

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1898/Mum/2025
(Assessment Year :2016-17)**

Rajnish Kasturchand Ostwal H/702, Magnoliya Enclave, Nahar Amrit Shakti, Chandivali Mumbai – 400 072	Vs.	Income Tax Officer, Int Tax, Ward 3(2)(1), Mumbai
PAN/GIR No.AAKPO6101E		
(Appellant)	..	(Respondent)

assessee by	Shri Fenil Bhat
Revenue by	Shri satya Pal Kumar, CIT DR
Date of Hearing	11/11/2025
Date of Pronouncement	14/11/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal has been filed by the assessee against the final assessment order dated 24 January 2025 passed under section 147 read with section 144C(13) of the Income-tax Act, 1961 in pursuance of the directions issued by the Dispute Resolution Panel on 02 December 2024 under section 144C(5). In this appeal, the assessee has challenged not only the validity of the reopening under section 147 but also the addition of ₹2,00,00,000 made under section 69 on the

allegation that the investment in a residential property during the relevant year was unexplained.

2. The assessee is a Non-Resident Indian who had been living and working in Dubai since 2001 and returned to India only in 2021. During the relevant previous year for A.Y. 2016-17, the assessee made a payment of ₹2 crores towards the purchase of a residential property in India and the balance consideration was paid in the succeeding years. Since no return of income had been filed in India and information was received regarding the investment in property, notice under section 148 was issued on 13 March 2023 after due procedure under section 148A. During the assessment proceedings the assessee submitted that he was employed in Dubai for nearly two decades, earning salary income of AED 24,500 per month, had no source of income accruing or arising in India, and therefore was not required to file any return here. It was further submitted that the investment was made completely out of accumulated foreign salary savings which had been remitted from Dubai into his NRE account in India through authorised banking channels.

3. Before the Assessing Officer the assessee produced a complete trail of funds including the RAK Bank statements evidencing withdrawals of AED 7,00,000 on 02.09.2015 and AED 5,00,000 on 03.09.2015, authorised dealer certificates issued by the remittance service providers showing remittance of AED 11,65,000 to India, and the corresponding inward credits aggregating to ₹2,00,52,630 in the Axis Bank NRE account from which the investment in the property was made.

The assessee also produced copies of his employment contract with Smart Planners, salary details, UAE residence visa, and the employee listing downloaded from the official Ministry of Labour website of the UAE indicating that he was employed as General Manager since 01.05.2006. These evidences were part of the material before the Assessing Officer.

4. Before the DRP the assessee furnished additional evidences and clarified each component of the fund trail including the bank extracts from Dubai, remittance records, salary credits and remittances from his RAK Bank account. The relevant extracts of the bank account, copies of authorised dealer certificates, and the details of salary drawn in Dubai were all incorporated into the DRP's order. The assessee also explained that the total purchase consideration of the property was ₹3,25,00,000, of which ₹2 crores was paid during the year under appeal and that tax @1% on the payments had been duly discharged.

5. For completeness of the record the table of withdrawals, authorised dealer certificates and INR credits as filed in the paper book is incorporated here.

Date	Withdrawn from RAK Bank	Certificate No. of Authorised Dealer	Amount of currency transferred	Amount credited in Axis Bank
September 2, 2015	7,00,000 AED	1231023017279	3,00,000 AED	53,93,385 INR
		1231023017280	2,50,000 AED	44,94,430 INR

September 3, 2015	5,00,000 AED	1231023017332	3,00,000 AED	53,97,270 INR
		1231023017333	2,65,000 AED	47,67,545 INR
TOTAL	12,00,000 AED		11,65,000 AED	2,00,52,630 INR

6. After hearing both sides and carefully examining the material placed on record, it is an undisputed fact that the assessee is a Non-Resident Indian who had been living and working in Dubai continuously since 2001 and returned to India only in 2021. It is equally undisputed that he had no source of income in India during the relevant period and all his earnings were exclusively from his long-term employment abroad. The extensive evidences produced before the Assessing Officer and the DRP, including the RAK Bank statements, authorised dealer certificates, proofs of withdrawal and remittance, salary records, residence visa documentation, and employee list downloaded from the official UAE Ministry of Labour portal, collectively form a complete, credible and coherent trail showing that the funds used for the investment in the residential property were sourced entirely from foreign salary income duly accumulated over the years and remitted through proper banking channels into the assessee's NRE account in India.

7. The evidences clearly demonstrate that AED 12,00,000 was withdrawn from the assessee's RAK Bank account in Dubai, out of which AED 11,65,000 was remitted to India through authorised dealers, resulting in INR credits of

₹2,00,52,630 into the Axis Bank NRE account from which the payments were made. This complete and contemporaneous trail of funds has not been rebutted by the Department in any manner. No discrepancy or inconsistency has been shown in the explanation. The authorities below have rejected the documentary evidences only on general and unsubstantiated observations, such as questioning the “credentials” of the foreign employer or the “authenticity” of the foreign bank statements, without undertaking any independent enquiry or verification despite having full statutory means available to them, whether under section 133(6) or through appropriate channels. The DRP’s remarks that the assessee could procure documents “due to close connection” with the employer remain purely speculative and unsupported by any material and hence cannot form the basis of rejection of otherwise reliable evidences.

8. Once the assessee has established that the funds utilised for the investment in property were remitted from salary earned abroad, and that such income was neither received nor accrued in India, there remains no basis for invoking section 69. Under section 5(2), a non-resident is taxable in India only with respect to income that is received or deemed to be received in India or accrues or arises or is deemed to accrue or arise in India. The Revenue has not brought any material to show that the amount invested represents income chargeable to tax in India. What is not taxable under section 5(2) cannot be brought to tax indirectly through a deeming fiction under section 69. Section 69

presupposes that the investment represents income liable to tax under the Act. In the present case the assessee has furnished a complete, satisfactory and credible explanation supported by independent evidences; therefore the very foundation for invoking section 69 is absent.

9. The evidences on record fully substantiate the assessee's explanation; the trail of funds is clear and complete; there is no allegation of any Indian-source of undisclosed income; and the authorities below have not carried out any verification to contradict the foreign-source explanation. The rejection of evidences by the DRP is based merely on conjectures and cannot override the tangible documentary material placed before it. In such circumstances the addition made under section 69 is wholly unsustainable in law and on facts. The assessee's explanation is accepted and the addition of ₹2,00,00,000 stands deleted.

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

Order pronounced on 14th November, 2025.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 14/11/2025
KARUNA, sr.ps

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai