

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद “ए” बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad “A” Bench, Hyderabad

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON’BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.347/Hyd/2025
(निर्धारण वर्ष/ Assessment Year: 2022-23)

The Income Tax Officer, International Taxation-1, Hyderabad.	Vs.	Deenababu Kondubhatla, Towlichowki, Hyderabad. PAN : AICPD5975F
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri A. Srinivas, C.A.,
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Gurpreet Singh, Sr.D.R.
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	03.06.2025
घोषणा की तारीख/Date of Pronouncement	:	04.06.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The present appeal filed by the Revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals) – 10, Hyderabad, dated 04-12-2024, which in turn arises from the order

passed by the Assessing Officer (for short "A.O.") under Section 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961, (for short "the Act") dated 24-05-2024. The Revenue has assailed the impugned order on the following grounds of appeal before us :

"1. The Ld. CIT(Appeals) erred both in law and on facts of the case in setting aside the assessment order passed by the Assessing Officer u/s.143(3) r.w.s. 144C(3) dated 24.05.2024 for making a fresh assessment.

2. On the facts and in the circumstances of the case, and in law, whether the CIT(Appeals) is justified in setting aside the assessment order passed by the Assessing Officer u/s.143(3) r.w.s. 144C(3) dated 24.05.2024 for making a fresh assessment by invoking the powers granted u/s.251 of the Act, when the provisions of Sec.251(1) clearly states that the power of the CIT(A) is to set aside an order of assessment passed u/s.144 only, which is not applicable to the present case of the assessee.

3. Any other ground of appeal that may be raised with the prior approval of the Hon'ble ITAT during the appellate proceedings."

2. Succinctly stated, the assessee, an NRI had filed his return of income for A.Y. 2022-23 on 06-06-2022, declaring an income of Rs.13,63,840/-. Subsequently, the case of the assessee was selected for scrutiny assessment through CASS for verifying two issues, viz. (i). the taxable receipts from other sources shown in schedule TDS-2 were higher than the receipts shown in the return of income; and (ii). the high ratio of refund to TDS relating to Section 195.

3. During the course of assessment proceedings, the A.O. observed that the assessee had, during the subject year, sold two immovable properties, on which Long Term Capital Gain aggregating to Rs. 13,18,002/-, viz. (i). Property - I: Rs. 55,887/- and (ii). Property – II: Rs.12,62,115/- was disclosed in his return of income. The A.O. to verify the Long-term Capital Gains (for short “LTCG”) disclosed by the assessee on the sale of subject properties, called upon him to submit copies of the sale deeds and purchase deeds in respect of the aforesaid properties. However, the assessee, despite having been afforded sufficient opportunity, failed to furnish the requisite information. Accordingly, the A.O. backed by the fact that the requisite information i.e. the cost of acquisition/ improvement of the properties along with the expenditure incurred in connection with the transfer of the same, was not forthcoming, reworked out and brought the income arising therefrom as Short-term Capital Gains (for short “STCG”) on the transfer of the same at Rs.2,15,25,000/-. The A.O., vide his order passed under Section 143(3) r.w.s. 144C(3) of the Act, dated 24.05.2024, made an addition of short-term capital gains of Rs. 2,15,25,000/- (after

dispensing with LTCG of Rs.13,18,000/- that was disclosed by the assessee in his return of income) and determined his income at Rs. 2,15,70,840/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Ostensibly, the CIT(A) though initially observed that the AO had framed the assessment under Section 143(3) r.w.s 144C(3) of the Act, but thereafter, stated that the AO had based on an ex-parte order assessed the income of the assessee at Rs. 2,15,70,840/-. Thereafter, the CIT(A), drawing support from the post-amended Section 251 of the Act, i.e., amended vide Finance (No.2) Act, 2024, w.e.f. 01-10-2024, wherein powers were vested with the first appellate authority to set aside the assessment and refer the case back to the A.O. for making a fresh assessment, where the appeal was against an order of assessment made under Section 144 of the Act, set aside the said impugned assessment order and referred back the case to the A.O. for making a fresh assessment. For the sake of clarity, the observations of the CIT(A) are culled out as under:

“4. ANALYSIS OF THE FACTS AND ADJUDICATION OF THE GROUNDS:

On perusal of the assessment order u/s 143(3) r.w.s 144C(3) of Income Tax Act, 1961 passed by the Assessing Officer, it is observed that the order was passed due to non-compliance to the notices issued. The AO has passed the assessment order as ex-parte arriving at assessed income of Rs.2,15,70,840/-.

4.1 As per Amendment to Section 251 of Income Tax Act, 1961 vide Finance Act, 2024, with effect from 1st day of October, 2024, the CIT(A) may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment, where such appeal is against an order of assessment made u/s 144.

