IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.1684/Ahd/2024
(Assessment Year: 2014-15)

Hemant Gordhanbhai Patel (Individual), 21, Santram Nagar Society, Nana Kumbhnath Road, Nadida, Gujarat-387001	Vs.	Assistant Commissioner of International Tax, Vadodara
[PAN No.GIBPP4580B]		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri Divyakant Parikh, A.R.
Respondent by:	Shri Veerbadram Vislavath, Sr. DR

Date of Hearing	15.05.2025
Date of Pronouncement	26.05.2025

O R D E R

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 vide order dated 24.07.2024 passed for A.Y. 2014-15.

2. The Assessee has taken the following grounds of appeal:-

"1. The Ld. Commissioner of Income Tax (Appeals) grievously erred both in law and on facts in upholding the legality of reassessment order passed u/s 147 of the IT Act which is without jurisdiction and also illegal and bad in law. There being no jurisdiction on the ld. AO on the appellant as also, there being no reason to believe as envisaged by section 147 of the Act, the order deserved to be quashed. It be quashed now.

2. Both the lower authorities erred in law and on facts in initiating and affirming the reassessment proceedings as there was no any escapement of income chargeable to tax when the appellant had made investment in purchase of property from his NRE account funds which facts were very much before them. The proceedings being illegal as settled by

the judgments of Jurisdictional High Court, the order passed ought to be quashed, it be so held now.

3. Without prejudice to the above grounds, the proceedings initiated u/s 147 is also illegal and ALSO barred by time on the basis of records of the issuance of first notice without DIN and without proper approval of competent authority. It be so held now.

4. Without prejudice to the above, the ld. CIT(Appeals) also erred both in law and on facts in not deleting the addition of Rs. 52,25,625/-= made u/s 69 of the Act, when the facts regarding investment in property from NRE account of the appellant was not disputed and necessary explanations were duly furnished to the Id AO also. It be so held now and addition made by wrongly invoking section 69 be deleted.

5. The ld. CIT(Appeals) also erred both in law and on facts in not properly considering the submissions made to him and various case laws cited by the appellant challenging legality of reassessment as also, on merits of untenable addition made by ld. AO which ought to be properly considered.

6. The Ld. Commissioner of Income Tax (Appeals) ought to have allowed the appeal in toto.

7. The appellant craves leave to add, alter, modify or delete any of the grounds at the time of hearing."

3. The brief facts of the case are that during the course of assessment proceedings, the Assessing Officer (AO), noted that the assessee failed to file his return of income for the relevant assessment year despite having purchased immovable property worth ₹68,35,500/- located at Nadiad, Gujarat. The AO noted that two specific payments were made by the assessee through cheques dated 15.05.2013 and 25.10.2013, totalling to ₹51,26,625/- for purchase of the aforesaid property. During the assessment proceedings, the assessee submitted that the funds were paid from his NRE account (Bank of Baroda Account No. 029001000015955). However, the AO treated this amount as unexplained investment under section 69 of the Income-tax Act, as the assessee failed to provide satisfactory evidence regarding the source of the funds, including the remittances from his UK bank account (Bank of Baroda UK Account No. 9410-01-91005606).

4. In the appellate proceedings before Ld. CIT(A), although the assessee submitted certain documents to support his claim, CIT(Appeals) was of the view that the assessee did not file an application under Rule 46A of the Income-tax Rules, which is a mandatory requirement for admitting additional evidence which was not submitted during the assessment proceedings. Despite multiple notices issued under section 250 of the Act on 25.06.2024 and 04.07.2024, and reminders requesting the assessee to file additional evidence along with the Rule 46A application, there was no response from the assessee, except a vague e-reply on the ITBA module stating that submissions had already been made. Accordingly, CIT(Appeals) held that since the assessee neither filed the required application under Rule 46A nor provided reasonable cause for not submitting this evidence during the assessment stage, the additional evidence submitted during the appellate proceedings cannot be considered. In light of the absence of proper documentary evidence and procedural compliance, the Commissioner (Appeals) upheld the AO's finding that the source of ₹51,25,625/- remains unexplained. Consequently, the addition made by the AO under section 69 of the Act was confirmed by CIT(Appeals).

5. Before us, the Counsel for the assessee submitted the assessee is a Non-Resident Indian (NRI) with his income comprising of salary, rent, and dividend earned outside India, specifically in the United Kingdom. The same is evidenced by passport of the assessee (produced before us at page 28 of the synopsis filed by the Counsel for the assessee). It was submitted

the assessee had no source of income in India and only earned interest income of ₹23,184/- from a savings bank account in India. During the relevant year, the assessee purchased immovable property using funds transferred from his UK bank account (Bank of Baroda UK Account No. 9410-01-91005606 the bank statements were placed before us at pages 42 to 47 of the paper book). These funds were remitted to his NRE account with Bank of Baroda in India (Account No. 02900100015955 the bank statements were produced before us (at pages 8 to 9 of the paper book). It was submitted that from this NRE account, the assessee made two payments for the purchase of property-₹25,00,000/- on 15.05.2013 and ₹26,26,625/- on 25.10.2013-to the seller Vilash Kantibhai Patel, as could be confirmed from the Purchase Deed (produced before us at pages 11 to 36 of the paper book, with relevant cheque details at page 27). During the assessment proceedings, the assessee submitted reply dated 31.12.2022 attaching his NRE bank account statements and the land "Purchase Deed" to explain the source of ₹51,26,625/- paid through two cheques. Another reply dated 25.01.2023 was filed before the Assessing Officer providing further clarification including the passport details, the assessee's stay in India, and credit entries in the NRE account. Despite this, the Assessing Officer added the amount of ₹51,26,625/- under section 69 of the Act on the ground that the source of income or the funds remitted from the UK bank account remained unexplained. Before CIT(Appeals), the assessee again submitted supporting documents, including a copy of his UK income tax return (reproduced at paper book pages 64 to 85), substantiating his income sources in UK and the source of remittance of funds from

legitimate UK sources. The assessee also cited established legal principles, supported by judgments of the Gujarat High Court and Ahmedabad ITAT supporting that investments made from NRE accounts are generally not subject to taxation in India. However, the CIT(A) rejected the submissions on the technical ground-that the assessee had not filed a separate application under Rule 46A of the Income-tax Rules for admitting additional evidence and dismissed the appeal of the assessee, thereby upholding the addition made by the AO, which is clearly contrary to facts placed on record and the law on the subject.

6. On going to the facts of the instant case, we observe that it is not disputed that the assessee is a NRI, residing in UK. The relevant details in support of the fact that the assessee is residing in UK citizen (in the form of passport) has also been placed on record before us, as well as before the concerned assessing officer/CIT(Appeals) and this fact has also not been disputed by the Revenue Authorities. Further, we observe that the counsel for the assessee has also placed the relevant documents like the return of income of the assessee filed in UK before us for our records (Pages 63-84 of the paper book). Further, the assessee has also placed on record copies of the bank account held by the assessee with Bank of Baroda, UK (Bank Account No. 9410-01-91005606), from which the amounts were transferred to his NRE account with Bank of Baroda, Nadiad, Gujarat (Bank Account No. 02900100015955). Further, we also see from the records is that it is from this NRE bank account, that the assessee paid an amount of ₹25 lakhs on 15-05-2013 and ₹26,26,625/- on 25-10-2013 for

purchase of property and the relevant "Purchase Deed" has also been placed before us, for our records. Accordingly, from the facts placed on record, nothing has been brought on record to dispute that the assessee is a UK resident, filing return of income in UK, the amounts were transferred by the assessee from his UK bank account to his NRE bank account and it is from this NRE bank account that the assessee had made payments for purchase of property, through banking channels. There is no allegation that the assessee had paid any amount over and above the amounts which was paid through banking channels. Further, there is no specific finding that the assessee was earning any income from any sources within India.

7. In a recent decision, the Gujarat High Court in the case of **Nitin Mavji Vekaria in Special Civil Application No. 7636 of 2022 (vide order dated 11th September 2023)** has quashed the income tax notices issued to several Ugandan residents over investments made in time deposits and mutual funds. The Court held that the investments were made from NRE accounts, and the income from these accounts was exempt from being included in the total income. In this case, all the petitioners were family members who, as residents and citizens of the Republic of Uganda, had sought directions to quash and set aside the order dated 29.03.2022, which was issued to them, under Section 148A(d) of the Income Tax Act, 1961. The petitioners' submitted that recently, the Income Tax Officer had issued a notice under Section 148A(b), calling upon the petitioner to show cause as to why a notice under Section 148 should not be issued. This was in view of the investments in time deposits and mutual funds aggregating

to Rs. 1,92,00,000/- made by the petitioners. On 21.03.2022, the petitioner had uploaded the reply along with various details and documents, including NRE Savings Bank statements, Uganda citizenship and passport documents. However, on 29.03.2022, the Income Tax Officer had passed the impugned order under Section 148A(d), holding that income amounting to Rs. 1,92,00,000/- had escaped assessment for the year under consideration. Therefore, it was deemed a fit case for the issuance of a notice under Section 148 of the Act. The Gujarat High Court held that it was evident from the explanation provided by the petitioner that all the investments in Time Deposits and Mutual Funds had been made from NRE Accounts. The High Court held that it was undisputed that the funds came from NRE Accounts, and the source of these funds was beyond the reach of the authorities. Even upon reading the provisions of Section 10(4) of the Income Tax Act, it was apparent that such incomes were exempt from being included in the total income.

8. In the case of **Shri Vinodkumar Hiralal Shah vs. ITO in ITA No. 50/Rjt/2018** vide order dated 20.120.2023, the ITAT made the following observations while dealing with a similar issue at hand before us:

> *"7. Before us the Counsel for the assessee submitted that in the instant facts, Department has not disputed that the assessee is a non-resident Indian during the impugned year under consideration. Further, during the impugned year under consideration, the assessee had received certain amount from a non-resident account of his son Mr. Binoy Raja into his NRE bank account in India as per RBI Guidelines. The son of the assessee Mr. Binoy Raja is also a non-resident and residing in UK. It was submitted that all the remittances were made through banking channels from the non-resident account of the son of the assessee's NRE account held in India, as per RBI Guidelines. The non-residential status of both the assessee and his son have not been disputed by the Department and it is not in dispute that all the transactions were made through banking channels. Accordingly, the submissions of the Ld. Counsel for the assessee was that since both the assessee and his son are non-residents, the transfers had*

been made into NRE bank account of the assessee held in India through another non-resident account of the assessee's son and no income arose in India and therefore, there is no question of invocation of Section 69 of the Act in the aforesaid circumstances.

8. In response, Ld. D.R. relied on the observations made by the Ld. CIT(A) in the appellate order.

*9. We have heard the rival contentions and perused the material on record. In the instant facts, certain points are noteworthy. The assessee is a non-resident during the impugned year under consideration holding a UK Passport. Further, the amounts in question were transferred to the assessee's NRE bank account by way of wire transfer from the account of the assessee's son, Mr. Binoy Raja, who is also a resident of UK. All the transactions have been carried out through banking channels as per RBI Guidelines. The NRI status of the assessee Shri Vinodkumar Hiralal Raja and his son Mr. Binoy Raja has not been disputed by the Department at any stage of the proceedings and admittedly, both the assessee and his son are residents of UK for the impugned year under consideration, and also for the earlier assessment years. The only reason on the basis of which the additions have been made are that the assessee has not been able to explain the source of funds received by the assessee in his NRE account (although it has not been disputed that the aforesaid amount has been received by way of wire transfer from another NRE account of the assessee's son). It would be useful to refer to the case of **Tarun Kumar Sarkar 84 taxmann.com 91 (Kolkata - Trib.)**, wherein the ITAT held that where foreign employer directly credited salary for services rendered outside India into NRE bank account of non-resident seafarer in India, same could not be brought to tax in India in terms of section 5 of the Act. The ITAT observed as below, while passing the order:*

> *"It is found that the impugned issue has been duly addressed by the CBDT Circular No. 13/2017, dated 11-4-2017 as rightly relied upon by the assessee.[Para 11]*
>
> *A perusal of the Circular referred to above shows that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NREaccount maintained with an Indian bank by the seafarer. Remittances of salary into NREAccount maintained with an Indian Bank by a seafarer could be of two types : (i) Employer directly crediting salary to the NREAccount maintained with an Indian Bank by the seafarer ; (ii) Employer directly crediting salary to the account maintained outside India by the seafarer and the seafarer transferring such money to NREaccount maintained by him in India. The latter remittance would be outside the purview of provisions of section 5(2)(a), as what is remitted is not 'salary income' but a mere transfer of assessee's fund from one bank account to another which does not give rise to 'Income'. It is not clear as to whether the expression 'merely because' used in the Circular refers to the former type of remittance or the latter. To this extent the Circular is vague.[Para 11.1]"*

