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

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
& SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

I.T.A. No. 434/Ahd/2025
(Assessment Year: 2019-20)

Kaushal Ganpatbhai Patel, Post: Rupgadh, Tall: Dholka, Dist: Ahmedabad, Gujarat-382240	Vs.	The Income Tax Officer, Ward-1 (International Taxation), Ahmedabad
[PAN No.ASGPP6228D]		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri Dhinal Shah, AR
Respondent by :	Shri Rameshwar P Meena, Sr.DR

Date of Hearing	04.02.2026
Date of Pronouncement	09.02.2026

O R D E R

PER: ANNAPURNA GUPTA - AM:

The present appeal has been filed by the assessee against the order passed by the Assessing Officer in accordance with the direction of the Dispute Resolution Panel ("DRP") under Section 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") order dated 03.12.2024 and relates to Assessment Year (A.Y.) 2019-20.

2. The Grounds of Appeal raised by the assessee are as under:

"1. Ground No. 1 – Addition on account of alleged undisclosed salary income of Rs. 44,24,000:

1.1. On the facts and in the circumstances of the case and in law, the learned Assessing Officer ("AO")/Hon'ble Dispute Resolution Panel ("DRP") has erred in making an addition towards the salary income of Rs. 44,24,000 received by the appellant in his bank account with Indian Branch inasmuch as the salary income in relation to service rendered outside India is not taxable in Indian since the appellant is non-resident.

2. Ground No. 2 – Addition of account of alleged unexplained investment by purchasing foreign currency of Rs. 42,81,762:

2.1. On the facts and circumstances of the case, the learned AO has erred in making the addition towards the purchase of foreign currency inasmuch as the source of purchase of such foreign currency is explainable.

3. Ground No. 3 – Addition of account of unexplained money receipt of Rs. 1,00,34,419.

3.1. On the facts and in the circumstances of the case and in law, the learned AO has erred in making an addition towards the amount credited in the bank account of Rs. 1,00,34,419 inasmuch as the source of such credit entries in the bank account are explainable and from the genuine sources.

The Appellant craves leave to add, alter, amend or withdraw any of the above grounds at or before the hearing of the appeal."

3. At the outset itself Ld. Counsel for the assessee clarified that the primary issue in the present appeal pertained to the taxability of income earned by the assessee outside India, the assessee being a non-resident. He pointed out that the entire case of the Revenue rested on the fact that the salary was received by the assessee in his NRE Account in India and therefore, it was held by the Assessing Officer and approved by the DRP that the salary was "received" by the assessee in India and hence taxable in India in accordance with the provision of Section 5 sub-Section (2)(a) of the Act. The other issues raised by the assessee, he stated, pertained to addition made on account of alleged unexplained investment by the assessee in foreign currency of Rs.42,81,762/- and on account of money deposited in bank account, source of which remained unexplained of Rs. 1,00,34,419/-., which additions he contended were made primarily for the reason that the assessee was *unable to explain its salary income*. In the light of the same he contended, therefore, that the main issue to be adjudicated was the taxability of salary earned by the assessee.

4. Thereafter he proceeded to make his arguments on the issue of taxability of salary income earned by the assessee. The facts pertaining to the same are that the assessee is a non-resident in terms of the provision of Section 6 of the Act. The assessee had earned salary income from his employment in VJP Company, Seychelles which was received in his NRE account to the tune of Rs. 44,24,000/-. The same was treated as taxable in India as per the provisions of Section 5(2)(a) of the Act, as per which the all incomes of assesses being non-residents, received or deemed to be received in India is liable to tax in India. The case of the Revenue was that the receipt of salary in the NRE Account of the assessee tantamounted to receipt of salary in India and hence in accordance with the provisions of Section 5(2)(a) of the Act the same was liable to tax in India.

5. During the course of hearing before us, Ld. Counsel for the assessee drew our attention to various decisions of Hon'ble High Court and the Coordinate Benches of the ITAT to the effect that salary earned from services rendered outside India, accrued outside India and was to be treated as received outside India and the deposit of the said salary in the NRE Account was a mere application of the salary received outside India and not receipt of income of the assessee, so as to qualify for taxation In India under Section 5(2)(a) of the Act. The Ld. Counsel for the assessee drew our attention to the following decisions in this regard:

Sr. No.	*Particulars*
1.	*Smt. Sumana Bandyopadhyay & Anr. V/S. Deputy Director of Income Tax (International Taxation) [2017] 396 ITR 406 (Calcutta)*
2.	*Director of Income-tax (International Taxation) V/s. Prahlad Vijendra Rao [2011] 10 taxmann.com 238 (Karnataka)*

3.	*Arvind Singh Chauhan V/s. Income-tax Officer, Ward-1(2), Gwalior [2014] 42 taxmann.com 285 (Agra – Trib.)*
4.	*The Income Tax Officer (International Taxation), Ward-1(3), Bangalore V/s. Mr. Lohitakshan Nambiar ITA No. 1045/Bang/2009 (Bangalore – Trib.)*

More particularly our attention was drawn to the decision of the ITAT in the case of Arvind Singh Chauhan vs. Income Tax Officer 42 taxmann.com 285 (Agra – Trib.), wherein it was pointed out that the ITAT had lucidly dealt on this aspect of income accruing outside India and when it is to be treated as received in India. Our attention was drawn to Para 9 of the order as under:

> *"9. The next objection of the Assessing Officer, which has met learned CIT(A)'s approval, is that the money was received in India, since, beyond any dispute or controversy, the salary cheques were credited to the assessee's account with HSBC, Mumbai. So far as this aspect of the matter is concerned, in our considered view, the law is trite that 'receipt' of income, for this purpose, refers to the first occasion when assessee gets the money in his own control - real or constructive. What is material is the receipt of income in its character as income, and not what happens subsequently once the income, in its character as such is received by the assessee or his agent; an income cannot be received twice or on multiple occasions. As the bank statement of the assessee clearly reveals these are US dollar denominated receipts from the foreign employer and credited to non resident external account maintained by the assessee with HSBC Mumbai. The assessee was in lawful right to receive these monies, as an employee, at the place of employment, i.e. at the location of its foreign employer, and it is a matter of convenience that the monies were thereafter transferred to India. These monies were at the disposal of the assessee outside India, and, it was in exercise of his rights to so dispose of the money, that monies were transferred to India. We may, in this regard, refer to Hon'ble Madras High Court's judgment in the case of CIT v. A.P. Kalyan Krishnan [1992] 195 ITR 534 wherein Their Lordships were in seisin of a situation in which the assessee had received pension from Malaysian Government which was remitted by the Accountant General, Federation of Malaya, Kuala Lumpur to Accountant General, Madras, for onward payment to the assessee. On these facts, rejecting the contention of the revenue that the pension amounts are required to be treated as having been received in India, Their Lorships observed, inter alia, that " that the pension payable to the assessee had accrued in Malaya……. and only thereafter, by an arrangement embodied in the letter found in Annexure D to the stated case, the pension had been remitted to the assessee in India and made available to him. The assessee had, therefore, to be regarded as having received the income outside India and the pension had been remitted or transmitted to the place where the assessee was living, as a matter of convenience and that would not, in our view, constitute receipt of pension in India by the assessee, falling within s. 5(1)(a) of the Act". This would show that once an income is received outside India, whether in reality or on*

constructive basis, the mere fact that it has been remitted to India would not be decisive on the question as to income is to be treated as having been received in India. The connotation of an income having been received and an amount having being received are qualitatively different. The salary amount is received in India in this case but the salary income is received outside India. It is elementary that an income cannot be taxed more than once but if, at each point of receipt, the income is to be taxed, it may have to be taxed on multiple occasions. In this view of the matter, in a situation in which the salary has accrued outside India, and, thereafter, by an arrangement, salary is remitted to India and made available to the employee, it will not constitute receipt of salary in India by the assessee so as to trigger taxability under section 5(2)(a) of the Act."

6. It was pointed out that in the facts of the said case, the assessee a Non Resident had received salary for services rendered outside India and the salary cheques were credited to his account in HSBC, Mumbai. Ld. Counsel for the assessee pointed out that the ITAT noted that Section 5(2)(a) refers to receipt of income and clarified that receipt of income refers to the first occasion when the assessee gets the money in his own control, real or constructive; that what is material is the receipt of income in its character as income and not what happens subsequently once the income in its character as such is received by the assessee or his agent. **He pointed out that the ITAT noted that the assessee was in lawful right to receive this money as an employee at the place of employment and it is a matter of convenience that the money is therefore transferred to India; that these monies were at the disposal of the assessee outside India and it was in exercise of his right to dispose to the money that the money was transferred to India.** The ITAT, it was pointed out noted that the salary amount was received in India but **salary income** was received outside India.

7. Ld. Counsel for the assessee contended that in the facts of the present case also the assessee had rendered services outside India by virtue of his employment in a company outside India. The salary earned on account of the

services rendered had therefore accrued outside India and as per the decision of the ITAT Agra Bench, therefore, the assessee had constructively received salary outside India. He contended, therefore, that the issue was squarely covered by the decision of the ITAT Agra Bench in the case of Arvind Singh Chauhan vs. ITO, Ward-1(2), Gwalior 42 taxmann.com 285 (Agra – Trib.) and the order of the Assessing Officer, therefore, treating salary to have been received in India and hence taxable in India needs to be set-aside.

8. Ld. DR, however, contended that the decision relied upon by the Ld. Counsel for the assessee was distinguishable having been rendered in the facts of the assessee being employed on merchant vessel which plied on international routes. He contended that the CBDT also had clarified vide Circular No.13/2017 that in the case of non-resident seafarers for services rendered outside India on a foreign ship, salary credited to NRE Account shall not be included in the total income of the assessee.

9. We have heard the rival contentions. The issue falling for our consideration is the taxability in India of salary, of a non resident assessee, received for employment outside India, the salary being deposited in India in the NRE account of the assessee.

10. As per the Revenue since the salary was credited to the assesses NRE account in India, therefore it was to treated as *income received in India* and hence taxable in India in the hands of the non resident assessee, in terms of section 5(2)(a) of the Act.

11. We agree with the Ld. Counsel for the assessee that the issue stands covered in favour of the assessee by the decision of the ITAT Agra Bench in the case of Arvind Singh Chauhan (supra). As rightly pointed out by the Ld. Counsel for the assessee, the ITAT in the said decision was seized with an identical issue and interpreted the term "*income received in India*" in section 5(2)(a) of the Act, to mean the first occasion when the assessee gets the money in his own control-real or constructive. The ITAT held that the assessee was in lawful right to receive this money, as an employee, at the place of employment. Accordingly, the ITAT held that the constructive receipt of salary took place at the place of rendering employment and the deposit of the same in the NRE bank account in India was only an application of the salary received outside India.

12. The Ld.DR's attempt to distinguish the decision of the ITAT on the ground that it was rendered in the facts of the assessee being a sea farer and the CBDT had clarified such assesses to be not liable to tax in India on salary received in their NRE accounts in India, we find is of no consequence. The reason being that the coordinate Bench of the ITAT in the case of Arvind Chauhan (supra) did not rely on the CBDT circular while giving relief to the assessee, but on the contrary interpreted the provision of law in this regard. The Ld.DR was also unable to draw our attention to any decision of the Higher judicial authorities holding to the contrary.

13. In view of the same we hold that the salary received by the assessee in his NRE Account amounting to Rs. 44,24,000/- does not tantamount to receipt of salary income and is therefore, not liable to tax in India by virtue

of Section 5(2)(a) of the Act. The addition so made to the income of the assessee is directed to be deleted.

14. The other two grounds raised by the assessee since it was common ground were made for the reason that the salary received by the assessee was not explained and since we have adjudicated the issue of salary above holding in favour of the assessee, the addition made on account of unexplained investment amounting to Rs. 42,81,762/- and cash deposit amounting to Rs. 1,00,34,419/- is directed to be deleted.

15. In effect, appeal of the assessee is allowed.

This Order pronounced in Open Court on	**09/02/2026**

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 09/02/2026
TANMAY, Sr. PS /SKS ***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