



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 304

Kaushal Ganpatbhai Patel

v.

Income-tax Officer, Ward-1 (International Taxation)

Salary earned and constructively received outside India does not become taxable in India merely due to its deposit in an NRE account

04.04.2026



[2026] 183 taxmann.com 532 (Ahmedabad - Trib.)

Jain Shrimal & Co.

Facts of the Case

- ❖ Assessee is a non-resident individual, employed with VJP Company in Seychelles and earned salary for services rendered outside India. The salary amounting to Rs.44,24,000 was credited to his NRE account maintained in India.
- ❖ Ld. AO treated such salary as taxable in India under section 5(2)(a) on the ground that the income was received in India.
- ❖ This position was upheld by the Hon'ble DRP, forming the basis of the addition.
- ❖ Further, additions were also made on account of alleged unexplained investment in foreign currency and unexplained cash deposits in the bank account. These additions were linked to the alleged unexplained nature of salary income.
- ❖ Assessee filed an appeal before the Hon'ble Tribunal challenging the taxability of salary and consequential additions.

Assessee's Contention

- ❖ Assessee contended that the salary was earned for services rendered outside India and thus accrued outside India. Accordingly, it could not be treated as income received in India merely because it was deposited in an NRE account.
- ❖ It was argued that the **deposit of salary into the NRE account was only an application of income already received outside India, and not a fresh receipt of income in India under section 5(2)(a).**
- ❖ Assessee relied heavily on judicial precedents, particularly the decision in ***Arvind Singh Chauhan v. ITO* [2014] 42 taxmann.com 285 (Agra – Trib.)**, to support the interpretation that **“receipt” refers to the first point of control over income.**
- ❖ It was further submitted that once the salary issue is resolved in favour of the assessee, the consequential additions on account of investments and deposits would automatically stand explained.

Revenue's Contention

- ❖ Revenue argued that since the salary was credited to the assessee's NRE account in India, it constituted income received in India. Therefore, it was taxable under section 5(2)(a).
- ❖ It was contended that the physical receipt of funds in an Indian bank account triggers taxability irrespective of where services were rendered.
- ❖ Revenue attempted to distinguish the reliance on judgement of *Arvind Singh Chauhan* by stating that the case involved a **seafarer**, and **CBDT Circular No. 13/2017 provided specific relief to such taxpayers.**
- ❖ Accordingly, it was argued that the precedent was not applicable to the present facts and the addition should be sustained.

Legal provisions

Section 5 of the Income Tax Act, 1961:

(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.*

Section 9 of the Income Tax Act, 1961:

(ii) income which falls under the head "Salaries", if it is earned in India.

Explanation.—For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—

- (a) **service rendered in India**; and
- (b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment

shall be regarded as income earned in India

Ruling

- ❖ Hon'ble Tribunal held that the issue was squarely covered by the decision in ***Arvind Singh Chauhan v ITO***, wherein “**receipt**” of income was interpreted as the first occasion when assessee gets control over the money.
- ❖ It observed that assessee had a lawful right to receive salary at the place of employment outside India, and thus constructive receipt occurred outside India. The subsequent transfer to India was merely an application of such income.
- ❖ Hon'ble Bench rejected the Revenue's attempt to distinguish the precedent, noting that the earlier ruling was based on interpretation of law and not on CBDT circulars.
- ❖ Accordingly, it held that **salary credited to the NRE account did not constitute receipt of income in India under section 5(2)(a), and the addition was deleted. Consequential additions relating to unexplained investment and deposits were also deleted.**

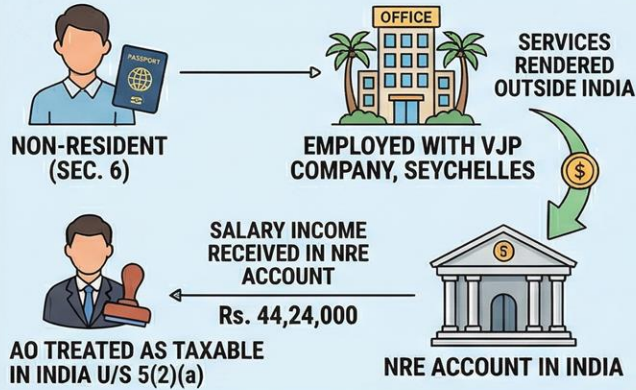
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CASE LAW SUMMARY: KAUSHAL GANPATBHAJI PATEL V. INCOME-TAX OFFICER

[2026] 183 taxmann.com 532 (Ahmedabad - Trib.)

FEBRUARY 9, 2026

1. FACTS OF THE CASE



2. ASSESSEE'S CONTENTION

-
- Salary accrued outside India
 - Constructive receipt at place of employment (outside India)
 - NRE deposit is 'mere application' of already received salary
 - Covered by precedent: *Arvind Singh Chauhan v. ITO*

3. REVENUE'S CONTENTION

-
- Salary credited to NRE account in India
 - Hence, 'income received in India'
 - Taxable U/S 5(2)(a)
 - Tried to distinguish seafarer precedent

4. HELD / RULING

**APPEAL ALLOWED!
IN FAVOR OF ASSESSEE**

- ITAT interpreted 'income received' as first occasion of control (real or constructive)
- Assessee had lawful right to receive money at place of employment (outside India)
- Deposit in NRE account is only application.
- Deposit in NRE account is only application
- Seafarer circular difference is irrelevant
- Unexplained investment and cash deposit additions deleted as common ground

**SALARY NOT
LIABLE TO TAX
IN INDIA U/S 5(2)(a)**

Our Comments

- ❖ For non-residents, taxability depends on **where the income is actually first received**, not where it is later transferred. If salary is earned and received outside India, bringing it into India later doesn't automatically make it taxable.
- ❖ As per **Section 15** of the Income-tax Act, salary is taxed on an **accrual basis**, i.e., when it becomes due, irrespective of whether it is actually received. Accordingly, under **Section 9(1)(ii)**, salary is deemed to accrue or arise at the place where the **services are rendered**, regardless of the place of receipt.
- ❖ Taxability of a non-resident remains the same even under the new Income-tax Act, 2025.

Section/Article	Section 5 and 9 of the Income Tax Act, 1961
Court	ITAT Ahmedabad
Date of decision	09.02.2026

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



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