4.2 Considering the facts and circumstances of the case and the submissions of the assessee, the assessment order passed by the AO u/s 143(3) r.w.s 144C(3) of the Income Tax Act, 1961 is set aside and is referred back to the AO for making a fresh assessment. Needless to add, the AO shall afford adequate opportunity of being heard to the assessee before passing the assessment order de novo. In view of this, the appeal is ALLOWED FOR STATISTICAL PURPOSES.

5. In the result, the appeal filed against the order u/s 143(3) r.w.s 144 of the Income Tax Act, 1961 for the AY 2022-23 is allowed for statistical purposes.”

5. The revenue being aggrieved by the order of CIT(A) has carried the matter in appeal before us.

6. We have heard the learned authorized representatives of both parties and perused the orders of the lower authorities and the material available on record.

7. Sri Gurpreet Singh, the learned senior Departmental Representative (for short “Ld. DR”), at the threshold of hearing of the appeal, submitted that the CIT(A) had grossly erred in law and

facts of the case in setting aside the matter to the file of A.O. for making a fresh assessment. Elaborating on his contention, the Ld. DR submitted that though pursuant to the amendment to Section 251(1) of the Act, as had been made available on the statute vide the Finance (No.2) Act, 2024 w.e.f. 01-10-2024, the CIT(A) is vested with the jurisdiction to set aside the assessment and refer the case back to the A.O. for making a fresh assessment, where such appeal is against an order of assessment made under Section 144 of the Act, but the said jurisdiction had wrongly been exercised in the case of the present assessee. Carrying his contention further, the Ld. DR submitted that as the assessment in the present case was framed by the AO under Section 143(3) r.w.s. 144C(3) of the Act and not u/s 144 of the Act, therefore, the CIT(A) had wrongly triggered the jurisdiction vested with him as per the "Proviso" to Section 251(1)(a) of the Act. The Ld. DR to buttress his aforesaid claim, had taken us to the observations of the CIT(A) and the assessment order. The Ld. DR submitted that as the CIT(A) had traversed beyond his jurisdiction, therefore, the order, so passed by him cannot be sustained.

8. Per Contra, Shri A. Srinivas, the learned Authorized Representative (for short “Ld. Ld. AR”) for the assessee relied upon the orders of the lower authorities.

9. Admittedly, it is a matter of fact borne from the record that the A.O. in the present case had framed the assessment vide his order passed under Section 143(3) r.w.s. 144C(3) of the Act, dated 24-05-2024. We find that the legislature, in all its wisdom, had by the amendment made available in the Statute, vide the Finance (No.2) Act, 2024 w.e.f 01.10.2024, had inserted a “Proviso” to Section 251(1)(a) of the Act, wherein the CIT(A) has been vested with the power to set aside the assessment and refer the case back to the A.O. for making a fresh assessment, where such appeal is against the order made under Section 144 of the Act. For the sake of clarity, section 251(1) is culled out as under:

“251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers –

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case

back to the Assessing Officer for making a fresh assessment.”

(emphasis supplied by us)

10. Although the “Proviso” to Section 251(1)(a) vests jurisdiction with the CIT(A) to set aside the assessment and refer the case back to the A.O. for making a fresh assessment, but the power to exercise such power is limited only to a case where the order of the assessment is made under Section 144 of the Act. As the Legislature has not extended the aforesaid jurisdiction to set aside the assessment in a case where the same had been framed by the A.O. under Section 143(3) of the Act, therefore, we find substance in the claim of the revenue that the CIT(A) had exceeded the jurisdiction vested with him as per the “Proviso” to Section 251(1)(a) of the Act and wrongly set aside the assessment that was framed by the A.O. under Section 143(3) r.w.s 144C(3) of the Act, dated 24-05-2024 to his file for making a fresh assessment.

11. We thus, in terms of our aforesaid observations, find substance in the Ld. DR's claim that as the CIT(A) had traversed beyond the scope of his jurisdiction and set aside the matter to the file of A.O. in the garb of the powers vested with him as per the

post-amended Section 251(1) of the Act, therefore, the same cannot be sustained. Accordingly, we set aside the order of CIT(A) and restore the matter to his file with a direction to re-adjudicate the appeal. Needless to say, the CIT(A) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

12. Resultantly, the appeal filed by the assessee firm is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the Open Court on 4th June, 2025.

<p>Sd/- (श्री मधुसूदन सावडिया) (MADHUSUDAN SAWDIA) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (श्री रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>
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Hyderabad, dated 04.06.2025.

TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	Deenababu Kondubhatla, G-5, Block-B, Alekhya Palmwoods, Next to Essar Petrol Pump, Nanakramguda, Towlichowki – 500036, Telangana.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, (International Taxation)-1, Hyderabad.
3.	The Commissioner of Income Tax, (IT & TP), Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad