



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH,  
RAJKOT**

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

**आयकरअपीलसं./ITA No. 187/RJT/2024  
Assessment Year: (2015-16)**

Nayna Mukeshkumar Kotecha Rajeshbhai Shingala Flat No. E- 202, Shri Sadguru Vatiaka, Maruti Nagar, Airport Road, Rajkot-360001	Vs.	The ACIT, International Taxation, Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>DNUPK7394R</b>		
(Appellant)		(Respondent)

**Appellant by** : Shri Sumit Shingala, Ld. A.R.  
**Respondent by** : Shri Sanjay Punglia, Ld. CIT(DR)  
**Date of Hearing** : 08/10/2025  
**Date of Pronouncement** : 05/01/2026

**आदेश/ORDER**

**Per DR. Dinesh Mohan Sinha, JM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY)-2015-16, is directed against the order passed by the Commissioner of Income Tax(Appeals) [(in short "Ld.CIT(A)"] vide order dated 28.12.2023, which in turn assessment order passed by Income Tax Department/Assessing Officer under section 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (in short "the Act"), vide order dated 25.01.2024.



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

*“1. The Ld. AO has erred in law as well as in facts in making addition of Rs.63,49,000/- u/s. 69A, towards the cash deposited into Bank Account, by the NRI assessee, which was out of earlier cash withdrawn.*

*2. The re-opening is bad in law.*

*3. The Ld. ITO, wd-1(1)(1), Rajkot inherently lacked jurisdiction to initiate proceedings u/s. 148A r.w.s. 147, and issue notice u/s. 148A, pass order u/s. 148A, and issue notice u/s. 148.”*

3. Brief facts of the case are that the assessee has aged above 70 years as settled in Tanzania. The assessee having brother in India, therefore the assessee visited occasionally. The assessee residing in Ridhmond Tower, Mindu Street Upanga Dar Es Salaam Tanzania 999999, Foreign and local address of assessee real brother is E-401, Shree Sadguru Vatika 2, Maruti Nagar, Airport road, Rajkot-360001 and no financial activity carried out in India. The assessee has attached copy of ITR for FY 2014-15 in response to notice u/s. 148 filed and computation of income with all financial statements. During the year the details regarding cash deposits made during FY 2014-15 in Bank of India out of her earlier withdrawal from the Bank. The copy of the bank statement along with cashbook is enclosed attached in paper-book. And the assessee has also highlighter the relevant transactions with bank statements. During the year assessee has booked one Residential Flat at Silver Height and the said amount was given form NRE Account and the said flat booking was cancelled in the same financial year. The ledger account from the books of account and copy of flat cancelation letter is attached in paper-book. The assessee attached in paper book complete bank statement utilized during the year along with bank ledger account from the assessee books of account. The details of relevant Bank Accounts with Bank of India are as under:



Sr.	Bank A/c. No.	Type of Account
1.	310014110000236	NRO Account
2.	310014100061865	NRE Account

4. The details of the assessee's visit of India, details of relevant instance of cash withdrawal from Bank and impugned Cash Deposit, during relevant period are as under:

Stay in INDIA	
Arrival	Departure
	11-02-2014
08-09-2014	03-10-2014
15-12-2014	30-01-2015

Impugned Cash Entries		
Rs.63,49,316/-	24-01-2014	withdrawal
Rs.63,49,000/-	28-01-2015	Deposited

5. The details regarding NRI status during the year under consideration, the copy of OCI card is attached herewith. The assessee has attached the copy of bank statement (foreign bank) from which the money has been remitted to the NRE account maintained in India. During the year the assessee received following amounts in my NRE account.

Sr	Date	Particulars	Amounts
1.	12/06/2014.	Ch. No.: TRTR/T14163002717/12-06-2014 FOF	2,94,900
2.	03/09/2014	Ch. No.: 3100IRT14001120	19,64,547
3.	28/01/2015	Amount transferred from NRO Account No.: 310014110000236	60,00,000

6. The assessee submitted the details whenever it is received from assessee -the relevant documentary evidences to show that the money has been remitted to NRE account in India out of income earned and



disclosed in your country of residence. The following transaction details are given from NRI to NRO account with narration:

Sr. No.	Date	Particulars	Amounts
3.	28/01/2015	Amount transferred from NRO Account No.: 310014110000236	60,00,000

7. During the year assessee has transferred fund from her NRO to NRE account during the year and form 15CA is already filed and copy of the said form is attached herewith along with supporting documentary evidence. That the assessment complete on 25.01.2024, and relevant para is reproduced below:

*"6. Subject to the above discussions, the total income of the assessee is computed as follows;*

*Total income disclosed in return of income : Rs. NIL/-  
Add: Unexplained cash deposits u/s. 69A : Rs.  
63,49,000/-  
Assessed total income : Rs. 63,49,000/-*

*7. In this case, the draft order was passed on 19.03.2023 where in following was mentioned.*

*"The assessment is proposed to be completed under section 143(3) r.w.s. 144C(1). Tax and interest chargeable will be calculated on income on finalization of Draft Assessment Order and demand will be raised accordingly. Penalty proceeding will also be initiated upon finalization of the Draft Assessment Order. The assessee may prefer an appeal against this Draft Assessment Order before the Hon'ble Dispute Resolution Panel (DRP) within 30 days. If no such communication is received within a period of 30 days, it will be deemed as acceptance of this Draft Order by the assessee and final order will be passed within one month from the end of the month in which the period of 30 days expires. If however, the assessee prefers to go before the DRP, the assessee must inform this office of such appellate proceeding and the final order will be passed within one month of the end of the month in which the DRP order is received."*

*8. As assessee has intimated this office regarding filing of objection before Hon'ble dispute resolution panel (DRP). The Hon'ble Dispute Resolution panel (DRP) has also considered the objection filed by the assessee in this*



*regard and passed an order u/s. 144C of the Act dated 28.12.2023 bearing DIN no.ITBA/DRP/F/144C(5)/2023-24/1059137922(1) rejecting the objection. Accordingly, the assessment is finalized u/s. 144C(3) of the Act.*

*10. Assessed under section 143(3) r.w.s 147 r.w.s 144C(3) of the Income-tax Act, 1961. Demand notice is enclosed herewith. The computation of tax is as per computer generated sheet and the same forms part of this order. Issue notice u/s. 271(1)(c) r.w.s. 274 of the Act.”*

8. That the assessee filed an appeal against the impugned order dated 23.01.2024 passed by the Ld. CIT(A) before this Tribunal.

9. During the course of hearing, the Ld. AR submitted that synopsis of rebuttal and rejoinder to written submission before the Bench, which is reproduced below:

*“1. Jurisdictional Objection:*

*The appellant has contended that Id. ITO, Ward 1(1)(1), Rajkot did not have jurisdiction to issue notice u/s. 148A/148 to non-resident. It is clarified that the objection is not concerning mere territorial jurisdiction, it is substantially about residential status of the appellant.*

*2. Department's Contention:*

*The Department contends that the appellant failed to inform the AO about her non-resident status.*

*This is both factually and legally flawed.*

*3. Department's Knowledge of Non-Resident Status:*

*i. The show-cause notice u/s 148A refers to 'receipt of remittance by a non-resident'- i.e. the appellant. Words "Receipt of Remittance" forming basis reopening are noteworthy. It is the Reason*

*ii. The Form-15CA is applicable, only in case of remittance to non-resident. It clearly mentions the APPELLANT as REMITTEE NON-RESIDENT.*

*iii. Notices u/s 148A and 148 were sent to the appellant's Tanzania address. The Address is picked up from the Non-resident Remittee's Column of Form-15CA. The said Form 15CA is available to AO since 26/01/2015.*

*These facts demonstrate the AO was fully aware of the appellant's non-resident status.*

*4. Statutory Interpretation and Onus:*



i. Under Sec. 6(1), an individual is NOT by default 'RESIDENT', unlike sec. 6(2)/6(4) – where HUF/any other person is 'always resident, unless proved otherwise'.

ii. The onus lies on Department to prove that assessee fulfils conditions of sec. 6(1)(a)-(c). – CIT V. B.K. Dhote [1967] 66 ITR 457 (SC).1

iii. The onus lies on the AO to determine residential status, each year. There is no concept in law, that residential status is "carried forward", from past periods.

