is warranted. However, Id DRP rejected the



contention of the assessee and held that the investments made during the year have not been explained, hence, Id DRP uphold the action of the assessing officer in proposing the adjustment of Rs.2,97,63,459/- on account of unexplained investment in purchase of immovable property u/s 69 of the Act.

4. Aggrieved by the order of Ld.DRP, the assessee is in further appeal before us.

5. Shri Bharat Kumar, Learned Counsel for the assessee, submitted the paper book, before the Bench, containing pages 1 to 243 and stated that assessee under consideration is a non-resident and who purchased immovable property in India on 25.02.2010, vide allotment letter issued by the Oberoi Realty Ltd, for a consideration of Rs.2,24,76,000/-, and a substantial amount was paid by the assessee at the time of allotment. However, sale agreement was made on 14.11.2017 by Oberoi Realty Ltd. Since the transaction was concluded in the assessment year 2010-11, therefore, the addition should not be made in the assessment year 2018-19. During the assessment proceedings and during the DRP proceedings, the assessee furnished copy of income tax return for assessment year 2018-19, copy of income tax return for assessment year 2017-18, copy of allotment letter issued on 25.02.2010, copy of agreement to sale on 14.11.2017, copy of return of income filed for assessment year 2020-21, copy of return of income filed for assessment year 2017-18 in case of Chetna Chandrakant Mehta, bank statement of wife of the assessee and



bank statement of Chetana Chandrakant Mehta, the bank statement of wife of the Chetana Chandrakant Mehta etc, were filed by the assessee before the assessing officer, and before the Id. DRP. The assessee also furnished the copy of passport issued by Republic of Portuguese, before the assessing officer, as well as before the Id. DRP. The Ld. Counsel for the assessee submitted that the immovable property was purchased in the year 2010 and part payment was made in the year 2010, which clearly evident from the bank statement and moreover, the payment was made through banking channel. Therefore no addition should be made in the hands of assessee.

6. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue submitted that the appeal filed by assessee is in a non-resident status and assessee has not filed the appropriate affidavit to the effect to appoint any person in India to argue his case. Besides the genuineness of the payment made by the assessee is not proved thus, the addition made by the assessing officer may be sustained.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. The Ld. Counsel for the assessee, submitted before the Bench, the



following documents and evidences, which were also on the file of the lower authorities:

- (1). *Details of Stay in Indian since 2009 to 2018 (PB-54)*
- (2). *Assessee's UAE Tourist Visa (PB-55)*
- (3). *Assessee's UAE Residence Permit (PB-56,57)*
- (4). *Income Tax Return Acknowledgement and Computation of Income for A.Y 2018-19 (PB -58-59)*
- (5). *Return of Income filed with Inland Revenue Department for the period 2017-18 of Anil Dhansukhlal*
- (6). *Allotment letter issued on 25/02/2010 by Oberoi Realty Limited for purchases Premises at 1802 on 18th Floor , in Tower A proposed to be constructed known as Oberio Exquisite-I for consideration of Rs. 2,24,76,000/- (PB-66-80)*
- (7). *Copy of Sale Agreement made on 14/1 1/2017 by Oberoi Realty Limited for purchases Premises at 1802 on 18th Floor , in Tower A proposed to be constructed known as Oberio Exquisite-I for consideration of Rs. 2,24,76,000/- (PB-81-159)*
- (8). *Return of Income filed with Inland Revenue Department for the period 2020-21 of Anil Dhansukhlal (PB-160)*
- (9). *Return of Income filed with Inland Revenue Department for the period 2017-18 of Chetna Chandrakant Mehta (PB-161)*
- (10). *Incorporation of Company in Hongkong Kilman Trading Limited and invoice (PB-163-164)*
- (11). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2010 to 31-12-2010 (PB-165-166)*
- (12). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2011 to 31-12-2011 (PB-167-169)*
- (13). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2012 to 31-12-2012 (PB-170-171)*



- (14). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2013 to 31-12-2013 (PB-172-173)*
- (15). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2014 to 31-12-2014 (PB-174-176)*
- (16). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2015 to 31-12-2015 (PB-177-179)*
- (17). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2016 to 31-12-2016 (PB-180-183)*
- (18). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2017 to 31-12-2017 (PB-184-189)*
- (19). *Copy of Bank Statement of assessee's wife Chetna Chandrakant Mehta NRI Account No. 087010100295956 for the period 01/01/2018 to 31-12-2018 (PB-190-200)*
- (20). *Bank Statement of Anil Dhansukhlal (PB-203-217)*
- (21). *Copy of Passport of issued by Republic of Portuguese from 25.03.2009 to 25.03.2014 (PB-218-235)*
- (22). *Copy of Passport of issued by Republic of Portuguese from 25.03.2022 to 25.03.2017,(PB-236-243)*

9. The Copy of the allotment letter issued to the assessee, by Oberoi Realty Ltd, on 25.02.2010, is reproduced below, to the extent applicable for our analysis:



Ref. No. AG65

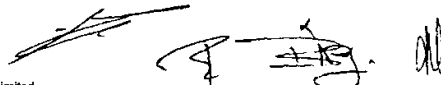
25 February 2010

Mr. Anil Dhansukhlal
 Mr. Birju Anil Dhansukhlal
 Mrs. Chetna Chandrakant Mehta
 AV. BOA ESPERANÇA,
 LOTE 4,45 1C 3C,
 PORTUGAL,
 LISBOA - 1990-044

Dear Sir / Madam,

Re: Premises admeasuring 100.43 square metres (carpet area) approximately equivalent to 1081 square feet (carpet area) approximately equivalent to 123.12 square metres (usable area) approximately equivalent to 1325.27 square feet (usable area) approximately equivalent to 169.08 square metres (saleable area) approximately equivalent to 1820 square feet (saleable area) bearing no. 1802 on 18th floor, in Tower A of the building known as "Oberoi Exquisite - I", proposed to be constructed on a portion admeasuring 1407.87 square metres approximately of land bearing C.T.S.590/A/A/1 (part) of Village Pahadi, Goregaon.

1. You are aware that we are entitled to develop a residential building called "Oberoi Exquisite-I". The said building called Oberoi Exquisite - I consist of 3 towers, viz. Tower A, Tower B and Tower C. Tower "A" is proposed to be constructed on a portion admeasuring 1407.87 square metres of land bearing C.T.S.590/A/A/1 (part) of Village Pahadi, Goregaon. The said portion admeasuring 1407.87 square metres of land bearing C.T.S.590/A/A/1 (part) of Village Pahadi, Goregaon is hereinafter for the sake of brevity referred to as the "Said Property".
2. You being desirous of acquiring a flat in Tower A of the said residential building "Oberoi Exquisite - I, have approached and requested us for allotment of the same in your favour.
3. As desired by you, and pursuant to your request, we hereby inform you that we are agreeable to allot to you a flat admeasuring 100.43 square metres (carpet area) approximately equivalent to 1081 square feet (carpet area) approximately equivalent to 123.12 square metres (usable area) approximately equivalent to 1325.27 square feet (usable area) approximately equivalent to 169.08 square metres (saleable area) approximately equivalent to 1820 square feet (saleable area) bearing no. 1802 on 18th floor in Tower - "A" proposed to be constructed on the Said Property (hereinafter referred to as the "Said Premises"), subject to approval of the plans and amendments


 Oberoi Realty Limited
 (Formerly known as Kingston Properties Private Limited)
 Commerz, 3rd Floor, International Business Park, Oberoi Garden City, Off Western Express Highway, Goregaon (E), Mumbai - 400 053
 Tel: +91 22 6677 3333 Fax: +91 22 6677 3334 www.oberoi constructions.com



thereof for construction of the building, Oberoi Exquisite – I, from time to time, being sanctioned by the Municipal Corporation of Greater Mumbai (“MCGM”), and subject to the terms and conditions contained herein. We are also agreeable to grant to you irrevocable permission and right to park your vehicle/s in 2 (Two) Single car parking space/s in the building, Oberoi Exquisite - I. The car parking nos. shall be assigned and communicated to you at a later date. For the sake of brevity “usable area” referred in this letter shall mean the carpet area of the flat and the areas of the planter (s), ledge (s) and service / dry yard.

4. The sale price of the Said Premises shall be ~~Rs.~~ Rs. 22,476,000/- (Rupees Two Crores Twenty Four Lakhs Seventy Six Thousand Only) in addition to other payments as mentioned in clause 10 herein below and you shall pay the sale price of Rs. 22,476,000/- (Rupees Two Crores Twenty Four Lakhs Seventy Six Thousand Only) to us in the following manner:
- (a) ~~Rs.~~ Rs. 4,495,200/- (Rupees Forty Four Lakhs Ninety Five Thousand Two Hundred Only), being the earnest money, which has been paid, prior hereto the receipt whereof is acknowledged at the foot of this writing.
 - (b) ~~Rs.~~ Rs. 2,247,600/- (Rupees Twenty Two Lakhs Forty Seven Thousand Six Hundred Only) to be paid on receipt of amended approved plans of the building in which the Said Premises is situated.
 - (c) ~~Rs.~~ Rs. 2,247,600/- (Rupees Twenty Two Lakhs Forty Seven Thousand Six Hundred Only) to be paid on receipt of commencement certificate from the MCGM.
 - (d) ~~Rs.~~ Rs. 9,889,440/- (Rupees Ninety Eight Lakhs Eighty Nine Thousand Four Hundred and Forty Only) to be paid in 49 equal installments on completion of each of 49 slabs of the building in which the Said Premises is situated.
 - (e) ~~Rs.~~ Rs. 899,040/- (Rupees Eight Lakhs Ninety Nine Thousand Fourty Only) to be paid on completion of the brick-work of the building in which the Said Premises is situated. D
 - (f) ~~Rs.~~ Rs. 899,040/- (Rupees Eight Lakhs Ninety Nine Thousand Fourty Only) to be paid on completion of the plastering of the building in which the Said Premises is situated.
 - (g) ~~Rs.~~ Rs. 899,040/- (Rupees Eight Lakhs Ninety Nine Thousand Fourty Only) to be paid on completion of flooring and tiling of the building in which the Said Premises is situated.

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

chetna chandrasekhar



10. We note that the assessing officer has proposed an addition for the amount of Rs.2,97,63,459/-, being the Fair Market Value of the property, at Oberoi Reality, purchased by the assessee. The assessing officer during the assessment proceedings asked for details of the investment. The assessee, produced before the assessing officer, all the documents and evidences, including bank statement, before the assessing officer, as well as before the DRP. However, we find that neither the assessing officer, nor the DRP has considered these documents and evidences submitted by the assessee, in right perspective. During the DRP proceedings, a report was sought from the assessing officer and we find that assessing officer, did not give any adverse comments in respect of the documents and evidences submitted by the assessee. During the DRP proceedings, it was assessee's contention that all the payments were made from the account of assessee's wife as it is a joint property purchased in the name of the assessee and his wife. The assessee has produced the bank statement of Chentna Chandrakant Mehta and that being an NRI account, and the credits appearing in the bank account has also been properly explained by the assessee. Despite of this, the assessing officer did not accept the explanation of the assessee. We note that the assessee has submitted a plethora of documents and evidences, before the assessing officer, which we have reproduced in para number eight of this order. We note that neither the assessing officer nor the DRP, has refuted or discredited these evidences and documents. The assessing officer and DRP, do not mention why they are not accepting these evidences. On the



contrary, the assessing officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises.

11. The whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the income of the assessee for the year under consideration. For that we rely on the Judgment of Hon'ble Supreme Court in case of **SreelekhaBannerjee** (491 ITR 122), wherein it was held that “ *before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...*”

12. From the above facts, we find that there was no mistake on the part of the assessee to submit the relevant documents and evidences and explanations before the assessing officer, as well as DRP. The assessing officer, as well as DRP, did not find any mistake in the documents and evidences and explanation submitted by the assessee, except to say that these documents and evidences are not acceptable. It is not tenable in the eye of law. The assessing officer and Id DRP, do not mention why they are not accepting these evidences, and when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises, as noted by us above, therefore, based on this score only, the addition made by the assessing officer should be deleted.



13. We note that Coordinate Bench of ITAT Delhi, in the case of Russian Technology Centre (P.) Ltd,[2013] 37 taxmann.com 400 (Delhi - Trib.) held that if identity of non-resident remitter is established and money has come in through banking channels, it cannot be treated as deemed income under section 68 or 69 of the Act. The detailed findings of the Coordinate Bench is reproduced below:

