

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

BEFORE SHRI INTURI RAMA RAO, AM

**ITA No. 770/Coch/2025
Assessment Year: 2015-16**

Valuzhathil Padmanabhan Sivadasan Appellant
Valuzhathil House, Kozhuvalloor, Thiruvalla
[PAN: AKAPS3606C]

vs.

The Income Tax Officer, Ward-2, Thiruvalla Respondent

Assessee by: Shri Stephen George, AR
Revenue by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 06.11.2025
Date of Pronouncement: 21.11.2025

ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-2, Noida [CIT(A)] dated 25.08.2025 for Assessment Year (AY) 2015-16.

2. 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 by the appellant. The DCIT (International Taxation) LKN (hereinafter called "the AO"), based on the information that the appellant made term deposits in bank and earned interest income of deposits, formed an opinion that income escaped assessment to tax. Accordingly, the

AO issued a notice u/s. 148 of the Act after duly complying the provisions of section 148(A) of the Act. In response to the notice u/s. 148, the appellant filed return of income for AY 2016-17 on 30.08.2022 declaring total income of Rs. 2,44,870/-. Against the said return of income, the assessment was completed by the AO vide order dated 26.05.2023 passed u/s. 147 r.w.s. 144C(3) of the Act at total income of Rs. 35,01,948/-. While doing so, the AO brought to tax the income of salary of Rs. 32,57,078/-.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO solely on the ground that the appellant had failed to file copy of the passport and Tax Residency Certificate to prove that he was NRI.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The only issue that arises for ny consideration is whether the AO was justified in making addition of Rs. 32,57,078/- as unexplained money of the appellant. The fact that the appellant's salary aggregating to Rs. 32,57,08/- was credited to his NRE account maintained with State Bank of Travancore, Kozhuvallur is undisputed. Since the appellant could not furnish any document to substantiate his non residential status, the AO treated him as resident and accordingly his global income was taxed in India. In my considered opinion this action of the AO cannot be sustained in view

of the decision of the Panaji Bench of this Tribunal, wherein it is held under: -

“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 assessee, 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.

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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.”

6. In view of the ratio of above legal position, I am of the considered opinion that the reasoning of the learned lower authorities cannot be sustained.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 21st November, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 21st November, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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By Order

Assistant Registrar
ITAT, Cochin