#### 5. Reopening Invalid Due to Lack of Jurisdiction:

The notice u/s. 148A / 148 suffers with “inherent lack of jurisdiction” with *ld. ITO Ward 1(1)(1), Rajkot*, rendering entire proceeding void-ab-initio and bad in law. Reliance is placed on:

i. *SUNIL CHABLANI vs. COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) (ITA No. 68/JP/2024)*: dealt with Issue: Notice u/s. 148 was issued by ITO, Wd 2(2), Ajmer - despite of the knowledge that assessee was non-resident - the same is held to be without jurisdiction, and entire assessment is quashed.

ii. *Vipul Mittal V/s. DCIT (ITA No.2850/DEL/2019) (15/01/2025)*: Held that notice u/s. 143(2) issued by AO not having jurisdiction. Such notice forms basis of entire assessment. Assessment is quashed.

iii. *Adarsh Rice Mill vs. Income-tax Officer [2024] 167 taxmann.com 695 (Raipur - Trib.) [29-11-2022]*: Held that if the initial notice (ie. Notice u/s. 148) is issued by an AO without jurisdiction, all subsequent notices becomes invalid and non-est, and entire proceedings are so vitiated that becomes liable to be quashed.

iv. *Pavan Morarka vs. Assistant Commissioner of Income-tax-2 [2022] 136 taxmann.com 2 (Bombay) [17-02-2022]*: Held that Where AO at Delhi who issued initial reopening notice had no jurisdiction over petitioner as he was assessed to tax at Mumbai, reopening notice issued by AO at Mumbai after case of assessee was transferred to his jurisdiction could not be said to be in continuation of proceedings initiated by AO at New Delhi.

v. *Ashok Devichand Jain vs. Union of India [2023] 151 taxmann.com 70 (Bombay)/[2023] 452 ITR 43 (Bombay)[08-03-2022]*: Held that Where notice under section 148 was issued by an officer who had no jurisdiction over assessee, such notice would have no validity in eyes of law and was to be set aside.

vi. *Commissioner of Income-tax -II vs. Ramesh D. Patel [2014] 42 taxmann.com 540 (Gujarat)/[2014] 225 Taxman 411 (Gujarat)/[2014] 362 ITR 492 (Gujarat)/[2014] 269 CTR 285 (Gujarat) [21-01-2014]*. Inherent lack of jurisdiction is distinct from lack of 'territorial' lack of jurisdiction.



*6. Prayer: In view of the above, we humbly pray that assessment is liable to be quashed for lacking inherent jurisdiction with the ld. AO who issued notice u/s. 148A and sec. 148.”*

The Ld.AR further relied on the judgement in support of the aforesaid contention.

10. On the contrary, the Ld. Sr. DR for the revenue submitted written submission before the Bench, which is reproduced below:

*“2. During the course of hearing, Ld. AR has taken an argument that the notice u/s 148A has not been issued by the jurisdictional AO and therefore, the order is void ab initio.*

*3. In this regard, it is submitted that the notice u/s.148 A(b) dated 20/03/2022 was issued by the ITO, Wd-1(1)(1), Rajkot for the reason that the PAN of the assessee at that point of time was lying with that Assessing Officer. The assessee did not inform the Assessing Officer that she is a non-resident and her PAN needs to be migrated to the International Taxation charge. Therefore, the order u/s.148A(d) was also passed by the ITO, Wd- 1(1)(1), Rajkot after taking the approval of the competent authority. Thereafter, during the assessment proceedings, the assessee has submitted her passport as evidence to show that she is Non-resident Indian. Accordingly, the case was transferred to the International Taxation charge and the final assessment order was passed u/s.147 r.w.s 144C(13) of the Act by the DCIT(IT), Rajkot after giving due opportunity to the assessee. The assessee has not taken any such legal ground either at the assessment stage or at the DRP stage. Rather the assessee has taken recourse to the beneficial provisions for NRIs provided u/s.144C of the IT Act. Subsequently, on failure at the DRP stage she has taken above legal ground at the ITAT stage (that notice has not been issued by the correct AO) which is not tenable in view of the facts mentioned above.*

*4. Without prejudice to above, the onus lies on the assessee to inform the AO about his/her residential status. Once the onus was discharged by the assessee, the AO rightly transferred the case to the jurisdictional AO and all the subsequent proceedings were held with the jurisdictional AO.*

*5. In view of the above, the legal ground of the Assessee needs to be rejected.”*

11. We have heard both the parties carefully and gone through the submission made by both the parties and also perused the record. We note that the assessee submitted the detail of stay in India during the year 2015-2016 as per detail.



Date	Date	No. of Days In India
08/09/2014 Arrived in India (pg. 40 of paper book)	03/10/2014 Left India Pg. 41 of paper book	25
15/12/2014 Arrived in India (pg. 42 of paper book)	30/01/2015 Left India (pg. 42 of paper book)	46
TOTAL stay in India during FY 14-15		71

In support of the stay in India the assessee submitted the copy of passport submitted the copy of passport upon perusal of passport we noted that the immigration department of India has put the seal of immigration on the passport. So, It is proved that the assessee is an NRI. The Ld. DR of the revenue also agreed to it.

That the assessee raised the jurisdiction issue of reopening of assessment by the department by stating.

- i. The show cause notice u/s 148A refers to 'receipt of remittance by a non-resident' – i.e. the appellant. Words "Receipt of Remittance" – are noteworthy. It is the Reason forming basis reopening.
- ii. The Form- 15CA is applicable, only in case of remittance to non-resident. It clearly mentions the APPELLANT as REMITTEE NON-RESIDENT.



iii. Notices u/s 148A and 148 were sent to the appellant's Tanzania address. The address is picked up from the Non-resident Remittee's column of form-15CA. The said Form 15CA is available to AO since 26/01/2015.

We note that the notices were issued by the assessing officer u/s 148A(b), 148A(d) and 148. Notices were issued by AO Ward- 1(1)(1) Rajkot. We agree with the argument of Ld. DR of the revenue that the assessee did not inform the assessing officer that the assessee is non- resident. However, during the course of proceeding the AO came to know from the passport of the assessee that the assessee is a non- resident Indian. The case was therefore forwarded to international taxation charge. We further note on perusal of the pass book at (page 27 of paper book) where address of the assessee is address of Rajkot. And copy of the same is attached herewith:

The image shows a screenshot of a bank passbook page. The header includes the bank name 'macle' and the slogan 'Universal Banking Solution from Intosys'. The page displays account details for NAYNA MUKESH KOTECHEA, including the account ID (310013100061865), balance (55,693.31 Cr), and address (C/O RAJU N SHINGALA, 42 PRAHLAD PLOT, KRISHNASHRAY, OPP CHABUTRA, RAJKOT, GUJARAT, INDIA). The page also shows the account opening date (07-01-1997) and the current status (Dormant). A handwritten note '(NRE)' is visible in the upper right area of the page.

Transaction Inquiry	
A/c. ID	310013100061865
A/c. Name	NAYNA MUKESH KOTECHEA
General Ledger Subhead Code	12050
Opening Balance	18,76,128.52 Cr
Float Balance	0.00 Cr
Available Amt.	55,693.31 Cr
Customer Status	00 Not Applicable
A/c. Status	D Dormant
Purge Date	16-06-2006
Address	C/O RAJU N SHINGALA, 42 PRAHLAD PLOT, KRISHNASHRAY, OPP CHABUTRA
City	RAJKOT
Country	IN INDIA
Phone Type	COMMPH2
Phone No.	+02550713333222
E-mail ID Type	COMMEML
E-mail ID	nmkotecha@hotmail.com
CCY/SOL ID	INR/31000
Balance	55,693.31 Cr
Closing Balance	11,197.61 Cr
Funds in Clearing	0.00 Cr
Effective Available Amt.	55,693.31 Cr
A/c. Opening Date	07-01-1997
A/c. Status Date	25-02-2022
State	GJ GUJARAT
Postal Code	360001
Telex No.	