"But that is not the end of the matter. In our considered opinion, the conflict between the provisions is only with reference to the onus and not to the issue of taxability of income. The onus is shifted under s. 68 or 69 only with reference to the income which is otherwise taxable in the hands of non-resident under s. 5(2). Therefore, the issue whether the income of non-resident is taxable or not is still to be decided with reference to the provisions of s. 5(2) and, the provisions of s. 68 or 69 cannot enlarge the scope of s. 5(2). What is not taxable under s. 5(2) cannot be taxed under the provisions of s. 68 or s. 69. Under s. 5(2), the income accruing or arising outside India is not taxable unless it is received in India. Similarly, if any income is already received outside India, the same cannot be taxed in India merely on the ground that it is brought in India by way of remittances. Reference can be made to the judgment of Supreme Court in the case of Keshau Mills Ltd. (supra). If such income is shown in the books of account then it cannot be taxed in India merely because the assessee is unable to prove the source of such entry. For example, there may be appearing an entry of cash credit in the name of a person of USA by way of loan received through cheque and deposited in the bank account maintained at any city in USA. Such money, being received outside India, cannot be taxed under s. 5(2) unless it is proved that such money is relatable to the income accrued or arising in India. Therefore, the same cannot be taxed under s. 68 merely on the ground that assessee fails to prove the genuineness and source of such cash credit. Therefore, we are of the considered view that provisions of s. 68 or 69 would be applicable in the case of non-resident only with reference to those amounts whose origin of source can be located in India. Therefore, the provisions of s. 68 or 69, in our opinion, have limited application in the case of non-resident."

11.2 The decision in the case of *Finlay Corporation Ltd. (supra)* has been followed in the case of *Smt. Susila Ramasamy (supra)*, holding as under :

"The assessee, who is a non-resident, brought money into India through banking channel and the manner in which this money was utilized in India is described in the Annexure. We have observed in the above paras that because of the mode of banking channel, admittedly, used for the remittance in this case, the onus on the assessee under s. 69 stood discharged, and therefore, it was not taxable in India under s. 5(2) (b) of the Act. The CBDT circular (supra) squarely supports the case of the assessee. The fact that the transactions and events narrated in the Annexure look curious and suspicious makes no difference to the conclusions that we have drawn in this case, as per law, in the above paras."

11.3 Apropos applicability of CBDT Circular No/5, dt. 20th Feb., 1969, the Tribunal in the case of *Saraswati Holding Corpn. Inc. (supra)*, while examining the issue in question in the light of CBDT Circular No. 5, dt. 20th Feb., 1969 and the decision of *Finlay Corporation Ltd. (supra)* held as under :

"10. In the light of the above decision of the Tribunal, and Circular No. 5 of CBDT, we are of the view that the action of the Revenue authorities in bringing to tax the sum of Rs. 3,83,11,550 cannot be sustained. We have already held that the assessee is a tax resident of Mauritius. There is no basis for coming to the conclusion that any income of the assessee accrued, arose or was received in India. In these circumstances, we direct that the addition made be deleted. Ground Nos. 2 to 2.3 raised by the assessee are allowed."

11.4 The proviso of s. 68 though inserted w.e.f. 1st April, 2013 also reveals the legislative intent that if the shareholder is a non-resident and the money is by way of remittance from his account, the rigour of s. 68 would not be applicable.

11.5 We find merit in the contentions of learned counsel and reliance on the decisions of the Tribunal in the cases of *Finlay Corporation Ltd. (supra)*, *Smt. Susila Ramasamy (supra)* and *Saraswati Holding Corpn. Inc. (supra)* and the import of CBDT circular referred to above. Whenever remittances are made by the non-resident holding company for purchase of shares of its subsidiary in India, the money undoubtedly is capital in the nature and if documents like FIRC etc. are produced, it can safely be stated that the said money came in through banking channels.

11.6 In the absence of any evidence to show that the money remitted by the non-resident accrued in India, it cannot be held to be taxable in India. Hence, moneys remitted by non-residents whose identity is not in



question through their bank accounts outside India have to be held as capital receipts not exigible to tax. It therefore naturally follows that if the identity of the non-resident remitter is established and the money has come in through banking channels, it would constitute a capital receipt and ordinarily cannot be treated as deemed income under s. 68 or 69 of the Act. This is clarified by the CBDT circular itself.

