

# TAX FLASH NEWS

6 July 2020

## Non-Resident's explanation of cash deposit in his Non Resident Ordinary Account acceptable in light of partial evidence

### Background

With respect to unexplained investments<sup>1</sup>, wherein a taxpayer does not offer any explanation about the nature and source of the investments made by him, then the Assessing Officer (AO) may include the value of such investments as income in that particular financial year (FY).

In this context, recently, the Jaipur Bench of the Income Tax Appellate Tribunal (the Tribunal) in the case of Shri Rajesh Chadha<sup>2</sup> has deleted the addition<sup>1</sup> made by the AO in the hands of individual taxpayer with respect to the cash deposit made by him in his NRO account in India, as the source of such deposit was explained by partial documentary evidence.

### Facts of the case

The taxpayer, a non-resident, was employed with the United Nations Organization at Democratic Republic of Congo, South Africa. The taxpayer, while coming into India on 22 May 2015, had USD 21,500 with him which he declared to the custom authorities at IGI airport, New Delhi. The taxpayer had exchanged such dollars to INR through staff of an authorised money exchanger and out of the total exchange, he had deposited INR 800,000 into his NRO Account on 27 May 2015.

While filing the return of income for the FY 2015-16, the taxpayer had declared a gross total income of INR 186,076 (which included interest from NRO savings bank account, FDR and long-term capital gain) and exempted salary income from United Nations and interest on NRE Account.

During the scrutiny assessment, the AO observed the cash deposit of INR 800,00 in to his NRO account and was of the view that that taxpayer did not have sufficient proof of exchanging foreign currency in India (absence of receipt of exchange of USD to INR). Accordingly, the AO added such cash deposit as unexplained income<sup>1</sup>.

Aggrieved by the order passed by the AO, the taxpayer had filed an appeal with the Commissioner of Income-tax (Appeals) [CIT(A)]. CIT(A) had upheld the order of the AO.

Aggrieved by the order of the CIT(A), the taxpayer had filed an appeal with the Tribunal.

### Taxpayer's contention

The taxpayer had contended that the source of cash deposit was out of the USD 21,500 brought into India and the said amount was duly disclosed to the custom authorities at the airport. Further, such amount was converted to INR through cash instead of cheque on account of better exchange rate. The supporting documentation pertaining to disclosure of cash to customs officials were forming a part of the evidence papers.

The taxpayer also confirmed that the converted money was deposited into his bank account within five days of arriving in India and therefore, contended that the deposit made in his NRO account could not be considered as unexplained, just because of unavailability of receipt of exchange.

Further, the taxpayer placed reliance on a decision<sup>3</sup> of the Supreme Court wherein it was held that the source of investments could not be treated as income<sup>1</sup> without considering the facts and circumstances of the case, even if the explanation offered by the taxpayer is not satisfactory.

<sup>1</sup> Section 69 of the Income-tax Act, 1961

<sup>2</sup> Shri Rajesh Chadha v. DCIT [ITA No. 969/JP/2019, dated 24 June 2020]

<sup>3</sup> CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570 (SC)

## Revenue's contention

The Revenue contended that the taxpayer had failed to provide an important evidence of receipt of exchange of USD to INR in order to prove that the cash deposited in his NRO account is out of USD brought-in by him into India.

Further, the Revenue argued that the taxpayer might take such deposits outside India and acceptance of taxpayer's argument may lead to misuse of deposits of unexplained cash by known ones of the taxpayer.

## Tribunal's observation and ruling

The Tribunal had observed that the explanation provided by the taxpayer on the cash deposit was believable and had noted the following:

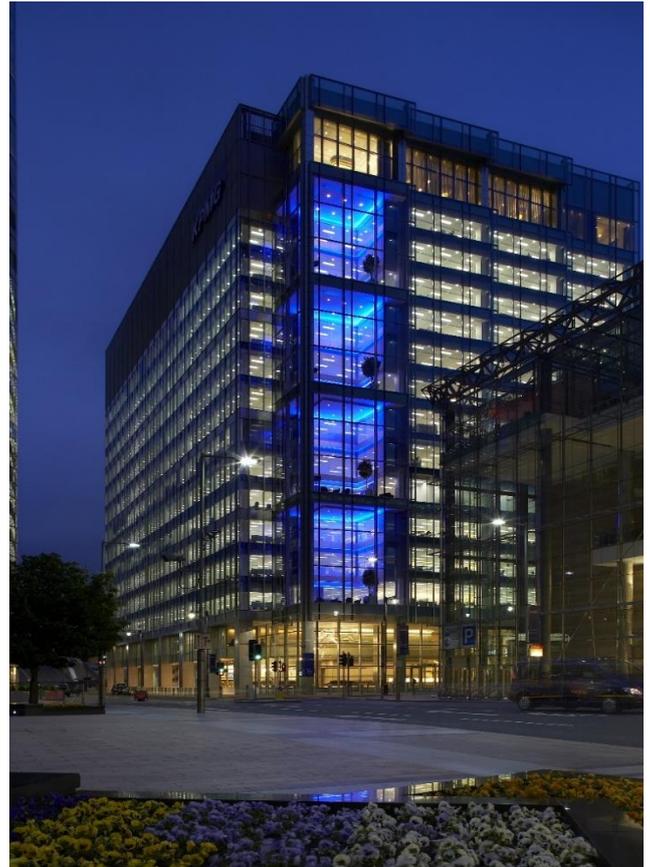
- The cash deposit of INR 800,000 was made within days of conversion of such amount from USD and the source of the cash deposit was the taxpayer's salary and interest income from NRE account, which by itself is not taxable in India;
- The taxpayer had produced various supporting documents including documentation pertaining to disclosure of cash to customs officials (except for receipt of exchange of USD to INR) to prove that such money was brought into India and thereafter deposited to his NRO account
- The taxpayer has disclosed interest from NRO savings bank account, FDR and long-term capital gain in his Income tax return and there was no finding of any other source of income over and the above the ones disclosed.

Given the above, the Tribunal accepted the explanation of the taxpayer despite his failure to produce evidence of exchange of USD with INR by examining the entirety of facts, submissions and circumstances of the case and accordingly, deleted the addition<sup>1</sup> made by the AO.

## Our comments

In this decision, the Tribunal had given cognizance to partial documentary evidence produced by the taxpayer in order to understand the source of funds. This decision provides clarity on the provisions of unexplained investments and places importance on inspecting the facts and circumstances of any case instead of just relying on material evidence. While this decision supports the explanation of a taxpayer after considering the totality of the case, it would be prudent to maintain complete documentary evidence of any transaction in order to avoid any litigation.

Considering this is a fact specific case and a ruling of the Tribunal, adoption of the same in other jurisdictions / set of facts could be evaluated on a case-to-case basis especially in such a case which could tantamount to deduction of expenses under two separate heads of income.



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