Without prejudice we are of the view that the assessee has to inform about residential status to the Revenue Department, here in this case no proper duty discharge by the assessee and during the course of proceeding the assessee brought into the notice of AO about the residential status of the assessee. We are of the view that the ground taken by the assessee for reopening of assessment by non-jurisdiction of officer is not acceptable. The other ground taken by the assessee about the addition of Rs 63,49,316/- The assessee has deposited cash on 27.01.2015 with the bank. However, the assessee claimed that this amount was withdrawn on from bank on 24.01.2014. The AO has made an addition in income because of there is a gap of 86 days. The AO was not satisfied with the explanation submitted by the assessee in respect of nature and source of cash deposit amounting to Rs 63,49,316/-. Hence 69A of IT Act attracts and this amount of Rs 63,49,316/- is deemed to be the income of assessee and same is considered as Income from undisclosed sources in the hand of assessee u/s 69A of the Act. We further note that the assessee applied to DRP (Dispute Resolution Panel) that assessee is a resident of Tanzania relevant assessment year 2015-16. The AO has made assessment of Rs 63,49,316/- u/s 69A of the IT Act considering to be an unexplained investment in form of cash deposit. Applicant, had a FD matured on 24.01.2014 and the entire amount was withdrawn in not been established that the FD has been made from explained sources. After withdrawing the cash via FD, the Assessee went back to Tanzania on 11.02.2014 Then the Assessee returned to India on 08.09.2014 marking the initiation of significant transactions. During this period, the Assessee booked a residential flat in Rajkot at Silver Heights, Rajkot. On 03.09.2014, the date of booking, cash was handed over to the builder, who subsequently arranged for Demand Drafts (DDs)



Additionally, a cheque of 7,04,160/- was issued from the Assessee bank account on 10.09.2014. As per the Assessee, the total payment made to the builder in September 2014 amounted to 31,11,240/-, inclusive of DDs made out of cash. That the assessee cancelled the booking of residential flat and the builder return the money amounting to Rs. 63,49,316/- considering the fact that the issue of money revolves around transactions with Builder of Silver Heights.

1. No detail about apartment / flat has been actually booked
2. No confirmation from Builder about booking of flat and returns the money.

The DR of the revenue is of the view that the Ld. AO. the explanation of the assessee is not satisfactory and the money held in form of cash deposited into bank deposits are held as unexplained money and are deemed income for the financial year in which the investments in form of money ownership are made. The unexplained investments are deemed income for the financial year in which the investments in form of money ownership are made. Considering the facts and circumstances of the case we are of the view as concluded by DRP “Based on the evidence submitted, Draft Assessment Order, report of enquiry by the Assessing Officer and the responses of the applicant to the queries. it is concluded that the nature and source of the investments made by the applicant assessee have not been adequately or satisfactorily explained” the assessee have not submitted adequate and satisfactory proof before the Ld. AO. We set aside the case back to the file of the Ld. AO for proper adjudication of the case uninfluenced by previous order and also direct assessee to comply with the notices issued by the Ld. AO properly and submit all the relevant document before AO.



13. In the result, the appeal of the assessee is allowed, for statical purpose.

**Order is pronounced in the open court on 05/01/2026**

Sd/-

**(Dr. Arjun Lal Saini)**  
**Accountant Member**

Rajkot

दिनांक/ Date: 05/01/2026

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

Sd/-

**(Dr. Dinesh Mohan Sinha)**  
**Judicial Member**

By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot