

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" , HYDERABAD**

**BEFORE**

**SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT**

**AND**

**SHRI MANJUNATHA G. HON'BLE ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA Nos.69 and 91/Hyd/2024**  
(निर्धारण वर्ष / Assessment Years: 2016-17 and 2018-19)

Shri Mir Ibrahim Ali, R/o.USA.  PAN : EGGPA8315C	Vs.	The Assistant Commissioner of Income Tax, International Taxation – 1, Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA Nos.92 and 93/Hyd/2024**  
(निर्धारण वर्ष / Assessment Years: 2016-17 and 2018-19)

Shri Abbas Ali Akhil, R/o.USA.  PAN : EKGPA1482J.	Vs.	The Assistant Commissioner of Income Tax, International Taxation – 1, Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Mohd. Afzal, Advocate.  
राजस्व द्वारा/Revenue by: Shri K. Meghnath Chowhan, CIT-DR.

सुनवाई की तारीख/Date of hearing: 06/11/2024  
घोषणा की तारीख/Pronouncement on: 29/11/2024

**ORDER****PER BENCH :**

These four appeals filed by two different assessees are directed against the separate Assessment Orders passed by the Assessing Officer (in short "the AO") u/s.147 r.w.s. 144C(13) of the Income Tax Act, 1961 dated 08.01.2024 and 10.01.2024, in pursuant to directions of the Dispute Resolution Panel-1 (in short "the DRP"), Bengaluru, u/s.144C(5) of the Income Tax Act, 1961 dated 07.12.2023, for the assessment years 2016-17 and 2018-19, respectively.

2. Both the assessees have more or less filed common grounds of appeal in their respective grounds of appeals and therefore, for the sake of brevity, the grounds of appeal filed by the assessee Shri Mir Ibrahim Ali in ITA No.69/Hyd/2024 for A.Y. 2016-17 are reproduced as under :

*"1. The order of the learned Dispute Resolution Panel (DRP) is against the law, weight of evidence and probabilities of case.*

*2. The learned Dispute Resolution Panel ought to have appreciated that the amendment to section 144C(15) is brought into the statute by introducing clause (b)(ii) in sub-section 15 of section 144C, non residents not being company or a foreign company are brought into the clutch of the provisions of section 144C with effect from 01.04.2020. Therefore, amended provisions of clause (b)(ii) of section 144C(15) are applicable from assessment year 2020-21 onwards, therefore, erred in rejecting the ground of objection in respect of applicability of section 144C of the IT Act, for the subject assessment year in the case of assessee.*

3. *The learned DRP ought to have held that the notice u/s 148 dt: 29.03.2021, is an invalid notice as there is no PAN details, as the notice is invalid notice the consequential proceedings are to be held null and void.*

4. *The learned DRP ought to have appreciated that the subject lands transferred are located in a village namely Edulanagulapally Village, which was a Gram Panchayat with less than 3000 population (2011 census), therefore, the agricultural land transferred is not a capital asset as per the provisions of section 2(14) of the IT Act, therefore, the learned DRP erred in directing the Assessing Officer to treat the subject land as capital asset.*

5. *The learned DRP erred in observing there is no infirmity in the action the Assessing Officer in computing the capital gains in respect of agricultural lands situated at Edulanagulapally, by assuming that the lands are situated in Ramchandrapuram Municipality, whereas, the lands were situated in Edulanagulapally Village, Ramchandrapuram Mandal, District Medak. Therefore, the DRP further erred in directing the Assessing Officer to treat Rs.7,81,75,000/- as capital gains u/s 45 of the IT Act, whereas the subject lands are not capital assets as per the provisions of section 2(14) of the IT Act.*

6. *Without prejudice to the above grounds, the learned DRP ought to have appreciated that the assessee entered into an agreement of sale cum GPA with possession on 25.09.2014 and received alleged consideration and also handed over the possession, therefore, assuming that capital gains if any (but not accepting) are to be charged for the assessment year 2015-16, therefore, notice issued u/s 148 for the assessment year 2016-17 is an invalid notice and consequently, the order u/s 144C becomes null and void.*

7. *Without prejudice to the above grounds, the learned DRP ought to have appreciated that there are disputes pending in respect of subject lands in the Hon'ble High Court of Telangana, therefore, the learned DRP and the Assessing Officer in adopting SRO value of assessee's share at Rs.7,81,75,000/-."*

3. The additional grounds raised by the assessee in ITA No.69/Hyd/2024 for A.Y. 2016-17 read as under :

*1. The learned Assessing Officer erred in passing an order u/s 147 r.w.s. 144C(13) of the IT Act, 1961 on 08.01.2024 where as the time limit for completion of assessment expires on 31.03.2023 as per the provisions of section 153(2) of IT Act. Therefore, the order u/s 147 r.w.s. 144C(13) is passed beyond the time limits provided u/s 153(2) of the IT Act and therefore, the same is to be held null and void.*

*2. As the order u/s 147 r.w.s. 144C(13) is passed on 08.01.2024, therefore, the same is beyond the time limit provided u/s 153(2) of the IT Act, therefore, order u/s 147 r.w.s. 144C(13) is to be held bad in law.”*

4. At the time of hearing, the learned counsel for the assessee, Shri Mohd Afzal, Advocate, referring to the petition filed by the assessee for admission of additional grounds, submitted that the assessee is a non-resident individual, sold agricultural land and not offered any capital gain. The assessment has been reopened under Section 147 of the Act, by issuing notice under Section 148 dated 29-03-2021, which was presumably served on the assessee in the month of April 2021. The assessment has been completed under Section 147 r.w.s. 144C(13) of the Income Tax Act, 1961, on 08-01-2024. As per the provisions of Section 153(2) of the Act, re-assessment shall be completed within one year from the end of the financial year in which notice under Section 148 has been served on the assessee. In the present case, notice under Section 148 has been served in the month of April 2021. Therefore, the assessment should have been completed on or before 31-03-2023, whereas the AO has passed the final assessment order on 08-01-2024, which is barred by limitation. The assessee, by an inadvertent error, could not take legal ground challenging the validity of the final assessment order passed by the AO, and thus,

filed a petition for admission of additional grounds in light of the Hon'ble Supreme Court's decision in the case of National Thermal Power Co., Ltd., Vs. Commissioner of Income Tax, reported in (1998) 229 ITR 38 and requested for admission of additional grounds.

5. The CIT-DR, Shri Meghnath Chowhan, on the other hand, opposing the petition filed by the assessee, submitted that the assessee could not adduce any evidence and reasons why he has not taken the legal ground before the D.R.P. Further, the assessee could not establish whether the facts related to the said legal ground has been already on record before the A.O. and no further investigation was required to ascertain the facts. Therefore, the additional grounds taken by the assessee should not be admitted.

6. Having heard both sides and considering the relevant reasons given by the assessee for admission of additional grounds, we find that the additional ground(s) taken by the assessee challenging the legality of the final assessment order passed by the Assessing Officer u/s 147 r.w.s. 144C(13) of the Act dt.08.01.2024 is purely a legal ground which can be taken at any time, including the appellate proceedings before the Tribunal and this legal principle is supported by the decision of the Hon'ble Supreme Court in the case of N.T.P.C. Vs. C.I.T. (supra). Therefore, considering the legal issue involved in the additional grounds taken by the assessee, we

admit the additional grounds taken by the assessee for adjudication.

7. The brief facts of the case are that the appellant Shri Mir Ibrahim Ali is a non-resident individual and has not filed his return of income for the assessment year 2016-17. As per the information disseminated by the I&CI Wing, the appellant sold his share of property vide an agreement of sale-cum-General Power of Attorney (GPA) in Survey No. 135/1-2, situated at Edul Nagulapally Village, Ramachandrapuram Mandal, Madak District, for a total consideration of Rs.7,26,84,000/-, whereas the SRO value of the said property was Rs.31,27,00,000/- and the assessee's share of sale consideration works out to Rs.7,81,75,000/-. The assessee has not filed his return of income declaring capital gain, if any, arising out of the transfer of property. Therefore, the assessment has been reopened under Section 147 of the Act and notice under Section 148 dated 29-03-2021 was issued and served on the assessee at the given address. The assessee has not filed his return of income, in response to the notice under Section 148 of the Act dated 29-03-2021. Subsequently, a show-cause notice has been issued to the assessee and called upon to explain as to why an addition should not be made, in respect of capital gain from sale of land in Survey No.135/1-2, situated at Edul Nagulapally Village, Ramachandrapuram Mandal, Madak District. In response to the show-cause notice, the assessee submitted that the land sold by

the assessee is agricultural land and situated beyond 12 kms from the local limits of Ramachandrapuram Municipality, and thus, it is out of the scope of a 'capital asset' as defined under Section 2(14)(iii) of the Income Tax Act, 1961.

8. The AO, after considering the submissions of the assessee and also taken note of the information available in the website of Greater Hyderabad Municipal Commission (GHMC), observed that the land sold by the assessee comes under West Zone, Circle 13, Hyderabad, GHMC. Therefore, the subject land is a capital asset as per Section 2(14) of the Act, and liable to tax, and therefore, the Assessing Officer rejected the explanation of the assessee and made addition towards the assessee's share of sale consideration of Rs.7,81,75,000/-, as income arising from capital gain from transfer of property and passed draft assessment order u/s 144C(1) of the Act, on 15.03.2023.

9. Aggrieved by the draft assessment order, the assessee filed objections before the learned DRP on 26-04-2023 and challenged the addition made by the AO. DRP-1, Bangalore issued directions under Section 144C(5) of the Act, on 07-12-2023 and rejected the objections filed by the assessee and uphold the addition made by the Assessing Officer towards computation of capital gain from transfer of property. Thereafter, the AO passed the final assessment order under Section 147 read with Section 144C(13)

of the Act on 08-01-2024 and determined the total income of assessee at Rs.7,81,75,000.

10. Aggrieved by the final assessment order, the assessee is now in appeal before us.

11. The Learned Counsel for the assessee, Shri Mohd Afzal, Advocate, submitted that the final assessment order passed by the AO under Section 147 read with Section 144C(13) of the Act dated 08-01-2024, is barred by limitation because, as per the provisions of Section 153(2) of the Act, no order of assessment or reassessment, or re-computation shall be made under Section 147, after the expiry of 12 months from the end of the financial year in which the notice under Section 148 was served. The Learned Counsel for the assessee further submitted that, if we go by the issuance of notice under Section 148 and proper service of said notice, it is assumed that notice under Section 148 was served on the assessee in the month of April, 2021, and if we consider 12 months from the financial year in which such notice is served, then the AO shall pass the re-assessment order under Section 147 r.w.s. 144C(13) of the Act on or before 31-03-2023, whereas, in the present case, the Assessing Officer passed final assessment order on 08-01-2024, which is barred by limitation and is liable to be quashed.

12. The Learned Counsel for the assessee, further referring to the provisions of Section 144C(15)(b) of the Act, submitted that in order to constitute an 'eligible assessee', the two conditions provided therein should be cumulatively satisfied. In the present case, although, the assessee is an N.R.I., there is no reference under Section 92CA of the Act to the Transfer Pricing Officer (TPO), and thus, the assessee cannot be treated as an eligible assessee. The learned counsel for the assessee further referring to the decision of ITAT, Hyderabad in the case of Sri Syed Gulam Mohiuddin Vs. ITO, International Taxation – 1, Hyderabad in ITA No.136/Hyd/2023 dt.03.06.2024, submitted that the Tribunal has considered an identical issue in the case of an N.R.I., and held that the re-assessment order should be completed within the time limit provided under Section 153(2) of the Act, but not as per the time limit available under Section 144C of the Act. Therefore, he submitted that re-assessment order passed by the AO under Section 147 read with Section 144C(13) should be quashed.

13. The Learned Counsel for the assessee, on the issue of addition made by the AO towards capital gain, submitted that, the impugned land sold by the assessee situated at Edul Nagulapally Village, Ramachandrapuram Mandal, Madak District is an agricultural land and is situated beyond 12 kms., away from Ramachandrapuram Municipality, and therefore, the same is not a 'capital asset' as per Section 2(14) of the Act. Therefore, the provisions of Section 2(14) of the Act, will not be attracted. The

learned counsel for the assessee further referring to various documents, submitted that although, Ramachandrapuram Mandal falls under the West Zone of GHMC, but the present land sold by the assessee is situated in a village which is 12 kms., away from the local limits of Ramachandrapuram Municipality. Therefore, the AO erred in considering the total area falls under the West Zone of GHMC., without ascertaining the exact distance of the land sold by the assessee from the nearest Municipality. If we consider the distance of the impugned land from the nearest Municipality, it is undisputedly clear that the said land is more than 12 kms., from the local limits of Ramachandrapuram Municipality and therefore, is outside the scope of a 'capital asset' as per Section 2(14) of the Act. Therefore, on this count also, the addition made by the AO cannot be sustained.

14. The CIT-DR, Shri K. Meghnath Chowhan, on the other hand, referring to the provisions of Section 144C of the Act, submitted that, the provisions of Section 144C are distinct provisions, and if we go by the wording of said provisions, it is very clear that notwithstanding anything contained in any provisions of the Act, the time limit provided under Section 144C of the Act needs to be followed. If we consider the time limit provided under Section 144C of the Act, the assessee, being an NRI, is subjected to provisions of Section 144C, and therefore, once the draft order is passed, the same needs to go to the learned DRP and further, the learned DRP shall have nine months time for completion of

proceedings, and thereafter, the AO shall pass the final assessment order within one month from the end of the month in which such direction is received by the AO. If we consider the present assessment order passed by the AO, it is before the time limit provided under Section 144C(13) of the Act and therefore, there is no merit in the argument taken by the assessee on the additional grounds, and the same needs to be rejected.

15. The CIT-DR further, referring to the reasons given by the AO to make addition towards capital gain from sale of property, submitted that, the facts brought on record by the AO clearly show that the impugned land is situated within the territorial jurisdiction of GHMC. Further, as per the findings of the AO, the land sold by the assessee falls under the West Zone of GHMC. Therefore, once the land sold by the assessee is within the territorial jurisdiction of Ramachandrapuram Municipality, it falls under the definition of 'capital asset', as defined under Section 2(14) of the Act, and the gain, if any, arising out of said transfer is taxable under the Act. Hence, the addition has rightly made by the Assessing Officer and upheld by the DRP. Therefore, the order of the AO should be upheld.

16. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee is a non-resident individual for the A.Y 2016-17 and is an eligible assessee as per section 144C(15)(b) of the I.T.

Act, 1961. As per section 144C of the Act, the assessment of an eligible assessee shall be dealt with in accordance with the said provision. As per the provision of section 144C, in case of an eligible assessee, the Assessing Officer shall pass a draft assessment order and served on the assessee, if he proposes to make any variation in his total income. The assessee, after receipt of draft assessment order shall have two options. As per sub section (2) of section 144C, on receipt of draft assessment order, the eligible assessee shall within 30 days file its acceptance of the variations to the Assessing Officer or file his objection, if any, to such variation with the DRP. If the eligible assessee file his acceptance to the Assessing Officer, then the Assessing Officer shall complete the assessment within one month from the end of the month in which the acceptance is received. In case an eligible assessee files objection before the DRP, then the DRP shall issue its direction within 9 months from the end of the month in which the draft order is forwarded to the assessee. Thereafter, the Assessing Officer shall pass his final assessment order within one month from the end of the month in which such direction is received.

17. In the present case, there is no dispute with regard to the fact that the appellant has filed his objection against the draft assessment order passed by the Assessing Officer before the DRP. Therefore, in ordinary course, the extended time limit for completion of the assessment should be available to the Assessing Officer as per section 147 r.w.s. 144C(13) of the I.T. Act, 1961. But

the argument of the learned Counsel for the assessee is that as per section 153(4) of the Act, the extended period of 12 months for completion of assessment is available only where a reference under sub section (1) of section 92CA is made during the course of the assessment or re-assessment, but not in a case where there is no reference to the TPO. We find force in the argument of the learned Counsel for the assessee for the simple reason that, as per section 153(2), the time limit for completion of assessment or re-assessment shall be 12 months from the end of the financial year in which notice u/s 148 was served. However, sub-section (4) of section 153 extends the said time limit by another 12 months notwithstanding anything contained in sub-section (1), (1A), (2), (3) and (3A) where a reference u/s 92CA(1) is made during the assessment proceedings to the TPO. In other words, except in a cases of reference to the TPO, extended time limit of 12 months for completion of assessment is not available even in a case of Non-Resident assessment, even though the said assessment proceedings is covered u/s 144C of the Act. Since the extended time limit of 12 months is not available in the case of Non-Resident as per section 153(4) of the Act, in our considered view, the Assessing Officer ought to have completed the assessment as per the provisions of section 153(2) of the Act which is one year from the end of the financial year in which notice u/s 148 was served. In the present case, if we go by date of notice issued u/s 148 of the Act i.e. 29.03.2021 and probable service in the month of April, 2021, the time limit for completing the assessment u/s 147 was available up to 31.03.2023 and thus, the final assessment order

passed by the Assessing Officer u/s 147 r.w.s. 144C(13) dated 08.01.2024 is clearly barred by limitation.

18. The assessee has relied upon the decision of ITAT, Hyderabad Bench in the case of Syed Gulam Mohiuddin (supra), wherein the Coordinate Bench of the Tribunal has considered an identical issue and after considering relevant facts, has held as under :

*“8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee is a non-resident individual for the A.Y 2017-18 and is an eligible assessee as per section 144C(15) of the I.T. Act, 1961. As per section 144C of the Act, the assessment of an eligible assessee shall be dealt with in accordance with the said provision. As per the provision of section 144C, in case of an eligible assessee, the Assessing Officer shall pass a draft assessment order and served on the assessee, if he propose to make any variation in his total income. The assessee, after receipt of draft assessment order shall have two options. As per sub section (2) of section 144C, on receipt of draft assessment order, the eligible assessee shall within 30 days file its acceptance of the variations to the Assessing Officer or file his objection, if any, to such variation with the DRP. If the eligible assessee file his acceptance to the Assessing Officer, then the Assessing Officer shall complete the assessment within one month from the end of the month in which the acceptance is received. In case an eligible assessee files objection before the DRP, then the DRP shall issue its direction within 9 months from the end of the month in which the draft order is forwarded to the assessee. Thereafter, the Assessing Officer shall pass his final assessment order within one month from the end of the month in which such direction is received.*

*9. In the present case, there is no dispute with regard to the fact that the appellant has filed his objection against the draft assessment order passed by the Assessing Officer before the DRP. Therefore, in ordinary course, the extended time limit for completion of the assessment should be available to the Assessing Officer as per section 144C r.w.s. 153C of the I.T. Act, 1961. But, the argument of the learned Counsel for the assessee is that as per section 153(4) of the Act, the extended period of 12 months for completion of assessment is available*

*only where a reference under sub section (1) of section 92CA is made during the course of the assessment or re-assessment, but not in a case where there is no reference to the TPO. We find force in the argument of the learned Counsel for the assessee for the simple reason that, as per section 153(2), the time limit for completion of assessment or re-assessment shall be 12 months from the end of the financial year in which notice u/s 148 was served. However, sub-section (4) of section 153 extends the said time limit by another 12 months notwithstanding anything contained in sub-section (1), (1A), (2), (3) and (3A) where a reference u/s 92CA(1) is made during the assesment proceedings to the TPO. In other words, except the cases of the reference to the TPO, extended time limit of 12 months for completion of assessment is not available even in a case of Non-Resident assessment, even though the said assesment proceedings is covered u/s 144C of the Act. Since the extended time limit of 12 months is not available in the case of Non-Resident as per section 153(4) of the Act, in our considered view, the Assessing Officer ought to have completed the assessment as per the provisions of section 153(2) of the Act which is one year from the end of the financial year in which notice u/s 148 was served. In the present case, if we go by date of notice issued u/s 148 of the Act i.e. 30.03.2021, the time limit for completing the assessment u/s 147 was available up to 31/03/2022 and thus, the final assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C dated 12.01.2023 is clearly barred by limitation.*

10. *This proposition is covered by the decision of the Hyderabad Bench of the Tribunal in the case of Shri Farooq Ali vs. Income Tax Officer in ITA No.104/Hyd/2023 order dated 10/04/2024. The relevant findings of the Tribunal are as under:*

*“23. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.2,55,75,000/- u/s 69 of the I.T. Act on the ground that as per the sale deed, the assessee had paid total sale consideration of Rs.2,55,75,000/-on 5.10.2016 to the vendors by way of cash, that the vendors have admitted and acknowledged the same and the assessee could not explain the source of such payment made for purchase of the immovable property. While doing so, he further held that the sale deed in itself is conclusive evidence and the contents of the same could not be proved further and a civil suit filed by the 3<sup>rd</sup> party claiming the title to the said property after the registration of sale deed between the assessee and the vendors will not negate the contents of the sale deed.*

23.1 *It is the submission of the learned Counsel for the assessee that the assessment order passed by the Assessing Officer is barred by limitation. It is also his submission that the assessee being an NRI and settled in UAE does not have any economic activities in India, therefore, there cannot be any addition of unexplained investment in the hands of the assessee as these falls under article 22 of Indo-UAE DTAA which makes such income taxable in the country of residence i.e. UAE unless these investments are proved to be made out of income generated in India.*

24. *We find some merit in the above argument of the learned Counsel for the assessee. A perusal of the record shows that the notice u/s 148 was issued on 24.2.2021, a fact not disputed by the Revenue. There is no reference made to the TPO for making any adjustment of arm's length price of the international taxation. We find the provisions of section 153(2) read as under:*

***“ 153. Time limit for completion of assessment, reassessment and re-computation.***

***(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:***

*Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:*

*[Provided further that in respect of an order of assessment relating to the assessment year commencing on the—*

***(i) 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;***

***(ii) 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:***

*Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the*

*provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.]*

*(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of nine months from the end of the financial year in which such return was furnished.]*

*(2) No order of assessment, reassessment or re-computation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:*

*Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted."*

*25. Thus, a perusal of the above provision clearly shows that the time limit for completion of the assessment in the present case lapses on 31.3.2022. However, the final assessment order u/s 144 r.w.s. 144C has been passed on 30.01.2023 which is beyond the time limit prescribed u/s 153(2). Since the assessment order has been passed on 30.01.2023 as against 31.03.2022, therefore, the same, in our opinion, is barred by limitation and accordingly, the assessment order is liable to be quashed. We therefore, quash the re-assessment proceedings being barred by limitation. Since the assessee succeeds on this preliminary legal issue, the other grounds become academic in nature and therefore, are not being adjudicated. "*

*11. In this view of the matter and considering the facts and circumstances and also by following the decision of the Hyderabad Bench of the Tribunal in the case of Farooq Ali vs. Income Tax Officer (Supra), we are of the considered view that the assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C(13) dated 12.01.2023 is barred by limitation and thus we quash the re-assessment order passed by the Assessing Officer."*

19. In this view of the matter and considering the facts and circumstances of the case, and also by following the decision of ITAT Hyderabad Bench in the case of Syed Gulam Mohiuddin Vs. ITO, International Taxation – 1 (supra), we are of the considered view that the final assessment order passed by the AO under Section 147 read with Section 144C(13) dated 08.01.2024 is barred by limitation and is liable to be quashed and thus, we quash the re-assessment order passed by the Assessing Officer u/s 147 r.w.s. 144C(13) of the Act dt.08.01.2024 for the A.Y. 2016-17.

20. The assessee has argued the issue of addition made towards capital gain from sale of property on merits and contended that impugned land sold by the assessee in Survey No. 135/1-2, situated at Edul Nagulapally Village, Ramachandrapuram Mandal, Madak District, is beyond 12 Kms., from the limits of nearest Ramachandrapuram Municipality. Although, we are convinced with the arguments of the learned counsel for the assessee in light of the relevant evidence filed in support of the contentions that the impugned land sold by the assessee is an agricultural land and which is situated beyond 12 Kms., from the limits of nearest Ramachandrapuram Municipality but in our considered view, the issue on merits does not require any adjudication because, the re-assessment order passed by the Assessing Officer u/s 147 r.w.s. 144C(13) of the Act has been held to be barred by limitation. Thus, we ourselves, refrain from adjudicating the issue on merits.

21. In the result, the appeal of assessee in ITA No.69/Hyd/2024 is allowed.

ITA No.91/Hyd/2024 for A.Y. 2018-19

22. The facts of the present case and issues involved are identical to the facts and issues which we had considered in ITA No.69/Hyd/2024 for A.Y. 2016-17. The reasons given by us in preceding paragraph nos.16 to 20 shall mutatis and mutandis apply to this appeal, as well. Therefore, for similar reasons, we quash the final assessment order passed by the Assessing Officer u/s 147 r.w.s. 144C(13) of the Act dt.08.01.2024 for A.Y. 2018-19.

23. In the result, the appeal filed by the assessee in ITA No.91/Hyd/2024 for A.Y. 2018-19 is allowed.

ITA Nos.92 and 93/Hyd/2024 for A.Ys. 2016-17 and 2018-19

24. The facts of the present cases and issues involved are identical to the facts and issues which we had considered in the case of Shri Mir Ibrahim Ali in ITA No.69/Hyd/2024 for A.Y. 2016-17. The reasons given by us in preceding paragraph nos. 16 to 20 shall mutatis and mutandis apply to these appeals, as well.

Therefore, for similar reasons, we quash the final assessment order passed by the Assessing Officer u/s 147 r.w.s. 144C(13) of the Act dt.08.01.2024 for A.Ys. 2016-17 and 2018-19.

25. In the result, the appeals filed by assessee in ITA Nos.92 and 93/Hyd/2024 are allowed.

26. To sum up, all the appeals filed by two different assessees are allowed.

Order pronounced in the Open Court on 29<sup>th</sup> November, 2024.

**Sd/-**

**Sd/-**

<b>(VIJAY PAL RAO)</b> <b>VICE PRESIDENT</b>	<b>(MANJUNATHA G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 29.11.2024.

***TYNN/sps***

Copy to:

S.No	Addresses
1	Mir Ibrahim Ali, USA, R/o. 3418-183 <sup>rd</sup> Place South East, Bothell, Washington, Ceatle, USA, Pin – 98012.
2	Shri Abbas Ali Akhil, R/o.1727, SOPLO Road, Albuquerque, New Mexico, USA. Pin – 87123.
3	The Assistant Commissioner of Income Tax, International Taxation – 1, Hyderabad.
4	Dispute Resolution Panel – 1, Bengaluru
5	Director of Income Tax (IT & TP), Hyderabad
6	Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad / Pr.CIT, Hyderabad.
7	DR, ITAT Hyderabad Benches
8	Guard File

*By Order*