

आयकर अपीलीय अधिकरण, हैदराबाद पीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Vijay Pal Rao, Vice President**  
**and**  
**Shri Manjunatha G., Accountant Member**

आ.अपी.सं /ITA No.1285/Hyd/2024 & 1286/Hyd/2024  
(निर्धारण वर्ष/Assessment Year: 2013-14 & 2016-17)

Venkateshwar Reddy Attigada Hyderabad [PAN : ABQPA4067Q]	Vs.	Asst. Commissioner of Income Tax Circle-8(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.C.Devdas, AR	
राजस्व द्वारा/Revenue by:	Shri Srinath Sadanala, DR	
सुनवाई की तारीख/Date of Hearing:	25/02/2025	
घोषणा की तारीख/ Date of Pronouncement:	16/05/2025	

आदेश / ORDER

**PER VIJAY PAL RAO, VICE PRESIDENT:**

These two appeals filed by the assessee are directed against two separate orders of the Commissioner of Income Tax (Appeals) ["Ld.CIT(A)"]-12, Hyderabad, both dated 18.10.2024, arising from the assessment order passed u/s 147 r.w.s. 144B and penalty order u/s 271(1)(c) of the Income Tax Act, 1961 ("the Act") for the assessment year 2013-14 and 2016-17 respectively.

2. In the quantum appeal, the assessee has raised the following grounds of appeal :

1. The learned Commissioner of Income Tax (Appeals)-12, Hyderabad (“the Ld.CIT(A)”) erred in confirming the expenses disallowed claimed at Rs.19,56,375/- for the Assessment Year 2013-14.

2. The Ld.CIT(A)-12, Hyderabad ought to have allowed the expenses claimed at Rs.19,56,375/- against the commission receipts of Rs.40,00,000 as it had a direct and substantial nexus with the commission earned.

3. The Ld.CIT(A)-12, Hyderabad failed to note that the Appellant had received sale commission from M/s Alrich Constructions Pvt.Ltd to the extent of Rs.40,00,000/- and the Appellant by sheer oversight and inadvertence admitted only income of R.20,43,625/- which was after deducting Rs.19,56,375/- being the expenses incurred towards earning the sales commission.

4. The appellant reserves its right to raise additional grounds of legal nature.

5. The appellant craves to add, modify, amend or revise the above grounds anytime during the course of appeal.

3. The assessee is an individual and engaged in the activity of Brokerage and Commission Agency Business. The assessee filed his original return of income for the year under consideration u/s 139 of the Act on 07.04.2014, declaring total income of Rs.32,11,200/-. Thereafter, the Assessing Officer (“the AO”) reopened assessment by issuing a notice u/s 148 on 30.03.2021. In response to the said notice, the assessee filed return of income on 14.12.2021, declaring the same income as declared in the

original return of income. While framing the reassessment order u/s 147 r.w.s. 144B, the AO made addition of commission income of Rs.19,56,375/-. The assessee challenged the action of the AO before the Ld.CIT(A), but could not succeed.

4. Before the Tribunal, the Ld.AR of the assessee has submitted that the assessment was reopened by the AO on the assumption that the assessee has received the sales commission from M/s Alrich Constructions Pvt.Ltd. to the tune of Rs.40,00,000/-, whereas, the assessee has admitted only Rs.20,43,625/- in the return of income. The Ld.AR has submitted that this assumption of fact on the part of the AO is contrary to the record, because, the assessee declared the commission income at Rs.40,00,000/- against which expenditure incurred to earn the commission income was claimed at Rs.19,56,375/- and the net commission income was offered to tax at Rs.20,43,625/-. Thus, the Ld.AR has submitted that reopening of the assessment as well as the addition made by the AO is based on the incorrect facts. He has referred to the original return of income filed by the assessee on 07.04.2014 and submitted that in Schedule OS (income from other sources), the assessee has declared the other income at Rs.40,00,000/- and also claimed the expenditure of Rs.19,56,375/-. Therefore, the net commission income was declared by the assessee at Rs.22,85,003/-. The Ld.AR has further submitted that the assessee has also furnished all the details and ledger account of

the parties to whom the payments were made. He has also referred to the confirmation given by M/s Alrich Constructions Pvt.Ltd., placed at page No.15 of paper book and submitted that the payment of Rs.40,00,000/- was paid to the assessee for liaisoning the dispute with the illegal occupants of the land of the company, pending over a period of time. The assessee used his good office and liaisoning skill in getting the land vacated from the illegal occupants through mediations and settlement. Apart from this, the assessee was also under obligation to carry out work of levelling and clearing of the land as well as putting the boundary fencing. Thus the Ld.AR has submitted that the expenditure incurred by the assessee for this entire work of getting the land vacated from the illegal occupants, subsequent development work has been claimed against the said commission income. He has referred to the order of the Ld.CIT(A) and submitted that the Ld.CIT(A) has confirmed the addition made by the AO on the ground that the assessee failed to furnish any documentary evidence to substantiate the expenses claimed as well as the claim of expenses were not reported earlier and therefore, the same is an afterthought to reduce the tax liability. This finding of the Ld.CIT(A) is contrary to the record and facts when the assessee has already claimed these expenses in the original return of income and also produced supporting evidence comprising of the ledger account of the parties in the books of the assessee, details of the payments made to each of the party for carrying out the work as well as the confirmation of M/s Alrich

Constructions Pvt.Ltd.. The Ld.AR has further submitted that even otherwise, making addition of the gross commission income is highly arbitrary and unjustified.

5. On the other hand, the Ld.DR has submitted that the AO has recorded the fact that the assessee declared the net commission income and therefore, suppressed the commission in the original return of income. Further, the assessee has also failed to submit the supporting evidence of claim of expenditure. He has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as the material on record. The AO has recorded the reasons for reopening of the assessment as reproduced at page No.2 and 3 as under :

1. **Brief details of the Assessee:** The assessee, Sri A. Venkateswara Reddy, S/o A. Narsimha Reddy, H.No.4-51/L/40, Lumbini Springs, Sy. No. 133, Gachibowli, Hyderabad.

2. **Brief details of information collected/received by the AO:** It is noticed from the information received from the office of ITO, Ward-1(1), Hyderabad on 02.02.2016 that, on verification of information in the case of M/s Alrich Constructions Pvt. Ltd, it was noticed that the company has paid an amount of Rs.40,00,000/- towards sales commission to Sri Venkateswar Reddy Attigada. Further, it is noticed from the return of income for the A.Y. 2013-14, the assessee has offered only Rs.20,43,625/-.

3. **Analysis of information collected/received:** On perusal of the information, it is observed that, assessee has received sales commission from M/s Alrich Constructions Pvt. Ltd to the tune of Rs.40,00,000/-. On verification of assessee's return for the A.Y. 2013-14 it is observed that the assessee has admitted only Rs.20,43,625/- as Net Commission Received. Therefore, the commission income of Rs.19,56,375/- which was not offered to tax is liable to tax on the income head income from business & profession.

4. **Enquiries made by the AO as sequel to information collected/received:** NA. 

5. **Findings of the AO:** The assessee has received sales commission from M/s Alrich Consturctions Pvt. Ltd to the tune of Rs.40,00,000/-. On verification of assessee's return for the A.Y. 2013-14 it is observed that the assessee has admitted only Rs.20,43,625/- as Net Commission Received. Therefore, the commission income of Rs.19,56,375/- which was not offered to tax is liable to tax on the income head income from business & profession.

6. **Basis of forming reason to believe and details of escapement of income:** On verification return of income filed by the assessee for the A.Y. 2013-14, it is observed that the assessee has admitted only Rs.20,43,625/- as Net Commission Received. Therefore, the commission income of Rs.19,56,375/- which was not offered to tax is liable to tax on the income head income from business & profession has escaped assessment for A.Y.2013-14. Hence, I have reason to believe that Rs.19,56,375/- has not offered to tax and hence the same has escaped assessment.

7. Seventh paragraph will include escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India: --

8. **Applicability of the provisions of section 147/151 of the facts of the case:** In view of the fore going discussion, it is observed that the assessee has received total sales commission of Rs.40,00,000/- but offered net commission income of Rs.20,43,625/- to tax. Therefore, the difference amount which was not offered to tax i.e. Rs.19,56,375/- is chargeable to tax in the income head 'Business & Profession' has escaped assessment for A.Y.2013-14. Hence, I have reason to believe that Rs.19,56,375/- has not offered to tax and hence the same has escaped assessment. Hence, the provisions of section 147 of the Act are applicable in this case for the Asst. Year 2013-14. As more than four years have lapsed from the end of the asst. year under consideration, necessary approval of the Principle Commissioner of Income Tax-2, Hyderabad is required as per the provisions of section 151 of the Act, to issue notice u/s 148 of the Act.

The record for the Asst. Year 2013-14, in one volume, is submitted to the Pr. Commissioner of Income Tax-2, Hyderabad through proper channel for according the necessary sanction to issue notice u/s 148 of the Act for the Asst. Year 2013-14 along with pro-forma. A2

7. The assessment was reopened on the basis of information collected / received regarding the sales commission received by the assessee from M/s Alrich Constructions Pvt.Ltd. to the tune of Rs.40,00,000/- in comparison to the income admitted by the assessee in the original return of income at Rs.20,43,625/- as net commission. Therefore, the AO formed a belief that the commission income of Rs.19,56,375/- was not offered to tax

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has escaped assessment. In para No.6 of the reasons recorded by the AO, it is stated that on verification of the return of income filed by the assessee, it is observed that the assessee has admitted only Rs.20,43,625/- as net commission received, therefore, the commission income of Rs.19,56,375/-, which was not offered to tax is liable to tax under the head “income from business and profession” has escaped assessment. Thus, the reasons recorded by the AO are apparently contrary to the facts evident from the return of income filed by the assessee on 07.04.2014. Schedule OS (income from other sources) clearly reflected the total commission income at Rs.40,00,000/- and deduction of expenses at Rs.19,56,375/-. For ready reference, Schedule OS of return of income is reproduced as under :

Schedule OS		Income from other sources	
1	Income		
a	Dividends, Gross	1a	0
b	Interest, Gross	1b	241378
c	Rental income from machinery, plants, buildings,	1c	0
d	Others, Gross (excluding income from owning race horses) Mention the source		
	1 Other income	1d1	4000000
	Total	1d	4000000
e	Total (1a + 1b + 1c + 1d)	1e	424137
f	Deductions under section 57:-		
i	Expenses / Deductions	fi	1956375
ii	Depreciation	fii	0
iii	Total	fiii	1956375
g	Balance (1e - fiii)	1g	228500
2	Winnings from lotteries, crossword puzzles, races, games, gambling, betting etc. (Gross)	2	
3	Income from other sources (other than from owning race horses) (1g + 2) (enter 1g as nil if loss).	3	228500
4	Income from owning and maintaining race horses		
a	Receipts	4a	
b	Deductions under section 57 in relation to (4)	4b	
c	Balance (4a - 4b)	4c	
5	Income chargeable under the head “Income from other sources” (3 + 4c).(enter 4c as nil if loss and take 4c loss figure to Schedule CFL)	5	228500
<b>NOTE</b>		Please include the income of the specified persons referred to in Schedule SPI while computing the income under this head.	

8. Therefore, it is not the case of suppression of the commission or under statement of the commission in the return of income, but the assessee has clearly declared the commission income at Rs.40,00,000/- and also claimed the deduction on account of expenses incurred towards earning of the commission income. We, further note that the assessee has produced the ledger accounts of the containing the details of payment and work carried out by those parties with descriptions of the machinery like JCB, tractors etc. All these details and ledger account are placed at page No.8 to 14 of the paper book. Therefore, it is not the case of the claim of the assessee remained unsubstantive, but the assessee has produced the details of the expenditure incurred and payments made to the parties, who have carried out the work at the site. Further M/s Alrich Constructions Pvt.Ltd. has also issued a certificate dated 09.11.2023, placed at page No.15 of the paper book as under :



## TO WHOM SO EVER IT MAY CONCERN

I Chandra Babu Polina authorized signatory of, Alrich Constructions Pvt Ltd (PAN:AABCA7637D) hereby confirm that we paid an amount of Rs.40,00,000/- (Rupees Forty Lakhs Only) to A.Venkateshwar Reddy (PAN ABQPA4067Q) on 03-04-2013 in order to liaising the dispute with the illegal occupants of the land which the company has land at Budvel which has been pending over a period of time. He has used his good offices and liaising skill in getting the land by the company by evacuating the illegal occupants through mediations and settlements.

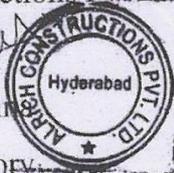
And the land which was levelled and cleared with respect to the Boulders and pits were leveled and boundary fencing was laid down by him during this process of evacuation.

For all the above said acts and deeds we paid the commission amount of Rs.40,00,000/- (Rupees Forty Lakhs Only).

For Alrich Constructions Pvt Ltd

Chandra Babu Polina

Authorised Signatory



Place: Hyderabad

Date: 09-11-2023

9. Therefore, it is manifest from the record that the amount of Rs.40,00,000/- was paid to the assessee for the liaisoning work for getting the land of the said company vacated from the illegal occupants as well as to carry out some development work like, levelling and clearing the land with respect to boulders and pits as well as carrying out the work of boundary fencing. Having considered the relevant facts and the documentary evidence produced by the assessee, we find that the assessee has duly substantiated his claim of expenditure for earning the said income of Rs.40,00,000/-. The Ld.CIT(A) in the impugned order has stated in para 6.3 as under :

The fact that the **revised return was filed in response to the notice under Section 148, declaring expenses not reported earlier**, suggests that the **claim may be an afterthought to reduce taxable income**. The absence of a detailed explanation for failing to claim these expenses in the original return further undermines the appellant's position. The appellant had not claimed these expenses in the original return of income filed. The reopening of assessment is not for the benefit of the assessee, the expenses which were not claimed in the original return of income, cannot be allowed in the return of income filed u/s 148.

10. Thus, the observation of the Ld.CIT(A) that the revised return was filed in response to the notice u/s 148, declaring the expenses not reported earlier is contrary to facts and record available with the department in the shape of original return of income and particularly, Schedule OS. Therefore, the impugned order of the Ld.CIT(A) is not based on the correct facts and liable to be set aside. We order accordingly.

11. In the result, addition made by the AO and sustained by the Ld.CIT(A) is deleted.

12. The assessee has also raised additional ground challenging the validity of notice issued u/s 148, which reads as under :

1. The issue of notice U/s 148 of the Income Tax Act 1961 on 30-03-2021 for the AY 2013-14, having been issued beyond the period of 6 years from the end of AY is totally without jurisdiction, invalid and bad in law and therefore must be quashed.
2. Since the notice issued U/s 148 on 30-03-2021 for the AY 2013-14 is beyond the period of limitation and therefore entire assessment proceedings relating to aforesaid assessment proceedings are bad in law and therefore the entire addition made of Rs.19,56,375/- must be deleted.
3. Without prejudices to the grounds No 1 & 2 the entire balance commission of Rs.19,56,375/- have voluntarily included by the appellant on 14-12-2021 was being less than 50 lacs and the entire assessment proceeding initiated U/s 148 of Income Tax Act 1961 is bad in law and has no legs to stand and therefore the question of taxing the sum of Rs.19,56,375/- though declared by the appellant in response to notice U/s 148 should be deleted.
4. Any other ground or grounds that may be urged at the time of hearing.

13. Since we have deleted the addition on merits, therefore, the additional grounds raised by the assessee become academic in nature and we do not propose to adjudicate the same.

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14. In the appeal arising from the penalty order, the assessee has raised the following grounds :

1. The order of the Learned Commissioner of Income Tax (Appeals)-10, Hyderabad (“the Ld.CIT(A)”) in confirming the levy of penalty at Rs.3,88,410/- u/s 271(1)(c) of the Income Tax Act, 1961.

2. The Ld.CIT(A)-10, Hyderabad fail to note that the Appellant had not furnished inaccurate particulars of income and therefore the levy of penalty is unsustainable and must be cancelled.

3. Without prejudice to any of the aforesaid grounds a mere incorrect claim made in the Return of income cannot lead to an inference that the Appellant had furnished inaccurate particulars as held by the Supreme Court in Reliance Petroleum Vs. CIT reported in 322 ITR Page 158(SC).

4. The Appellant craves to add, modify, amend or revise the above grounds any time during the course of appeal.

15. The assessee filed his return of income for the A.Y.2016-17 on 01.04.2017, declaring total income of Rs.1,34,79,790/-. In the scrutiny assessment, the AO has disallowed the claim of deduction u/s 54F to the tune of Rs.1,05,51,982/- which was restricted by the CIT(A) to Rs.16,83,476/- and consequently the AO initiated proceedings u/s 271(1)(c) of the Act. The AO thus levied penalty u/s 271(1)(C), being 100% of the tax sought to be evaded amounting to Rs.3,88,410/- vide order dated

05.02.2022. The assessee challenged the action of the AO before the Ld.CIT(A), but could not succeed.

16. Before the Tribunal the Ld.AR has submitted that the assessee claimed deduction u/s 54F at Rs.1,05,51,982/-, which was restricted to by the CIT(A) to the tune of Rs.88,68,506/-, resulting an addition of Rs.16,83,476/-. The Ld.AR has pointed out that initially, the assessee invested Rs.1,12,00,000/- for purchase of land admeasuring 3125 sq.yds for construction of house. However, due to the glitches involved in obtaining permission for construction of residential house, the assessee made investment in acquisition of a semi-finished flat and also spent amount for furnishing work. Therefore, the total amount spent by the assessee for acquiring the flat and furnishing work was Rs.88,68,506/-. The AO while passing the order u/s 143(3) dated 31.12.2018 disallowed the entire claim of deduction u/s 54F, however, on appeal, the Ld.CIT(A) allowed the claim of deduction u/s 54F to the extent of investment made for the purchase of new flat. Thus, the Ld.AR has submitted that in the return of income, the assessee has claimed the deduction by considering the total investment comprising of land as well as flat. The disallowance of claim by the AO as well as the Ld.CIT(A) in respect of the investment made in the land cannot be held as furnishing inaccurate particulars of income or concealment of particulars of income, attracting penal provision u/s 271(1)(c) of the Act. In support of his contentions, he has

