

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "B" BENCH: HYDERABAD
BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.375/Hyd./2025
Assessment Year 2021-2022

Anand Boddapaty, Hyderabad – 500 034. PAN ADKPB3810C	vs.	The PCIT, Hyderabad-4, Hyderabad – 500 004.
(Appellant)		(Respondent)

For Assessee :	CA Kumar Pal Tated
For Revenue :	Sri Narender Kumar Naik, CIT-DR

Date of Hearing :	05.06.2025
Date of Pronouncement :	09.06.2025

ORDER

PER MANJUNATHA G. :

This appeal has been filed by the assessee against the order dated 13.02.2025 of the learned Principal Commissioner of Income Tax, Hyderabad-4, Hyderabad, passed u/sec.263 of the Income Tax Act, 1961, relating to the assessment year 2021-2022.

2. Brief facts of the case are that, the assessee is an individual and filed his return of income on 11.12.2021

declaring total income at Rs.2,07,55,350/-. The case of the assessee has been selected for scrutiny under CASS and notice u/sec.143(2) dated 28.06.2022 was duly served upon the assessee. The Assessing Officer also issued various statutory notices u/sec.142(1) of the Act calling the assessee to furnish his explanation with respect to large capital gains exemption claimed u/sec.54 of the Act. In response, the assessee has filed his submissions dated 23.08.2022 and 23.11.2022. The Assessing Officer after examining the submissions of the assessee, accepted the return of income filed by the assessee.

3. The learned PCIT, Hyderabad-4, Hyderabad was of the view that the assessment order passed by the Assessing Officer is not only erroneous, but, also prejudicial to the interest of Revenue and, therefore, by exercising his revisional powers u/sec.263 of the Act, issued show cause notice to the assessee on 03.01.2025 calling the assessee to furnish his explanation. The reasons enunciated by the learned PCIT in the show cause notice are that, the assessee has purchased immovable property for a consideration of

Rs.4,40,00,000/- from his wife Smt. Radha Kumari Boddapaty on 15.05.2021 through an un-registered agreement of sale and claimed deduction on the impugned transaction u/sec.54 of the Act. The learned PCIT further noted that, since the agreement of sale has not been registered, therefore, the un-registered agreement cannot be treated as a 'valid transfer' and thus, the claim of deduction made by the assessee u/sec.54F of the Act at Rs.4,26,28,194/- is not allowable. In response, the assessee has filed his submissions on 04.02.2025 contending, *inter alia*, that, he has already furnished agreement of sale [with possession] dated 15.05.2021 with regard to the purchase of duplex villa on House bearing No.7-108/A-28, on Plot No.28 [In Part-A] situated at Manchirevula (v) under Narsingi Municipality, Gandipet Mandal, Ranga Reddy District from his wife Smt. Radha Kumari Boddapaty who has purchased the property in question through Sale Deed No.400/2007 dated 05.11.2007. The assessee further submitted that, the Assessing Officer after verifying and examining all the evidences filed viz., agreement of sale [with possession] has

accepted the return of income filed by the assessee and allowed the exemption claimed by the assessee u/sec.54 of the Act. He further submitted that, the Assessing Officer has already examined the evidences filed and took a view that the claim of exemption u/sec.54F is in order and therefore, the PCIT cannot take a different view which tantamounts to change of opinion i.e., different view on the same issue. The assessee also further submitted before the learned PCIT that, in the agreement of sale dated 15.05.2021, it was clearly mentioned that, the property could not be registered in view of the fact that, the same was included in the "Prohibited Properties in Rural Prohibited Register" by the Registration and Stamps Department, Government of Telangana, as per stay issued by Court Orders and the said fact was also endorsed at page-2 in Agreement of Sale [with possession] dated 15.05.2021. Thus, the reason for non-registration of the said property in question was clearly explained in the recital of the Agreement of Sale [with possession] itself. He submitted that, the Assessing Officer after satisfying and

examining the documents placed on record, has allowed the capital gains deduction claimed by the assessee u/sec.54 of the Act. He further drew the attention of the learned PCIT that, there is no bar to purchase of property from the wife of the assessee, according to law, nowhere in the Provisions of Capital Gain i.e., u/sec.45 of the Income Tax Act, 1961, it has prohibited purchase of property from Spouse, nor nowhere in the Income tax Provisions with regard to Capital Gains prohibit the acquisition of Immovable Property by way of Agreement of Sale (with Possession) and as such, it cannot be treated as "no transfer" for allowing exemption u/sec.54F of the Income Tax Act, 1961. Further, in recent judgments, the Hon'ble Supreme Court held that, even though an agreement to sell does not transfer proprietary rights in an Immovable Property, however, when the prospective purchaser performs his part of the contract and receives possession of the property, then he is said to have acquired possessory title and the sale is protectable under section 53A of the Transfer of Property Act, 1882. He accordingly, submitted that, the order of the Assessing

Officer allowing exemption u/sec.54F of the Act is in accordance with law and requested the PCIT to drop the proposal for invoking provisions of sec.263 of the Act. The learned PCIT considering the facts and circumstances of the case and the assessment order passed by the Assessing Officer and the submissions filed by the assessee, being not convinced with the explanation of the assessee, observed that the assessment order passed by the Assessing Officer dated 29.11.2022 is erroneous, as it is prejudicial to the interest of revenue and, therefore, directed the Assessing Officer to pass fresh assessment order after affording opportunity to the assessee by relying on various case laws.

4. Aggrieved by the order of the learned PCIT, the assessee is now in appeal before the Tribunal.

5. CA Kumar Pal Tated, Learned Counsel for the Assessee, supporting the order of the Assessing Officer submitted that, the learned PCIT has erred in setting-aside the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.144B of the Act by exercising his powers conferred u/sec.263 of the Act, even though, the

assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue in the given facts of the case. Learned Counsel for the Assessee referring to the assessment order passed by the Assessing Officer and consequent notice issued u/sec.142(1) of the Act on various dates submitted that, the Assessing Officer has called for specific details with regard to computation of capital gains and relevant exemption claimed u/sec.54 of the Act. In response, the assessee has filed all details including sale agreement for purchase of property to claim exemption u/sec.54 of the Act. The Assessing Officer after considering the relevant facts has rightly allowed the claim and, therefore, it cannot be said that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Learned Counsel for the Assessee further referring to various judicial precedents including decision in the case of Malabar Industrial Co. Ltd., vs., CIT 243 ITR 83 (SC) submitted that, unless the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue, the

PCIT cannot have any jurisdiction to set-aside the assessment order. Learned Counsel for the Assessee further referring to decision of Hon'ble Supreme Court in the case of CIT vs., Max India Ltd., 295 ITR 282 (SC) submitted that, although, the title of the property cannot be transferred without any valid registered document, but, when it comes to the beneficial provision of claiming exemption u/sec.54 of the Act, there is no requirement of registration and if assessee has paid entire consideration for purchase of new house property, then, the deduction should be allowed as held by various Courts including Hon'ble Delhi High Court in the case of ITO vs., DG Housing Projects Ltd., 343 ITR 329 (Del.). and decision of Hon'ble Andhra Pradesh High Court in the case of Spectra Shares & Scrips (P.) Ltd., vs., CIT 254 ITR 22 (AP) and decision of ITAT, Chennai in the case of Muthu Daniel Rajan vs., ACIT ITA.No.1675/Chny/2019. Therefore, he submitted that, the assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue. Further, the learned PCIT without bringing on record as to how the

assessment order passed by the Assessing Officer is erroneous, simply set-aside the assessment order. Therefore, he submitted that, the order of the PCIT should be set-aside.

6. Shri Narender Kumar Naik, learned CIT-DR, on the other hand, supporting the order of the learned PCIT submitted that, although, the Assessing Officer has issued notice u/sec.142(1) of the Act and called various details, but, failed to gather relevant information in light of exemption claimed u/sec.54 of the Act, which is clearly evident from the show cause notice issued by the PCIT where he has brought-out the claim in light of un-registered sale deed for purchase of property from related party [wife]. Therefore, it is a clear case of lack of enquiry by the Assessing Officer on the issue in light of relevant provisions of the Act which render the assessment order erroneous and prejudicial to the interest of the Revenue. Therefore, he submitted that, the PCIT has rightly invoked jurisdiction and set-aside the assessment order and thus, the order of the PCIT should be upheld.

7. We have heard both the parties, perused the material on record and the orders of the authorities below. The provisions of sec.263 of the Act deals with the powers of the Commissioner and as per the said provisions, if the PCIT satisfied that the assessment order passed by the Assessing Officer is erroneous, in so far as it is prejudicial to the interest of the Revenue, then, by exercising his powers conferred u/sec.263 of the Act, he can set-aside the assessment order passed by the Assessing Officer with a direction to re-do the assessment. However, in order to invoke his revisionary powers, the PCIT must bring on record with relevant reasons, as how the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the present case, going by the facts brought on record by the PCIT in light of assessment order passed by the Assessing Officer, it is a clear case of erroneous order passed by the Assessing Officer which caused prejudice to the interest of the Revenue, which is evident from the claim of exemption u/sec.54 of the Act on the basis of an un-registered sale

agreement for purchase of property from wife of the assessee. Although, the Assessing Officer has issued show cause notice u/sec.142(1) of the Act and called for relevant details to verify the claim of exemption u/sec.54F of the Act and also the assessee has furnished relevant details including copy of sale agreement for purchase of new asset, but, in our considered view, although, the claim of exemption u/sec.54F is based on an un-registered agreement with the related party, but, the Assessing Officer has failed to verify the issue in light of relevant provisions of the Act including provisions of Registration Act, 1908 which render the assessment order erroneous and prejudicial to the interest of the Revenue. Further, as per the provisions of Explanation-2 to sec.263 of the Act, an assessment order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue, if, in the opinion of the PCIT, the order is passed without making enquiries or verification which should have been made and the order is passed allowing any relief without enquiring into the claim. And further, the order has not been made in accordance with

any other direction or instruction issued by the Board u/sec.199 of the Act. In the present case, going by the facts on record, it is undisputedly clear that, the claim of assessee towards deduction u/sec.54F of the Act is not based on relevant evidences which is evident from the claim made by the assessee and allowed by the Assessing Officer on the basis of an un-registered sale agreement with related party. Although, the assessee claims that it is a bonafide transaction between the two parties and the assessee has invested entire consideration received towards sale of original asset for purchase of new asset and because of certain disputes including prohibitory orders issued by the VAT Authorities on the impugned property, registration could not be done, but, in our considered view, except stating this fact in the purported sale agreement, the assessee could not file any evidence to prove that he has made any effort to register the property by presenting document to the registration authorities. Therefore, the averment of the Counsel for the Assessee on the basis of an un-registered agreement and it's contents can only be

treated as self-serving document and on that basis, the claim of the assessee cannot be accepted. Therefore, we are of the considered view that, the assessment order passed by the Assessing Officer without examining the claim by conducting relevant enquiries which ought to have been carried-out in terms of Explanation-2 to Sec.263 of the Act, is definitely an erroneous order which caused prejudicial to the interest of the Revenue.

8. Coming back to various case laws. The Learned Counsel for the Assessee relied upon the decisions of Hon'ble Supreme Court in the cases of Malabar Industrial Co. Ltd., vs., CIT (supra) and CIT vs., Max India Ltd., (supra), on the issue of powers of PCIT in terms of sec.263 of the Act. We find that, although, the cases referred to by the assessee is on the issue of 'phrase' prejudicial and erroneous of the orders, but, in our considered view, the above case laws does not applicable to the facts of the present case, because, in the present case, the assessment order is clearly erroneous and prejudicial to the interest of the Revenue going by the facts available on record.

Therefore, we reject the case laws relied upon by the Learned Counsel for the Assessee including the decision of jurisdictional High Court of Andhra Pradesh in the case of Spectra Shares & Scrips (P.) Ltd., vs., CIT (supra). Further, the assessee has also relied upon decision of Hon'ble Supreme Court in the case of Sanjeev Lal vs., CIT 365 ITR 389 (SC) and the decision of Hon'ble Delhi High Court in the case of Balraj vs., CIT 254 ITR 22 (Del.) (HC) on the issue of registration of property for transfer of title in the immovable property and claimed that, although, the title in the property cannot be transferred unless a registered document, but, when it comes to the beneficial provision of claiming exemption u/sec.54 of the Act, the registration is not mandatory if the entire consideration is invested for purchase of property by entering into an agreement of sale. In our considered view, there is no dispute with regard to the arguments canvassed by the Learned Counsel for the Assessee that, in case, the assessee has entered into an agreement and invested the entire sale consideration for purchase of property, but, registration could not be

completed because of some legal disputes, then, the claim of the assessee can be allowed on the basis of agreement to sale. However, if the transaction is between the related party and the assessee fails to bring on record any evidence to prove that, the property could not be registered for bonafide reason, in our considered view, the arguments of the assessee in light of the above judgment fails, because, unless a property is conveyed by a registered deed in terms of the Registration Act, 1908, the title of the property will not be transferred to the purchaser and, therefore, it cannot be said that, the said transfer is a “valid transfer” and the person who purchased the property has got a valid title and right over the property. In the present case, an un-registered agreement claimed to have been entered into by the assessee with his wife is between the two related parties and further, the assessee is also failed to file relevant evidences to prove that he has made a honest effort to register the property by presenting the document before the registering authority and in absence of any evidence, the averments made by the assessee on the basis of the recitals

of an un-registered sale agreement, cannot be considered as evidentiary value. Therefore, we reject the various case laws relied upon by the Learned Counsel for the Assessee on this issue.

9. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that, the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.144B of the Act is not only erroneous but also prejudicial to the interest of the Revenue. The learned PCIT after considering the relevant facts has rightly set-aside the assessment order in terms of provisions of sec.263 of the Act. Thus, we are inclined to uphold the order of the learned PCIT and dismiss the appeal filed by the assessee.

10. In the result, appeal of the Assessee is dismissed.

Order pronounced in the open Court on 09.06.2025

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Hyderabad, Dated 09th June, 2025
VBP

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Copy to

1.	Anand Boddapaty, D.No.8-2-545, Block-H 008, Brigade No.7, Road No.7, Banjara Hills, Hyderabad – 500 034. Telangana.
2.	Principal Commissioner of Income Tax, Hyderabad-4, Room No.211, 2 nd Floor, A-Block, IT Towers, AC Guards, Masab Tank, Hyderabad – 500 004. Telangana.
3.	The DR ITAT “B” Bench, Hyderabad.
4.	Guard File.

//By Order//

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