

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री रवीश सूद, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.235/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2013-14)**

Srinivasa Rao Chunduri D.No. 33-8-20(4), Satya Homes Kanchi Raju Vari Street Babu Gari Street, Tanuku – 534211 Andhra Pradesh [PAN:ADWPC3135D]	v.	Income Tax Officer – Ward – 2 Income Tax Office Aayakar Bhavan Sajjapuram, Tanuku – 534211 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	15.05.2025
घोषणा की तारीख/Date of Pronouncement	:	09.06.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against rectification order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No.

ITBA/APL/M/250/2019-20/1017606575(1) dated 27.03.2024 for the A.Y.2013-14 passed Under section 154 r.w.s. 250 of the Income Tax Act, 1961 (in short 'Act').

2. Brief facts of the case are that, assessee being an individual has purchased Ac. 1.95 ½ cents of land at chivatam village for Rs. 3,53,000/- which was sold on 21.07.2012 for Rs. 65,00,000/-. It was observed that as per SRO, the market value of the property is Rs. 1,70,31,960/- and since the Chivatam Village is under the Municipal Limits of Tanuku Municipality, the provisions of section 50C of the Act are applicable. The assessee has not filed any return of income for the A.Y. 2015-16. Therefore, Ld. Assessing Officer [hereinafter in short "Ld. AO"] observed that there is an "income escaping assessment" within the meaning of section 147 of the Act and accordingly notice under section 148 of the Act was issued on 13.11.2017 after taking necessary approval from the Competent Authorities. In response to the notice, assessee filed return of income on 02.02.2018 admitting a taxable income of Rs. 1,72,876/-. Assessee also claimed deduction under section 54F for Rs. 54,02,361/-. Thereafter, notice under section 143(2) of the Act dated 06.02.2018 was issued and served on the assessee on 10.02.2018. Assessee vide letter dated 19.02.2018 sought reasons for reopening of the assessment which was replied vide letter dated 23.02.2018 informing the reasons for reopening. On 27.02.2018 assessee filed its objections for reopening of the assessment. Ld. AO vide letter dated

07.03.2018 addressed to the objections raised by the assessee. Thereafter Ld.AO completed the assessment by adopting the SRO value and also disallowing the deduction claimed under section 54F of the Act.

3. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A), Rajamahendravaram. Ld. CIT(A), Rajamahendravaram vide his order dated 13.08.2019 affirmed that Ld. AO has not passed a speaking order for disposing the objections of the assessee for reopening of the case before proceeding with the assessment and therefore the re-assessment under section 147 was quashed. Ld. CIT(A), Rajamahendravaram thus allowed the appeal of the assessee.

4. Subsequently, the Ld. AO filed a rectification petition before Ld. CIT(A), National Faceless Appeal centre, Delhi, after seeking prior approval from the competent authorities stating that the assessee has not brought to the notice of the Ld. CIT(A), Rajamahendravaram, regarding the disposal of objections vide Ld.AO letter dated 07.03.2018. Considering the rectification petition, the Ld.CIT(A), National Faceless Appeal centre, Delhi, passed an order under section 154 r.w.s. 250 of the Act dated 27.03.2024 rectifying the order of the Ld. CIT(A), Rajamahendravaram, thereby partly allowing the appeal of the assessee. Ld.CIT(A), National Faceless Appeal centre, Delhi, observed that the order passed under section 250 of the Act by his predecessor has not considered the disposal of the objections by Ld AO, thereby rectifying the order passed by

Ld. CIT(A), Rajamahendravaram accordingly. Further he also directed the Ld.AO to allow the deduction under section 54F of the Act provided that the assessee has completed the construction of the new house within the three years after the date of sale of land and fulfilment of other conditions as specified under section 54F of the Act.

5. Feeling aggrieved by the order of the Ld.CIT(A), National Faceless Appeal centre, Delhi, assessee is in appeal before us by raising following grounds of appeal: -

“1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The order passed by the learned Commissioner of Income Tax (Appeals) u/s 154 r.w.s 250 of the Act is barred by limitation.

3. The decision of the learned Commissioner of Income Tax (Appeals) in upholding the validity of the notice issued u/s 148 of the Act is outside the scope of rectification u/s 154 of the Act.

4. Without prejudice to Ground no. 2 and 3, the learned Commissioner of Income Tax (Appeals) ought to have quashed the notice issued u/s 148 of the Act as invalid and ought to have quashed the consequent reassessment proceedings as void -ab-initio.

5. Without prejudice to Ground no.2 to 4, the learned Commissioner of Income Tax (Appeals) ought to have directed the assessing officer to allow the deduction of Rs.54,02,361 claimed by the appellant u/s 54F of the Act in as much as the assessing officer mentioned in the assessment order passed on 26.11.2018 u/s 143 (3) r.w.s 147 of the Act that the appellant completed the construction of the house within 3 years from the date of sale of the asset.

6. Any other grounds may be urged at the time of hearing.”

6. Ground Nos. 1 & 6 are general in nature and needs no specific adjudication.


7. Ground Nos. 2, 3 & 4 are not pressed by the Ld. Authorised Representative [hereinafter “Ld.AR”] and hence disposed of as not pressed.

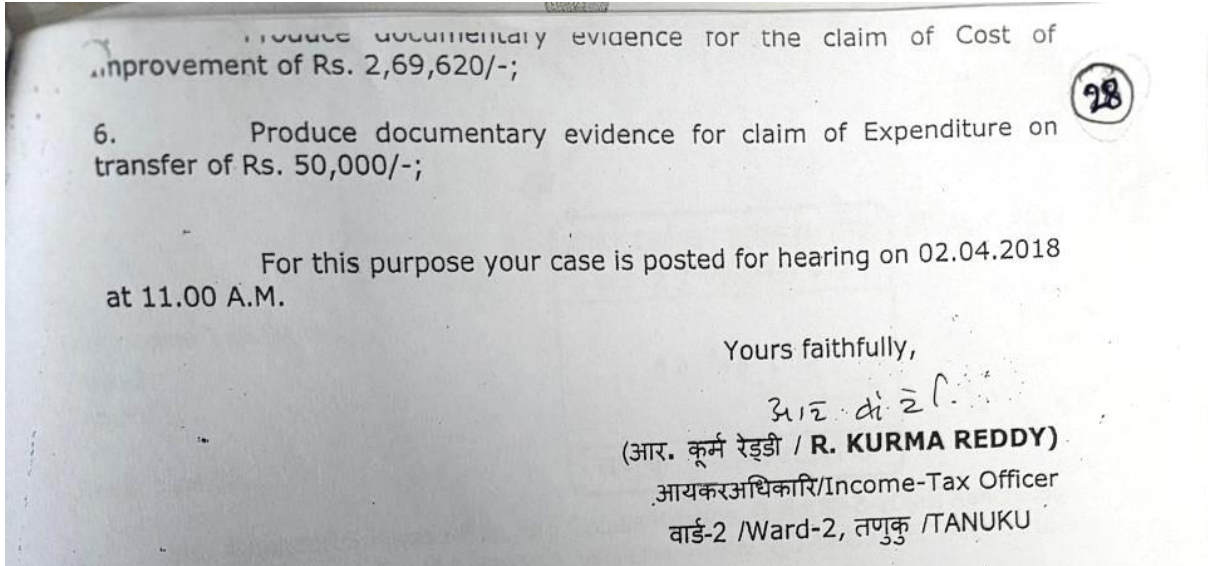
8. Ground Nos. 5 is with respect to allowance of deduction under section 54F of the Act. At the outset, Ld.AR argued that the assessee has raised objections vide letter dated 27.02.2018 regarding the issuance of notice under section 148 of the Act. However, he submitted that Ld. AO vide letter dated 07.03.2018 has not passed a speaking order regarding the second objection of allowance of deduction under section 54F of the Act but has only sought for clarification and information from the assessee. He therefore submitted that this cannot be considered as disposal of objections raised by the assessee and hence order passed by the Ld. CIT(A), Rajamahendravaram dated 13.08.2019 quashing the reassessment proceedings for non-disposal of the objections is justifiable and to be sustained.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] referring to the letter dated 07.03.2018 by the Ld. AO and argued that Ld. AO has rightly disposed of the objections raised by the assessee vide letter dated 27.02.2018. Ld. DR further submitted that this disposal of objections was not brought to the notice of the Ld. CIT(A), Rajamahendravaram and thus the

Ld.CIT(A) has passed an order that Ld.AO has not disposed of the objections. She therefore, pleaded that the rectification order passed by the Ld. CIT(A), National Faceless Appeal centre, Delhi dated 27.03.2024 is justifiable and valid in law.

10. We have heard both the sides and perused the material available on record. It is an admitted and undisputed fact that the assessee has sought reasons for reopening which was communicated to him. Assessee objecting to the re-assessment proceedings by way of issue of notice under section 148 of the Act filed his objections vide letter dated 27.02.2018. Ld. AO vide letter dated 07.03.2018 replied to the objections raised by the assessee for reopening of the assessment under section 148 of the Act. The disposal of the objections by the Ld. AO is reproduced below: -

 आयकर विभाग INCOME TAX DEPARTMENT, MINISTRY OF FINANCE GOVERNMENT OF INDIA	आयकर अधिकारी कार्यालय, वार्ड-2, आयकर भवन, सज्जापुरम, तानुकु, आंध्र प्रदेश - 534 211 Office of the Income Tax Officer, Ward-2, Aayakar Bhavan, Sajjapuram, Tanuku, Andhra Pradesh - 534 211 दूरभाष/ Phone No. 08819-222039 / फैक्स - 08819-221079 email : tanuku.ito2@incometax.gov.in and kurma.r.resapu@incometax.gov.in
P.A.No: ADWPC3135D/2013-14	Date 07.03.2018
To Shri Chunduri Srinivasa Rao S/o. Sri Gopala Krishna #33-8-20(4), Kanchirajuvari Street TANUKU	
Sir/Madam,	
Sub : Reopening Proceedings - In your own case - Asst. year 2013-2014 - Calling for clarification and information - Reg.	
Ref : 1. Your letter dated 26.02.2018 2. Your letter dated 27.02.2018 -o0o-	
Please refer to the above.	
2. During the course of last hearing and in your letters cited under reference supra, you are claiming that the you have sold Ac. 1.95 Cents of Agriculture land for a consideration of Rs. 65,00,000/- on 21.07.2012. But, the registrar had applied rte per square yard instead of rate per acreage in Registered documents. Further, it is stated that you have obtained valuation certificate from the SRO, which is showing the value per acre at RS. 19,00,000/-, so, a request was made to consider the real consideration instead of adopting the Market value of SRO.	
3. The document filed is verified and found that it is only a "Market value Assistance (Duty and Fee Calculator)" but, not any authenticated certificate. This is a provisional statement providing the tentative information of Market value, Stamp duty and fees, as per the details furnished by the applicant. In view of the same the document brought on record, is not acceptable.	
4. In order to consider your claim for deduction u/s. 54 of Rs. 54,02,361/-, please produce the following :-	
i) Details of land and construction, against which such deduction is claimed;	
ii) Books of accounts for cost of construction;	



11. It is noticed that the Ld. AO has not passed a speaking order while disposing the objections raised by the assessee but rather called for clarification and information from the assessee. The Hon'ble Supreme Court in the case of GKN Drive Shaft (India) Ltd., v. ITO [259 ITR 19 (SC)] has clearly held that Ld.AO has to dispose off the objections, if filed, by passing a speaking order before proceeding with the assessment. Considering the ratio laid down in the case of GKN Drive Shaft (India) Ltd., v. ITO (supra) the Ld. CIT(A), Rajamahendravaram during the first round of appeal proceedings found that the Ld. AO has not disposed of the objections as mandated by passing a speaking order and therefore quashed the re-assessment order passed by the Ld. AO. However, the Ld. AO citing that the Ld. CIT(A), Rajamahendravaram while passing the order has not considered the disposal of objection by the Ld. AO vide letter dated 07.03.2018 and therefore sought the order to be rectified. On perusal of the letter dated 07.03.2018, Ld. AO has sought for details to consider

the claim for deduction under section 54F of the Act which cannot be considered as disposal of the objection by way of a speaking order. In the light of the facts and circumstances as discussed above, we find that the Ld. AO has not passed a speaking order while disposing of the objections raised by the assessee for the reopening of the proceedings under section 148 of the Act. We are therefore inclined to restore the order passed by the Ld. CIT(A), Rajamahendravaram dated 13.08.2019 while setting aside the rectification order passed under section 154 r.w.s. 250 of the Act by the Ld. CIT(A), National Faceless Appeal centre, Delhi dated 27.03.2024. Accordingly, Ground No. 5 raised by the assessee is allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09th June, 2025.

Sd/-
(रवीश सूद)
(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated:09.06.2025

Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखासदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Srinivasa Rao Chunduri**
D.No. 33-8-20(4), Satya Homes
Kanchi Raju Vari Street
Babu Gari Street, Tanuku – 534211
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 2**
Income Tax Office
Aayakar Bhavan
Sajjapuram, Tanuku – 534211
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam