

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SOUNDARARAJAN K., JM**

**ITA Nos. 679 & 681/Coch/2023
Assessment Years: 2006-07 & 2007-08**

Mammayil Thekepurayil Manshoor Appellant
MTP House, Payyangadi, Mattool P.O.
Kannur 670302
[PAN: AVDPM1334R]

vs.

DCIT (Exemption), Kochi Respondent

Appellant by: Shri Surendranath Rao, CA
Respondent by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 20.03.2025
Date of Pronouncement: 29.04.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against the orders of the Commissioner of Income Tax (Appeals)-12, Bangalore [CIT(A)], dated 31.07.2023 & 09.08.2023 for Assessment Years (AY) 2006-07 & 2007-08, respectively.

2. Since identical issues are involved in these appeals, they are heard together and disposed of by this common order. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 679/Coch/2023 for AY 2006-07 are stated herein.

3. Brief facts of the case are that the appellant is a non-resident Indian. No regular return of income under the provisions of section 139(1) of the Income Tax Act, 1961 (the Act) was filed for AY 2006-07. However, the DCIT (Exemption), Kochi (hereinafter called "the AO") formed an opinion that income had escaped assessment to tax based on the information received from Swiss authorities that the appellant along with Smt. Naseera Seervalappil had made various investments with HSBC Bank Pvt. Ltd., Switzerland in the form of fiduciary deposits, accordingly issued notice u/s. 148 of the Act on 29.03.2016. The notices u/s. 148 was sent through registered post on the known address of the appellant in UAE were returned unserved. On further enquiry with the Superintendent of Posts, Ernakulam it was found that the notices had been returned back unclaimed. Therefore, the AO treated it as a valid service of notice in view of section 27 of the General Clauses Act. Accordingly the AO had proceeded to make exparte assessment invoking provisions of section 144C of the Act by making addition of the investments made in HSBC Bank of Rs. 41,36,90,020/-. The AO further observed that as per the data available with the HSBC Swiss Bank account the appellant is an Indian national. The place of establishment of the appellant is India and in the absence of any evidence to show that the investments are made out of sources of income outside India, the AO inferred that the said investments could have been made out of taxable income in India which escaped assessment to tax.

Accordingly made addition on protective basis as substantive addition was made in the hands of Smt. Naseera Seeravalappil.

4. Being aggrieved, an appeal was filed before the CIT(A) contending as follows: -

- i) The notice issued u/s. 148 of the Act was barred by limitation and also there was no reasons to believe that income escaped assessment to tax as ultimately the AO completed the assessment proceedings by resorting to protective assessment.
- ii) In case of a non-resident, only income received in India or income deemed to have accrued in India alone can be taxed.

5. The learned CIT(A) after duly considering the above contentions and dismissed the appeal by holding that the appellant had failed to establish the source of income out of which, the investments were made in HSBC Bank, Switzerland was not in India.

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. The learned counsel for the assessee submits that the reassessment proceedings were barred by limitation as the reassessment proceedings were initiated after expiry of a period of 6 years and also for the reason that the AO had no reason to believe that the income charged to tax escaped assessment as he himself

resorted to protective assessment. On merits he submitted that in view of the admitted fact that the appellant is a non-resident Indian the income earned outside India is not taxable in view of section 5(2) of the Act.

8. On the other hand, the learned Sr. DR, placing reliance on the orders of the lower authorities submits that no interference is called for.

9. We have heard the rival contentions and perused the material available on record. The grounds of appeal 2 to 3 challenge the very validity of the initiation of reassessment proceedings on the ground that the reassessment proceedings are barred by limitation and also there was no reason to believe that income escaped assessment to tax. The contention of the appellant that the assessment is barred by limitation cannot be accepted for the reason that the case of the appellant falls within clause (c) of sub-section (1) of section 149 of the Act which reads as under: -

“Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

.....

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.”

Thus, these grounds of appeal Nos. 2 & 3 stand dismissed.

10. As regards to the contention of the appellant that there is no reason to believe that income escaped assessment to tax as the AO has resorted to making a protective assessment based on the decision of the Mumbai Tribunal in the case of Ms. Amrita Jhaveri v. DCIT [2023] 150 taxmann.com 371 Mum-Trib). It is now settled position of law that the validity of reassessment should be decided on the anvil of reasons for issue of notice u/s. 148 of the Act. The said reasons do not indicate that the assessment was sought to be reopened for the purpose of making a protective assessment. Therefore, it is also equally settled that at the stage of issue of notice u/s. 148 of the Act, there need not be conclusive evidence. Therefore, as held by the Hon'ble Supreme Court in the case of Raymond Wool Mills Ltd. v. ITO [1999] 236 ITR 34 (SC). Therefore, we do not find any merit in the contentions raised by the assessee. Accordingly we hold that the reassessment proceedings initiated u/s. 148 of the Act are valid in law.

11. The other ground of appeal No. 5 challenges the addition on protective basis on alleged investments made by the appellant in the HSBC Bank of Switzerland. It is undisputed fact that the appellant is a non-resident Indian during the previous year relevant to the assessment year under consideration and also it is a fact that there was no material on record to show that the subject investments were made out of the income sourced in India. The onus lies upon the AO

to prove that the investments in HSBC bank were made out of the taxable income in India. Once the AO discharges this onus of proving that the source of investments was made out of the taxable income in India then the onus shifts to the assessee of proving the nature of source of investments. In this case a mere perusal of the assessment order would indicate that there was no material to prove that the subject investments were made out of the taxable income sourced in India. The scope of tax liability of nonresident is required to be considered in the light of section 4 and 5 of the Income Tax Act. The relevant provisions of the Act are extracted as under :-

“Charge of income-tax.

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person : Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, incometax shall be charged accordingly. (2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Scope of total income.

5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or

(c) accrues or arises to him outside India during such year :

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(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 source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.—Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India. Explanation 2.—For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.”

12. Therefore, in view of the undisputed position of law, even assuming that the subject investments belongs to the assessee, the same was not taxable in India for the above reasons, no addition is called for.

13. In the result, appeals filed by the assessee stand partly allowed.

Order pronounced in the open court on 29th April, 2025.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 29th April, 2025

n.p.

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1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin