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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA Nos.567/Hyd/2023 & 1284/Hyd/2024**
(निर्धारण वर्ष/Assessment Year:2015-16)

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| Shri Prakash Lal Potluri, Hyderabad. PAN:GNKPP1085B | Vs. | Income Tax Officer, International Taxation-2, Hyderabad. |
| (Appellant) | | (Respondent) |
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| निर्धारिती द्वारा/Assessee by: | Shri A.V. Raghuram, Advocate | |
| राजस्व द्वारा/Revenue by:: | Shri B.Balakrishna, CIT-DR | |
| | | |
| सुनवाई की तारीख/Date of hearing: | 19/03/2025 | |
| घोषणा की तारीख/Pronouncement: | 15/04/2025 | |

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

These appeals are filed by Shri Prakash Lal Potluri ("the assessee"), feeling aggrieved by the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-10, Hyderabad ("Ld. CIT(A)"), dated 09.08.2024 and Learned Assessing Officer ("Ld. AO") on 21.09.2023 for the same A.Y. 2015-16. Since these appeals are inter related, they are heard together and one consolidated order is being passed for the sake of convenience and brevity.

ITA No.1284/Hyd/2024

2. At the outset, it is seen that, there is a delay of 12 days in filing of this appeal for which the assessee has filed a condonation petition along with affidavit explaining the reasons for such delay. After considering the contents

of the condonation petition and after hearing the learned DR, the delay of 18 days in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. The assessee has raised the following grounds :

1. On the facts and in the circumstances of the case, the Id. CIT(A) erred in dismissing the appeal on the alleged ground of lack of jurisdiction. The Id. CIT(A) ought to have appreciated that the final assessment order passed is not pursuant to the order passed by Id. Dispute Resolution Panel, in as much as the Id. Dispute Resolution Panel has declined to entertain the Reference as it was not filed within time.
2. The Id. CIT(A) ought to have treated the appeal to have been filed against the final assessment order under section 246A of the Act, and ought to have adjudicated the appeal on merits.
3. The Id. CIT(A) failed to appreciate that the final assessment order dated 21.09.2023 passed by the AO is beyond time limits prescribed by the Act, in as much as the Id. AO could not have waited for the order of Dispute Resolution Panel (DRP) at the first instance, as the Appellant did not file acknowledgement of filing the reference to DRP before the AO within the prescribed time limit.
4. The Id. CIT(A) ought to have appreciated that the AO could not have waited for the directions of the DRP as there is no valid reference, and the Id. DRP did not have the power to condone the delay in filing the Reference before it.
5. Without prejudice, the Id. CIT(A) erred in not adjudicating the appeal on merits.

4. The brief facts of the case are that the assessee is an NRI, who has not filed any Return of Income ("ROI") for A.Y. 2015-16. The Ld. AO found from the available information that the assessee had sold an immovable property during the year under consideration. Accordingly, a notice u/s.148 of the Income Tax Act, 1961 ('the Act') was issued to the assessee on 27.03.2021. However, again no ROI was filed by the assessee in accordance with the notice u/s.148 of the Act. Since the assessee was an eligible assessee within the meaning of section 144C(15)(b)(ii) of the Act, the Ld. AO forwarded a draft order to the assessee in accordance with section 144C(1) of the Act on

04.02.2023. Further, in accordance with the provisions of section 144C(2) of the Act, the assessee had to file his acceptance qua draft order with the Ld. AO or had to file his objection, if any, qua the draft order before the Learned Dispute Resolution Panel ("Ld. DRP") and the Ld. AO within 30 days of receipt of draft order by him. The assessee filed his objection against the draft order on 31.03.2023 before the Ld. DRP, however, the last date for filing such objection was 06.03.2023. The Ld. DRP passed order on 20.09.2023 contending that as the assessee has filed the objection after the prescribed time limit, the objection filed by the assessee is not maintainable and accordingly dismissed the objection of the assessee. Finally, the Ld. DRP did not adjudicate the objections on merits. Consequently, after passing of order by Ld. DRP, the Ld. AO completed the assessment u/s.144 of the Act on 21.09.2023 computing the Long Term Capital Gains ("LTCG") of Rs.1.20 Crores.

5. Aggrieved with the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee contending that the order passed by Ld. AO is in accordance with the directions of Ld. DRP and the jurisdiction to file the appeal against the impugned order is lies with the Tribunal.

6. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Learned Authorised Representative ("Ld. AR") submitted that, the Ld. DRP rejected their objection on the ground that the assessee has filed the objection after the limitation period. As the objection of the assessee is dismissed in limine by the Ld. DRP, it cannot be said that the direction u/s. 144C(5) of the Act has been issued by the Ld. DRP although the Ld. DRP has passed an order on 20.09.2023. As no direction has been issued by Ld. DRP, therefore, the jurisdiction for filing of appeal lies with the Ld. CIT(A).

Accordingly, the Ld. AR prayed before the bench to set aside the issue to the file of Ld. CIT(A) with a direction to accept the appeal and adjudicate the same on merits.

7. Per contra, the Learned Department Representative (“Ld. DR”) submitted that, when an objection is filed by the assessee and an order is passed by Ld. DRP, it means that a direction u/s.144C(5) has been made by the Ld. DRP to the Ld. AO and the Ld. AO after the issue of direction of Ld. DRP has passed the assessment order on 21.09.2023 in accordance with the direction of Ld. DRP. Hence, when an order is passed by Ld. AO in accordance with direction of Ld. DRP, the jurisdiction to file appeal lies with ITAT and not with Ld. CIT(A). Accordingly, there is no irregularity in the order of Ld. CIT(A) in rejecting the appeal of the assessee on the ground of wrong jurisdiction.

8. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. It is undisputed that the assessee’s objections before the Ld. DRP were filed beyond the prescribed time limit and the objection of the assessee has been dismissed in limine by the Ld. DRP. Since the Ld. DRP rejected the objections as time-barred without adjudicating them on merits, it cannot be said that the Ld. DRP has issued any “direction” as contemplated under Section 144C(5) of the Act. In the absence of any direction by the Ld. DRP, the order passed by the Ld. AO cannot be treated as one passed in pursuance of the direction of the Ld. DRP. Therefore, the jurisdiction for filing an appeal against such an order lies before the Ld. CIT(A) and not before the ITAT.

9. In view of the above findings, we hold that the Ld. CIT(A) erred in dismissing the appeal of the assessee on the ground of lack of jurisdiction.

Accordingly, we set aside the order of the Ld. CIT(A) and direct the Ld. CIT(A) to admit the appeal and decide the same on merits in accordance with the law.

10. In the result, the appeal of the assessee in ITA no.1284/Hyd/2024 is allowed for statistical purposes.

ITA No.567/Hyd/2023

11. This appeal has also been raised against the same impugned order of the Ld. AO, which has been raised in ITA No. 1284/Hyd/2024. The only issue raised before us to decide the jurisdiction to file appeal against the impugned order of the Ld. AO. In ITA No. 1284/Hyd/2024, we have already held that, the jurisdiction to file an appeal against the impugned order of Ld. AO lies with the Ld. CIT(A).

12. In view of our findings and discussion in ITA No. 1284/Hyd/2024, we reiterate that the appeal against the impugned order Ld. AO is maintainable before the Ld. CIT(A) and not before the Tribunal. Accordingly, as the present appeal has been filed before an incorrect forum, we hold that this Tribunal does not have jurisdiction to entertain the appeal. Consequently, the appeal of the assessee is dismissed.

13. In the result, the appeal of the assessee in ITA No. 567/Hyd/2023 is dismissed.

14. To sum up, the appeal of the assessee in ITA no.1284/Hyd/2024 is allowed for statistical purposes and the appeal of the assessee in ITA no. 567/Hyd/2023 is dismissed

Order pronounced in the open Court on 15th April, 2025.

Sd/-

(RAVISH SOOD)
JUDICIAL MEMBER

Hyderabad.

Dated: 15.04.2025.

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

** Reddy gp*

Copy of the Order forwarded to :

1. Shri Prakash Lal Potluri, PO Box 111, Magee Avenue Cambria County, Patton, Pennsylvania, USA 166680
2. ITO, Int. Taxation-2, Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,