



# SATURDAY INTERNATIONAL TAX GYAN !!!

## #taxmadeeasy

SITG No. 250

ANILESH AHUJA

v.

Union of India & Anr.

**Mere investment in India cannot be a base to deem that non-resident has any income in India.**

22.03.2025



W.P.(C) 3409/2023 – Delhi High court

Jain Shrimal & Co.

# Facts of the Case

- ❖ Anilesh Ahuja is a non-resident Indian (NRI) and he has been residing in the USA for quite some time.
- ❖ During the year, **assessee made remittances** of the consideration, i.e., Rs.13,22,40,752, to Lodha Developers Private Limited [in short, “Lodha”] for the purposes of **purchasing two immovable properties**, i.e., flats located in Mumbai, via an account maintained with CITI Bank in USA. Two separate agreements to sell of even date, i.e., 09.12.2016, were executed between him and Lodha.
- ❖ The transaction was later **cancelled**, and two **Cancellation Deeds dated 27.12.2018** were executed. An amount of Rs. 3 crores was forfeited and the rest was remitted to the assessee.
- ❖ The Assessing Officer (AO) has sought to tax INR 13,22,40,752/- on the ground that this amount **constitutes unexplained money**.

## Assessee's Contention

- ❖ Assessee contended that, the remitted funds originated from income that was **earned and taxed in the USA**, and thus not taxable in India as per Section 5(2) of the Income Tax Act.
- ❖ Further, assessee being a non-resident, in any case, is neither under an obligation to disclose nor explain the source of income earned outside India.
- ❖ It was submitted that **the investments were made** based on the income which had been earned by the assessee and which had undoubtedly **accrued or arisen in USA**.
- ❖ The assessee had also questioned the applicability of Sections 69 and 69A of the Act since he was a non-resident and the **investments is thus not qualifying either Sections 9 or 5 of the Act** so as to be held as eligible to tax.

# Revenue's Contention

- ❖ Revenue contended that Rs.13,22,40,752/- sought to tax on the ground that this amount constitutes unexplained money.
- ❖ Further revenue contended that the assessee had not filed a Return of Income and, therefore stated, “it appears **that the assessee is carrying on some activity** which has **resulted in generation of income**, but the income has escaped assessment as no ITR had been filed by the assessee”

# Legal provisions

## **Section 5(2) of the Act:**

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.

# Legal provisions

## Section 69 of the Act:

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

# Legal provisions

## **Section 69A of the Act:**

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

# Ruling

Hon'ble Delhi HC in the **order dated 10.03.2025** has upheld the decision of co-ordinate bench of Delhi HC in case of Angelantoni Test Technologies Srl. The judgement is as under :

- ❖ In our considered opinion, nothing could have been described as being even more gloriously vague than the AO alleging that the petitioner was carrying on “some activity” and which had “resulted in generation of income”.
- ❖ The reasons so recorded do not even allude to the provisions of Sections 5 or 9 of the Act and which may have been demonstrative of the AO having come to a prima facie conclusion that income had arisen or accrued in India.
- ❖ The mere investment made by the petitioner in the course of its desire to acquire immovable properties within the country could not have possibly been construed as income having been generated in India.
- ❖ We also find ourselves at a loss to appreciate how any additions could have been made with reference to Sections 68, 69 or 69A of the Act. Those set of provisions would have been attracted provided the petitioner could have been acknowledged to be an assessee subject to the rigours of the Act and required to make disclosures to Indian Income Tax authorities.



## Our Comments

- ❖ This a very important judgement considering the notices being issued to non-residents for making investment in India wherein a notice is being issued without any base and just for making fishing and roving enquires. Such judgements helps the assessee to defend themselves wherein they receive notice for just making an investment from outside India.
- ❖ It is important to note that provision of section 68 to 69D can be only applicable in a case of non-resident where the income is accruing or arising in India and not if the source of income is established to be outside India.

<b>Section/Article</b>	Section 5, 69 and 69A of IT Act
<b>DTAA/Country</b>	USA
<b>Court</b>	Delhi HC
<b>Date of decision</b>	10.03.2025

**Note:** Case law name in **Red**- in favor of the revenue, **Green**-In favor of the Assessee, **Orange** = Partial



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