*10. In the case of **Shri Vijaykumar Vasantbhai Patel in ITA No. 40/Ahd/2021**, the ITAT Ahmedabad held that addition under Section 69 of the Income Tax Act as unexplained investment is unsustainable as the investment is out of the NRI Repatriation funds came outside India and which is not taxable in India. In this case, the assessee is an individual and Non-Resident Indian. For the Assessment Year 2009-10, the Assessing Officer came*

in possession of the information that the assessee had made investment of Rs. 23,06,83,200/- in Fortis Mutual Fund (later renamed as BNP Paribas Mutual Fund) and this was neither disclosed in the Return of Income filed by the assessee nor disclosed during the assessment proceedings. Therefore a notice under Section 148 was issued on 03.11.2014. The AO treated the amount of Rs. 23.06 crores as unexplained investment under Section 69 of the Act and added as the assessee's income. In appeal, Ld. CIT(Appeals) deleted the addition after calling for remand report. In further appeal by Department, ITAT Ahmedabad dismissed the appeal of the Department, with the following observations:

> *"4.1. Though both the parties have raised various grounds in their respective appeal and Cross Objection. The short point is to be decided is whether the investment made by the assesse of Rs. 23.06 crores in Mutual Fund is assessable to tax in India. The assessee has proved beyond doubt that he is a Non-Resident Indian who borrowed for loans from Standard Chartered Bank, Chennai NRE Account. This is evident from Ld. CIT(A)'s order at Para 5.7 that from the letter dated 27.08.2008 from Manager Credit Operation addressed to the assessee at his address outside India, it is seen that the assessee was granted term loan of USD 44,80,000/- at the rate of 0.60% and that an amount of Rs. 23,06,83,200/- deposited on 29.08.2008 in the Standard Chartered Bank, Rajaji Salai, Chennai (account No. 427-1-029798-6 savings account in INR) and the amount was transferred on the same day for investment in the mutual fund.* ***Thus it is clear the source of the fund is from outside India and not taxable in India.*** *The assessee could not produce these documents during time barring period of reassessment, when the same were more than six years old documents to be obtained from the bankers. Therefore the Ld. CIT(A) directed the Assessing Officer to obtain from the assessee, the certified True Copies of the above documents from Standard Chartered Bank and the assessee shall bound to furnish the same, before the Assessing Officer while giving effect to the appellate order.* ***The ld. CIT(A) further directed the A.O. having satisfied himself that the source of such investment is from outside India shall delete the addition made by him****. We do not find any infirmity in the direction issued by the Ld. CIT(A). The Ld. CIT(A) having satisfied with the copies of the documents submitted by the assessee, has taken a conscious decision to delete the additions,* ***since the funds are NRI Repatriation funds came outside India and is not taxable in India.*** *Further the assessee also produced before us a copy of giving effect order dated 04.11.2020 passed by the Assessing Officer deleting the addition made by him."*

11. In this case of ***Iqbal Ismail Virani 128 taxmann.com 181 (Panaji - Trib.)****, the ITAT held that money brought in India by non-resident for investment or for other purpose 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. The ITAT made the following relevant observations in this regard:*

> *"24. There is yet another reason as to why the impugned addition cannot be sustained. Admittedly, the subject properties were acquired by the appellant by way of remittances from the appellant himself from abroad. From the material on record, it is clear that the deposits were made in Bank of Baroda, Dubai in the account belonging to appellant himself. Therefore, it can be said to be that money was received by the appellant for the first time in Dubai, and the income, if any,*

had accrued at Dubai only. Once it is received by the party entitled to it, in respect of any subsequent dealing with the said amount, it cannot be said to be received on that occasion, kindly refer to 14 ITR 10 (Bom.). Subsequently, the term "receipt" had been interpreted to mean that the first occasion when the recipient gets the money on his own control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in "receipt", within the meaning of this clause at the other place (see, Pondicherry Rly. Co. v. CIT [1931] 1 Comp Case 314 (Mad); CIT v. Diwan Bahadur S.L. Mathias [1939] 7 ITR 48 (PC). The observations made by the privy council in the above cases was quoted with approval by Hon'ble Supreme Court in the case of Keshav Mills Ltd. v. CIT [1953] 23 ITR 230 wherein it was held as follows :—

"It was clear that under these circumstances there was no receipt of the moneys at all, either actual or constructive, in cash or in kind, by actual payment or by adjustment or settlement of accounts. There was also no scope for the argument that even though these sums might not be said to be either actually or constructively received they should be "deemed to be received". The expression "deemed to be received" only means deemed by the provisions of the Act to be received. An amount cannot be "deemed to be received" merely by the volition or sweet will of an individual. The profits earned which were credited in the books of account according to the mercantile system of accounting were at best "treated as having been received" which is neither "received" nor "deemed to be received" and therefore not within the purview of section 4(1)(a) of 1922 Act. It is true that the words used in section 4(1)(a) of 1922 Act relate to the first receipt after the accrual of the income. Once it is received by the party entitled to it, in respect of any subsequent dealing with the said amount it cannot be said to be "received" as income on that occasion. The "receipt" of income refers to the first occasion when the recipient gets the money under his own control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in "receipt", within the meaning of this clause, at the other place. If therefore the income, profits or gains have been once received by the assessee even though outside British India they do not become chargeable by reason of the moneys having been brought in British India, because what is chargeable is the first receipt of the moneys and not a subsequent dealing by the assessee with the said amount. In that event they are brought by the assessee as his own moneys which he has already received and had control over and they cease to enjoy the character of income, profits or gains. In the instant case the moneys were neither received by the company nor could be deemed to have been received by it when the entries were made in the books of account at Petlad. They had merely accrued or arisen to it and so far as the receipt thereof was concerned they were first received in British India when they were received by J or by the various banks or shroffs in British India through whom the railway receipts were negotiated. The first receipt of the moneys was therefore when they were paid as such by the merchants to J or to the various banks or shroffs as above. What were paid by the merchants to these several parties were the sale proceeds of the goods which had been sold and delivered by the company to them and they were received within the meaning of section 4(1)(a) of 1922 Act by these several parties on behalf of the assessee in British India at the time when these payments were made by the merchants to them."

25. The above ratio of the Hon'ble Supreme Court in the case of Keshav Mills Ltd. (supra) was reiterated in series of decisions like Smt. Tarulata Shyam v. CIT [1977] 108 ITR 345 (SC); CIT v. Dharamdas Hargovandas [1961] 42 ITR 427 (SC); Benares State Bank Ltd. v. CIT [1970] 75 ITR 167 (SC). This position of law also been accepted by the CBDT vide para 2 of the CBDT Circular No. 5 in [F.No.73A/2(69)-IT (A-II)], dated 20-2-1969. which extracted below :-

"Migrant assessee - Money remitted to India through banks - Enquiries by Income-tax Officers regarding origin of money - Instructions regarding.

It has been represented to the Board that persons of Indian origin residing abroad but intending to return to India and settle here permanently, apprehend that the money brought in or remitted from abroad by such persons might be subjected to income-tax in India. The apprehension appears to be due to lack of information regarding the correct legal position about the taxability of the remittances of money from abroad. The general position, in this regard, is clarified below :

(2) Money brought into India by non-residents for investments or other purposes is not liable to Indian income-tax. Therefore, there is no question of a remittance into the country being subjected to income-tax in India. The question of assessment to tax arises only when there is no evidence to show that the amount, in question, in fact, represents such remittance. In other words, in the absence of proper supporting evidence, the taxpayers' story that the money has been brought into India from outside may be disbelieved by the Income-tax Officer who may then proceed to hold that the money had in fact been earned in India.

(3) If the money has been brought into India through banking channels or in the form of assets like plant and machinery or stock-in-trade, for which the necessary import permits had been obtained, no questions at all are asked by the Income-tax Officers as to the origin of the money or assets brought in. It is only in cases where the money is claimed to have been brought from outside otherwise than through banking channels and there is no evidence regarding the transfer of money, that the department has to make enquiries about the source thereof. Even in these cases, having regard to the difficulties experienced by persons migrating from Pakistan, Burma and East African countries, instructions have been issued to the Income-tax Officers that such claims should be freely admitted up to the limit of Rs. 50,000 in each case provided the following conditions are satisfied:—

(a) The assessee migrated to India on or after the dates mentioned below from the countries shown against each and had no source of income in India :

(i) 30-7-1962 Mozambique (vide Min. of Finance Press Note dated 22-5-1967).

(ii) 1-11-1963 (Sic.) Zanzibar, Kenya, Tanzania and Uganda (vide Min. of Finance Press Note dated 22-5-1967).

(iii) 1-1-1964 East Pakistan and Burma (vide Min. of Finance Press Note dated 25-6-1964/22-5-1965).

(iv) 1-10-1965 West Pakistan (vide Min. of Finance Press Note dated 3-2-1969).

(b) He had sufficient resources in the foreign country.

(c) He had no source of income either in India or in any foreign country, other than the country from which he migrated, prior to migration, and he was not assessed as 'Resident' in India, either for the assessment year preceding the year in which he migrated or for earlier years; and

(d) The amount brought in has been duly introduced in the books regularly maintained in India and an intimation of such introduction is given to the Income-tax Officer within two months of the migrant's arrival.

4. Cases not covered by the preceding paragraph, namely,

(a) where the money (in the case of Mozambique, Zanzibar, Kenya, Tanzania, Uganda, East Pakistan and Burma) and money and/or the personal jewellery (in the case of West Pakistan) claimed to have been brought exceeds Rs. 50,000; or

(b) where the assessee had some sources of income either in India or in any foreign country, other than the one from which he had migrated, prior to migration; or

(c) where the assessee was assessed as Resident in India either for the assessment year preceding the year of his/her migration or in the earlier years, will not be entitled to any special concession. Thus, any claim by such migrants that the funds or the jewellery have been brought from the abovementioned countries, will be accepted only if the persons concerned produce adequate evidence to show that they had sufficient funds/wealth in those countries and that the transfer of the cash/jewellery to India, can directly be linked with the said funds or wealth. In other words, these migrants will have to lead proper evidence like any other assessees, about the source of the cash/jewellery alleged to have been brought by them from these countries. In support of the claim that they had sufficient funds in those countries, they might produce before the income-tax authorities in India, their bank accounts in those countries as also copies of the assessment orders passed in their cases by the income-tax authorities of those countries. The migrants would also then be required to prove that the amounts brought into India can directly be linked with the funds which they had possessed in those countries."

26. The position that emerges from the CBDT Circular as well as the Hon'ble Supreme Court's decision in the case of Keshav Mills Ltd. (supra) ***is that the money brought in India by Non-Resident for investment or for other purpose is not liable to tax under the provisions of the Income-tax Act. The question of assessment to income tax arises only when there is no evidence to show that amount is question in fact represents remittance from abroad. Admittedly, in the present case, there is ample evidence on record demonstrating that the amounts in question represents remittance from abroad by the appellant himself. The rational behind this legal proposition is that the word "receipt" implies two persons viz. the person who receives and the person from whom he receives; a person cannot receive a thing from himself.***

27. ***Admittedly, the appellant herein is Non-Resident for the last 30 years for income tax purpose and citizen of USA. The scope of tax liability of Non-***

Resident is required to be considered in the light of sections 4 and 5 of the Income-tax Act. *The relevant provisions of the Act are extracted as under :—*

"4. Charge of income-tax.—(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, income-tax 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."

28. The provisions of sub-section (2) of section 5 provides that the Non-Resident is liable to tax in respect of (a) income received or deemed to be received in India and (b) income which accrues or arises or is deemed to be accrued or arise to him in India. ***Considering the totality of facts situation of the case on hand, it can be safely concluded that the remittance received from the appellant's account Bank of Baroda, Dubai to appellant's account to SBI NRE SB Account, Mapusa, Goa or remittance to the vendors of the properties is neither income received or deemed to received in India or nor was accrued or arisen or deemed to be accrued or arisen in India, therefore, the question of chargeability to income tax in India does not arise.*** *Therefore, the CBDT Circular cited supra also supports the case of the assessee. In the case involving identical facts, the Co-ordinate Bench of the Chennai Tribunal in the case of Smt. Susila Ramasamy (supra) referring to the CBDT Circular No. 5 dated 20-2-1969 (supra) held the same view.*

29. ***Admittedly, the appellant herein is Non-Resident Indian for income tax purpose for last 30 years. As noted by us (supra), an Indian resident is liable to tax in respect of income received or deemed to be received in India and income which accrues or arises or deemed to be accrued or arisen in India. In the preceding paragraphs, we held that the impugned addition does not represent either income received or deemed to be received in India or income accrued or arisen or deemed to be accrued or arisen in India. The remittance brought to India which are subject matter of impugned additions are obviously income received at first instance outside taxable territories of India or accrued or arisen outside taxable territories of India. Therefore, it is beyond the scope of jurisdiction of the Assessing Officer to go into the source of income earned outside taxable territories of India, once the Assessing Officer is satisfied that the source of money for acquisition of property represent remittance from the abroad from the appellant himself.*** *Therefore, rejection and acceptance of explanation given as to the source of credits in the bank account of Bank of Baroda, Dubai is totally immaterial and had no relevance at all, as the Assessing Officer was not concerned about the taxability or otherwise of income received or accrued and arisen outside the taxable territories of India to Non-Resident. Therefore, the fact that the lower authorities had rejected the explanation as to the sources of credits in the Bank of Baroda, Dubai account does not come in the way of deleting the impugned additions. This is more so, in view of the fact that there is no material on record to show that the appellant had diverted the income which escaped the assessment to tax in India to deposit the money in the Bank of Baroda, Dubai account, in fact, it is not even the case of the Assessing Officer that the appellant had indulged in round tripping of money and there is no allegation as such against the appellant.*

30. Therefore, in our considered opinion, the lower authorities not accepting the explanation offered by the assessee is not based on proper appreciation of material on record and other attending circumstances available on record. It is needless to say that the opinion of the Assessing Officer is required to be formed with reference to the material on record and application of mind in sin qua non for forming the opinion as held by the Hon'ble Supreme Court in the case of CIT

v. P. Mohanakala [2007] 161 Taxman 169/291 ITR 278. In the present case, there is total lack of application of mind, the Assessing Officer had not formed the opinion objectively with reference to any material on record and is merely based on the surmises and conjectures. We fail to understand as to why the Assessing Officer, having rightly taken note of the correct legal position governing the credits in the bank account i.e. he had chosen to bring the same to tax u/s 68 of the Act instead of section 69 of the Act. This itself goes to show the mala fides on the part of the Assessing Officer, perhaps he intends to assess to tax in the hands of the appellant under more vigorous the provisions of section 68 of the Act than provisions of section 69 of the Act. In the circumstances, we are of the considered opinion that the addition made by the Assessing Officer cannot be sustained and the orders of both the Assessing Officer and the ld. CIT(A) are hereby set-aside. We direct the Assessing Officer to delete the impugned additions.

31. In the result, the appeal of the assessee stands allowed."

*12. In the case of **Hemant Mansukhlal Pandya 100 taxmann.com 280 (Mumbai - Trib.)**, ITAT 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.*

*13. In the case of **Madhusudan Rao 57 taxmann.com 262 (Hyderabad - Trib.)**, ITAT held that provisions of section 5 do not permit taxation of amounts remitted to India from sources outside India which are not incomes under provisions of Act. The ITAT in this case held that where assessee, an NRI, received a certain sum from his own account outside India through proper banking channels with necessary statutory approvals, income could not be said to accrue or arise in India. The ITAT further held that the provisions of section 68 or 69 would be applicable in case of non-resident only with reference to those amounts **whose origin of source can be located in India**. Since assessee had remitted his own funds abroad to India, said inward remittance could not be considered as unaccounted income of assessee under sections 68 and 69. Where assessee transferred his own fund from outside of India, said fund could not represent his unexplained investment under Section 69A of the Act.*

*14. In the case of **Smt. Susila Ramasamy 37 SOT 146 (Chennai)**, the ITAT held that in case of remittances by way of banking channel onus on assessee under Section 69 stands discharged, and, therefore, section 5(2)(b) does not apply.*

15. In view of the instant facts and the judicial precedents cited, above we are of the considered view that Ld. CIT(A) has erred in facts and law in confirming the additions made by the assessee received by way of wire transfer from NRE account of his son in UK to assessee's NRE account from which investments were made into Mutual Funds. In our considered view, in the instant facts, no addition is sustainable under Section 69 of the Act.

16. In the result, Ground No. 1 of the assessee's appeal is allowed.

17. Ground No. 3 (Addition of Rs. 10 lakh under Section 68 of the Act) is similar to Ground No. 1 of the assessee's appeal. In view of our observations made in Ground No. 1 of the assessee's appeal, Ground No. 3 of the assessee's appeal is also allowed."

9. Accordingly, in view of the facts of the assessee's case discussed in the preceding paragraphs and the judicial precedents on subject dealing with similar issue, we are of the considered view that CIT(Appeals) erred in facts and in law in confirming the addition in the hands of the assessee.

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

This Order pronounced in Open Court on	**26/05/2025**

Sd/-	**Sd/-**
(DR. BRR KUMAR)	**(SIDDHARTHA NAUTIYAL)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Ahmedabad; Dated 26/05/2025

TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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