11.7 Taking into consideration of all the above, we find merit in the argument of the learned counsel for the assessee that the primary burden cast on the assessee was duly discharged. The issue of primary onus is to be weighed on the scale of evidence available on the record and the discharge of burden by the assessee is also to be decided on the basis of documents filed by the assessee and facts and circumstances of each case and on that basis a reasonable view is to be taken as to whether the assessee has discharged the primary onus of establishing the identity of share applicant, its creditworthiness and genuineness of the transaction. From the documents filed during the course of assessment and before CIT(A), the independent existence of the share applicants in Russia is clearly established. The assessee's application to FIPB for raising the capital contains all the relevant details which is favourably accepted by the Board, particularly by allowing the assessee to raise further capital without approaching the FIPB. The transactions are through banking channels. Thus, the gamut of evidence does not leave any doubt in the discharge of primary burden of the assessee. On the issue CBDT circular and Finlay Corporation Ltd. Judgment (supra) also we are in agreement with the learned counsel for the assessee that in these circumstances of the case, moneys remitted by non-residents through banking channel outside India have to be held as capital receipts, not exigible to tax and cannot be treated as deemed income on the fictions created by ss. 68 and 69 of the Act. In consideration of all these observations, we are inclined to hold that the share application money as raised in the grounds of appeal cannot be held as non-genuine and added as income of the assessee under s. 68 of the Act. Consequently, additions made on this count as raised in grounds of appeal are deleted. Assessee's grounds of appeal on this issue are allowed.

14. The Co-ordinate Bench of ITAT Delhi in the case of Finlay Corporation

Ltd. [2003] 86 ITD 626 (DELHI), on identical facts held as follows:

"However, the conflict between the provisions is only with reference to the onus and not to the issue of taxability of income. The onus is shifted under section 68 or 69 only with reference to the income which is otherwise taxable in the hands of non-resident under section 5(2). Therefore, the issue whether the income of a non-resident is taxable or not is still to be decided with reference to the provisions of section 5(2) and the provisions of section 68 or 69 cannot enlarge the scope of section 5(2). What is not taxable under section 5(2) cannot be taxed under the provisions of section 68 or 69. Under section 5(2), the income accruing or arising outside India is not taxable unless it is received in India. Similarly, if any income is already received outside India, the same cannot be taxed in India merely on the ground that it is brought in India by way of remittances. If such income is shown in the books of account then it cannot be taxed in India merely because the assessee is unable to prove the source of such entry. Therefore, the same cannot be taxed under section 68 merely on the ground that the assessee fails to prove the genuineness and source of such cash credit. Therefore, the provisions of section 68 or 69 would be applicable in the case of non-resident only with reference to those amounts whose origin of source can be located in India. Therefore, the provisions of section 68 or 69 have limited application in the case of non-resident. [Para 13]"

15. Further, our view is fortified by the decision of the Coordinate Bench of ITAT Hyderabad in the case of Madhusudan Rao [2015] 57 taxmann.com 262 (Hyderabad - Trib.), wherein it was held that the provision of section 5 does not permit taxation of amounts remitted to India, from sources outside India which are not incomes under provisions of Act.



Similarly, the Co-ordinate Bench of ITAT Mumbai, in the case of Hemant Mansukhlal Pandya [2018] 100 taxmann.com 280 (Mumbai - Trib.), held that where additions were made to income of assessee, who was a non-resident since 25 years, since, no material was brought on record to show that funds were diverted by assessee from India to source deposits found in foreign bank account, impugned additions were unjustified

16. Further, in the assessee`s case under consideration, the assessee purchased the property on 25.02.2010, and major payment was made to Oberoi Realty Limited in the year 2010 itself. Therefore, it should not be taxable in the assessment year 2018-19. That is, no addition under section 69 could be made in year under consideration in respect of investment in immovable property made in earlier year(s). For that, reliance is placed on the decision of the Co-ordinate Bench of ITAT Delhi in the case of Km. Preeti Singh, [2019] 103 taxmann.com 293 (Delhi - Trib.). Moreover, Money brought in India by non-resident for investment or for other purposes is not liable to tax under provisions of Act and question of assessment to income-tax arises only when there is no evidence to show that amount in question in fact represents remittance from abroad, for that reliance is based on the decision of the Coordinate Bench of ITAT Panaji in the case of Iqbal Ismail Virani,[2021] 128 taxmann.com 181 (Panaji - Trib.). Therefore, based on these facts and circumstances, the addition made by the assessing officer/DRP needs to be deleted. Accordingly, we delete the addition.



17. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 10/01/2025

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट/Rajkot

दिनांक/ Date: 10/01/2025

Sd/-
(DR.ARJUN LAL SAINI)
लेखा सदस्य/**ACCOUNTANT MEMBER**

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अत्रोषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

सहायकपंजीकार

आयकरअपीलीयअधिकरण ,राजकोट