relied upon the judgement of Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products (P) Ltd. (2010) 322 ITR 0158 (SC) and submitted that the Hon'ble Supreme Court has held that on the basis of mere disallowance of claim made by the assessee in the return of income cannot be said that the assessee was guilty of concealment or filing of inaccurate particulars of income u/s 271(1)(c) as all the information was available in the return.

17. On the other hand, the Ld.DR has submitted that the assessee has made excess claim of deduction u/s 54F, whereas, eligible investment made by the assessee is only to the extent of Rs.88,68,506/-, hence, it is a case of furnishing inaccurate particulars of income, attracting penalty u/s 271(1)(c) of the Act. Though the Ld.CIT(A) partly allowed deduction u/s 54F to the extent of eligible investment, however, when the balance claim of deduction u/s 54F to the extent of Rs.16,83,476/- is not permissible and the explanation of assessee is not found to be Bonafide, thus, the penalty levied by the AO and confirmed by the Ld.CIT(A) is justified. He has relied upon the impugned orders of the authorities below.

18. We have considered the rival submissions as well as the relevant material on record. In the return of income, the assessee claimed deduction u/s 54F of Rs.1,05,51,982/- calculated on the basis of the investment made by the assessee

for purchase of residential land for construction of house. The assessee also invested a sum of Rs.88,68,506/- towards purchase of a residential house bearing No.1501, Sector-A, Tower-2, NCC URBANONE at Narsingi village, Ranga Reddy Dist. The AO has disallowed the entire claim of deduction u/s 54F on the ground that the investment made in the land without construction of house is not eligible for deduction u/s 54F and the investment made in the residential flat without prior deposit of the amount in the capital gain account is also not eligible for deduction u/s 54F. The assessee challenged the said order of the AO before the Ld.CIT(A). The Ld.CIT(A) vide order dated 28.01.2020 allowed the claim of deduction u/s 54F to the extent of investment made in the residential flat of Rs.88,68,506/- and consequently sustained the addition of the differential amount of Rs.16,83,476/-. Against which, the AO has levied penalty u/s 271(1)(c) of the Act. It is pertinent to note that in the return of income, the assessee has claimed deduction of Rs.1,05,51,982/- in respect of the investment made in the residential land purchased by the assessee as well as for purchase of residential flat. The assessee could not carry out the construction of the house on the land purchased by the assessee due to some problem in getting the requisite permission for construction of the residential house on the said land. Thus, it is clear that the deduction claimed by the assessee u/s 54F is based on the facts, which were duly disclosed in the return of income. Though the deduction u/s

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54F could not be allowed in respect of the land purchased by the assessee without construction of the house, but the same would not ipso facto lead to the conclusion that that the assessee has furnished inaccurate particulars of income or concealed the particulars of income. Mere disallowance of claim of deduction u/s 54F due to non- satisfaction of the conditions provided u/s 54F would not constitute concealment of income or furnishing of inaccurate particulars of income. Therefore, in the facts and circumstances of the case, when the claim of the assessee is based on the bonafide belief and correct facts, then, the disallowance of claim u/s 54F cannot be said to be a case of concealment of income or furnishing inaccurate particulars of income. Accordingly, we find that the penalty levied by the AO u/s 271(1)(c) against the addition made on account of disallowance of partial claim of deduction u/s 54F is unjustified and the same is deleted.

19. In the result, appeals filed by the assessee for both the assessment years 2013-14 and 2016-17 are allowed.

Order pronounced in the Open Court on 16<sup>th</sup> May, 2025.

**Sd/-**

**Sd/-**

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

Dated 16<sup>th</sup> May, 2025

**L.Rama, SPS**

**ITA No.1285 & 1286/Hyd/2024**  
**Venkateshwar Reddy Attigada** 

Copy to:

S.No	Addresses
1	Shri Venkateshwar Reddy Atigadda, H.No.4-51/L/40, Sy.No.133,Lumbini SLN Springs, Gachibowli, Hyderabad
2	The ACIT, Circle-8(1), Hyderabad
3	The Pr.CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

*By Order*