

IN THE INCOME TAX APPEALTE TRIBUNAL :  
VISA KHAPATNAM BENCH : VISA KHAPATNAM AT HYDERABAD  
[THROUGH VIRTUAL HEARING]

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G. ACCOUNTANT MEMBER

ITA.Nos.158 and 159/Vizag/2025  
Assessment Years 2015-2016 and 2016-2017

Pavani Dutt, VISA KHAPATNAM - 530012 PAN ARDPS4734M (Appellant)	vs.	The Income Tax Officer – [Intl. Taxation], VISA KHAPATNAM – 530 016. (Respondent)
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For Assessee :	CA, Satish Kumar Solanki
For Revenue :	Dr. Aparna Villuri, Sr. AR

Date of Hearing :	28.07.2025
Date of Pronouncement :	31.07.2025

**ORDER**

**PER MANJUNATHA G. :**

The above appeals are filed by the assessee against the Final Assessment Order dated 17.01.2025 passed by the Assessing Officer u/sec.147 r.w.s.144C(13) of the Income Tax Act, 1961 for the assessment years 2015-2016 and 2016-2017 respectively, in pursuance to the Directions dated 12.12.2024 of the Disputes Resolution Panel-1 [in

short “DRP”], Bengaluru passed u/sec.144C(5) of the Income Tax Act, 1961 [in short “the Act”]. Since common issues are involved in both these assessee’s appeals, these appeals were heard together and are being disposed of by this single consolidated order for the sake of convenience and brevity.

2. The assessee has raised the following grounds in ITA.No.158/Viz./2025 for the assessment year 2015-2016 :

*“Being aggrieved by the order passed under section 147 r.w.s. 144C(13) of the Income Tax Act by the ITO Intl. Taxation ward Vizag, the appellant present the appeal before the Hon'ble Tribunal on following grounds:*

- 1. The notice issued by the AO u/s 148 to reopen the assessment is without jurisdiction, incorrect and bad in law. The notice was issued by the ITO ward 22(2)(1), Mumbai who never had jurisdiction over appellant's case.*
- 2. The notice issued by the AD u/s 148 to reopen the assessment is incorrect and bad in law. The applicant made transaction of Rs. 16,47,900/- only during the F.Y.2014-15 which is less than Rs.50 Lakh. As per the provisions of section 149 amount of escapement of more than Rs.50 lakh is required to reopen the assessment beyond 3 years.*
- 3. The applicant is a non-resident and hence any deposits made in her NRE account is exempt under section 10(4) of the Income Tax Act.*

4. *The addition of Rs.16,47,900/- made by the AD and upheld by the hon'ble DRP under section 69 as unexplained investment is illegal and bad in law since the assessee is a non-resident and has made this expenditure out of her income earned in UAE.*
  5. *The addition of Rs.16,47,900/-made by the AD and upheld by the hon'ble DRP under section 69 as unexplained investment is illegal and bad in law as it is for the expenditure incurred on the stamp duty and it cannot be construed as "investment".*
  6. *The appellant is a non-resident and income earned by her in India only is taxable in India. The AD and DRP has failed to prove that the appellant has worked in India and earned any income in India.*
  7. *The Ld. AO has passed assessment order without issue of notice under section 143(2) which is mandatory before passing the assessment order and is incurable error.*
  8. *The Ld. AO has erred in law and in facts in making the addition of Rs.16,47,900/- to the income of the Assessee without appreciating the fact that the said income is not liable to income-tax in India by virtue of Article 22 of the India-UAE DTAA.*
  9. *Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal before or at the time of hearing."*
2. Brief facts of the case are that, the assessee is an non-resident individual residing in Dubai. The assessee had not filed her return of income for the assessment year 2015

2016. The assessment has been, subsequently re-opened under section 147 of the Act, after following the due procedure provided under section 148A of the Act and notice under section 148 of the Act, dated 05.04.2022 was issued and served on the assessee on the ground that, income chargeable to tax has been escaped for assessment. The Assessing Officer reopened the assessment as per the information available in ITBA portal that, the assessee has purchased the immovable property valued at Rs.3,29,52,128/-. In response to notice under section 148 of the Act, the assessee has filed return of income on 03.06.2023 declaring total income of Rs.36,610/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer called-upon the assessee to explain the source for purchase of property. In response, the assessee submitted that, she was a non resident Indian employed in UAE since last 18 years and only income earned in India is, interest income from NRE account held at bank and the same is exempt from tax. The assessee further submitted that, she has purchased the

property at Mumbai and paid total consideration of Rs.3,67,76,870/- and the source for the said payment is out of income earned outside India i.e., UAE and all payments, except, payment towards registration and stamp duty of Rs.17 lakhs has been made by her husband Sri Sunil Dutt bank account. The assessee had filed relevant NRE bank account, fixed deposit and maturity account statement and claimed that, out of funds transferred from outside India into NRE account, her husband got fixed deposit with Axis bank and the same has been matured on 11.08.2014. Out of maturity proceeds, the payment has been made for purchase of property. The Assessing Officer after considering the relevant submissions of the assessee and also taking note of various evidences observed that, the assessee has paid consideration for purchase of property, out of maturity proceeds of fixed deposit with Axis bank and the source for the said fixed deposit is, funds transferred from outside India into his NRE bank account. The Assessing Officer accepted the payment made to Adani Estates Private Limited. However made addition towards

stamp duty payment of Rs.16,47,900/- for the assessment year 2015-2016. Similarly, the Assessing Officer made addition of Rs.77,93,341/- towards payment made to Adani Estates Private Limited for purchase of property for the assessment year 2016-2017. Since, the assessee is a non-resident and is an eligible assessee, the Assessing Officer passed Draft Assessment Order dated 20.03.2024 under section 144C(1) of the Income Tax Act, 1961.

3. Aggrieved by the assessment order, the assessee filed objections before the DRP for both the assessment years. The assessee has challenged the additions proposed by the Assessing Officer towards unexplained investment in purchase of property with certain evidences and claimed that, she is an NRI residing in UAE for more than 18 years and source for purchase of property is, out of funds transferred from her husband bank account held at UAE to bank account held in India. The DRP forwarded the additional evidences filed by the assessee to Assessing Officer for remand report. The Assessing Officer submitted his remand report and observed that, although, the

assessee claims to have transferred funds from outside India into their bank account held in India, but, failed to furnish relevant evidences of source of income earned outside India. Therefore, opined that, the assessee failed to prove the source for purchase of property. The DRP after considering the relevant submissions of the assessee and also taking note of remand report of the Assessing Officer, rejected the objection filed by the assessee and sustained the addition made by the Assessing Officer towards unexplained investment in purchase of property for assessment years 2015-2016 and 2016-2017. In pursuance to the Directions of the DRP, the Assessing Officer passed Final Assessment Order dated 17.01.2025 under section 147 r.w.s.144C(13) of the Income Tax Act, 1961 and made additions of Rs.16,47,900/- for the assessment year 2015-16 and Rs.99,36,350/- for the assessment year 2016-2017.

4. Aggrieved by the Final Assessment Order, the assessee now, in appeal before the Tribunal.

5. CA, Satish Kumar Solanki, Learned Counsel for the Assessee submitted that, the Assessing Officer was erred in making addition towards unexplained investment for purchase of property, even though, the assessee has explained source for purchase of property, out of remittances from outside India i.e., UAE. Learned Counsel for the Assessee referring to the provisions of section 5(2) and 10(4) of the Act submitted that, income of a non-resident is taxable in India, if such income is received or deemed to be received in India or accrues or arises or is deemed to accrue or arises to him in India during such previous year. Further, any fund held in NRE account is only through remittances from outside India and further, no deposits can be made to NRE account from income earned in India. Since, the entire payment has been made through NRE account, out of source of income from outside India, the Assessing Officer is erred in making addition towards purchase of property under section 69 of the Act as unexplained investment. In this regard, he relied upon various documents including relevant Bank account

statement of Sri Sunil Dutt, husband of the assessee held at UAE, relevant Bank account statement of the assessee and her husband held at Axis Bank in India to prove that, funds has been transferred from bank account held at UAE to bank account held in India, which is the source for purchase of property. In this regard, the assessee had also relied upon certain judicial precedents including decision of Hon'ble Gujarat High Court in the case of Nitin Mavji Vekariya vs., ITO, Ward-4, GDHAM (BHUUJ02) in R/Special Civil Application No.11052 of 2022, Judgment dated 11.09.2023.

6. Dr. Aparna Villuri, Sr. AR for the Revenue, on the other hand, supporting the order of the Assessing Officer submitted that, although, the assessee has filed certain evidences including relevant NRE bank account held at Axis bank, but, failed to prove the source of income from UAE, which is evident from the remand report of the Assessing Officer, where the Assessing Officer has categorically observed that, the assessee could not file any evidence to prove source of the income in UAE. In absence of any

relevant details, the Assessing Officer has rightly made the addition towards investment in purchase of property including stamp duty for assessment years 2015-2016 and 2016-2017. Therefore, she submitted that, the addition made by the Assessing Officer should be upheld.

7. We have heard both the parties, perused the material on record and the orders of the authorities below. There is no dispute with regard to the fact that, the assessee is a non-resident Indian residing in UAE for more than 18 years and carrying-on the business under the trade name viz., 'Vcare Marine FZE', which is evident from licence copy issued by RAK Free Trade Zone Authority, Government of Ras Al Khaimah. Further, as per the provisions of section 5(2) and 10(4) of the Act, income of a non-resident is taxable in India only if such income is received or deemed to be received or accrue or deemed to be accrues in India during such previous year. Therefore, it is necessary for us to examine the reasons given by the Assessing Officer to make the addition towards payment made for purchase of property under section 69 of the Act as unexplained

investment, in light of residential status of the assessee and the income or the source for purchase of property.

8. Admittedly, the assessee has purchased the property from Adani Estates Private Limited and made payment from her bank account and also from her husband Sri Sunil Dutt bank account held at Axis Bank. The assessee has paid total of Rs.3,67,76,870/- including amount for maintenance deposit, club-fee and other amenities etc. The entire amount, except, for the registration and stamp duty charges of Rs.17 lakhs have been paid by Sri Sunil Dutt, husband of the assessee from his NRE account maintained with Axis Bank. The assessee has paid a sum of Rs.17 lakhs from Kotak Mahindra Bank Account for registration and stamp duty charges. The Assessing Officer made addition of Rs.16,47,900/- for the assessment year 2015-2016 towards stamp duty expenses. The assessee has paid a sum of Rs.17 lakhs to Adani Estates Private Limited on 19.06.2014 from Kotak Mahindra Bank Account for stamp duty and registration charges. The source for the said payment is, fund transferred from State

Bank of India Bank Account of the assessee to Kotak Mahindra Bank Account on 15.05.2014. The source of source for above payment is, out of opening balance held at SBI Account. From the details filed by the assessee, there is enough evidence to accept the arguments of the assessee that, entire amount of Rs.16,47,900/- has been paid out of funds remitted from outside India i.e., UAE to her bank account held in SBI. Therefore, we are of the considered view that, the Assessing Officer is erred in making addition towards amount paid for stamp duty charges in respect of purchase of property as unexplained investment under section 69 of the Act for the assessment year 2015-2016.

9. Coming back to the assessment year 2016-2017. The Assessing Officer has made addition of Rs.99,36,350/-. The Assessing Officer considered payment of Rs.1,34,14,902/- made to Adani Estates Private Limited and out of total payment of Rs.1,34,14,902/-, the Assessing Officer allowed credit for balance amount available out of FD maturity proceeds of Rs.56,21,561/- and stated that, the assessee is able to explain the source for Rs.56,21,561/-

and balance amount of Rs.99,36,350/- is remain unexplained. The assessee has filed Bank Account Statement of Sri Sunil Dutt, husband of the assessee. As per the bank account statement of Sri Sunil Dutt, the entire amount of Rs.1,34,14,902/- has been paid by Sri Sunil Dutt from his NRE bank account maintained with Axis Bank. The source for the above payment is, funds transferred from his Bank Account held at Dubai. The assessee has furnished relevant Bank Account Statement held at Dubai and also NRE bank account held at Axis Bank. From the details furnished by the assessee, it is undisputedly clear that, the entire payment for purchase of property has been made by Sri Sunil Dutt, out of his income earned outside India. Once the income or source for payment for purchase of property or remittance is from outside India, in our considered view, the addition made by the Assessing Officer under section 69 of the Act, cannot be sustained, unless the Assessing Officer makes-out a case that, the source for said payment is either from India or rooted from India through his bank account held at outside India. Since, the Assessing Officer has not

made-out a case that, the source for payment for purchase of property is earned inside or received from India, in our considered view, the addition made by the Assessing Officer cannot be sustained, more particularly, when the source for said payment is remittance from outside India. This is because, even if the source or income earned from outside India is not explained, but, still there is no scope for the Authorities to tax the said source or income in India because, the income of non-resident is taxable in India only if such income is received or deemed to be received or accrued or deemed to be accrued in India for the relevant previous year. Since, the assessee has filed various evidences including relevant Bank Account Statement to prove the source for purchase of property from outside India, in our considered view, the Assessing Officer is erred in making addition under section 69 of the Income Tax Act, 1961, for both the assessment years. Thus, we direct to the Assessing Officer to delete the additions made under section 69 of the Income Tax Act, 1961 for the assessment year

2015-2016 for Rs.16,47,900/- and for the assessment year 2016-17 for Rs.99,36,350/-.

10. The assessee had also raised various legal grounds including non-issuance of notice under section 143(2) of the Income Tax Act, 1961 for both the assessment years. Since, we have deleted the addition made by Assessing Officer towards unexplained investment for purchase of property for both the assessment years, in our considered view, the legal ground taken by the assessee challenging the validity of assessment passed by the Assessing Officer for both the assessment years becomes academic in nature and thus, these grounds taken by the assessee are dismissed as infructuous.

11. In the result, both the appeals of the assessee are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 31.07.2025.

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT  
Hyderabad, Dated 31<sup>st</sup> July, 2025  
VBP

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

Copy to

1.	Ms. Pavani Dutt, D-511, Navya Nulife Construction, Backside BPCL Petrol Bunk, Sheelanagar, VISAKHAPATNAM – 500 012. State of Andhra Pradesh
2.	The Income Tax Officer- [Intl. Taxation], Ground Floor, Infinity Towers, Sankaramatham Road, VISAKHAPATNAM – 530 016. State of Andhra Pradesh
3.	The Pr. CIT, VIJAYAWADA/VISAKHAPATNAM.
4.	The DR ITAT Visakhapatnam Bench, Visakhapatnam.
5.	Guard File.

//By Order//

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