

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.266/VIZ/2024

(निर्धारण वर्ष/ Assessment Year: 2017-18)

Murali Mohan Reddy Bonthu 14/4, Flat No. 503 Sree Satya Sai Towers Main Road Nunna Andhra Pradesh - 521212 [PAN:AIOPB5077E]	v.	Income Tax Officer – Ward – 3(1) CR Building, 1 st Floor Annex M.G. Road, Vijayawada – 522002 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri I. Kama Sastry, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	24.07.2025
घोषणा की तारीख/Date of Pronouncement	:	22.08.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order

No.ITBA/NFAC/S/250/2024-25/1064851912(1)dated 14.05.2024 for the A.Y.2017-18 arising out of order passed under section 147 of Income Tax Act, 1961 (in short 'Act') dated 30.03.2022.

2. Brief facts of the case are that, assessee being an individual filed its return of income on 28.07.2017 for the A.Y. 2017-18. From the information available with the Department, it was noticed that assessee is entered into a Joint Development Agreement (JDA) with M/s. Bhagawahti Constructions vide document No. 3663/2012 dated 17.10.2012 by transferring his rights of 67% share of the schedule land in favour of M/s. Bhagawahti Constructions in consideration for eleven flats to be constructed. Subsequently, the case was reopened after obtaining prior approval from the competent authorities and notice under section 148 of the Act was issued on 30.03.2021 and served on the assessee through ITBA Portal. In response to the notice, assessee filed return of income declaring total income at Rs.3,96,860/- on 28.07.2017. Subsequently, notices under section 142(1) of the Act were issued on various dates requiring the assessee to file the details called for. On verification of the details, it was found that out of 11 flats the assessee sold 5 flats in F.Y. 2016-17 i.e., within the period of three years from the date of transfer of rights in lieu of the Joint Development Agreement, for a consideration of Rs.41,07,000/-. Ld. AO considering the assessee has not filed the development agreement denied the

exemption claimed by the assessee under section 54F of the Act by making addition of Rs.41,07,000/-.

3. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). Assessee also challenged the reopening of the assessment under section 148 of the Act before Ld. CIT(A). On perusal of the submissions made by the assessee, Ld. CIT(A) partly allowed the appeal of the assessee.

4. Being aggrieved by the order of the Ld. CIT(A), assessee filed an appeal before the Tribunal by raising following grounds of appeal: -

“1. The reopening of assessment for this assessment year is bad in law as it is based on wrong facts/facts not relevant to this assessment year.

2. The Assessment Unit, National Faceless Assessment Centre is not justified in bring to tax Rs.41,07,000/- as short term capital gains from transfer of five residential flats out of 11 flats received by the assessee as a consideration from joint development agreement executed on 17.10.2012 and the CIT(Appeals), National Faceless Appeal Centre is not justified in confirming the same.

3. The Assessment Unit, National Faceless Assessment Centre is not justified in computing tax on the short term capital gains of Rs.41,07,000 at the rate of 60% under section 115BBE

4. All the above grounds of appeal are mutually exclusive and without prejudice to one another.

5. The appellant craves leave to add to; alter; amend; modify or delete all or any of the above grounds of appeal.”

5. Ground Nos. 1, 4 & 5 are general in nature and needs no adjudication.

6. Ground No. 2 relates to treating the capital gains as short-term gains by the revenue. On this issue, Ld. Authorised Representative [hereinafter

“Ld.AR”] submitted that assessee has sold two flats during the impugned assessment year for a consideration of Rs.41,07,000/-. However, the Ld. AO has wrongly mentioned in the assessment order that the assessee has sold five flats which is not the fact. He further submitted that the sale deed copies dated 11.04.2010 amounting to Rs.20,80,000/- and another sale deed dated 06.10.2016 amounting to Rs. 20,27,000/- are provided in the paper book page Nos. 1 to 10. He further submitted that since the assessee has entered into the land development agreement on 17.10.2012 it shall be considered as a deemed date of acquisition of the flats allotted by the developer. Accordingly, assessee has disclosed the sale of two flats during the A.Y. 2017-18 and has claimed it as Long-Term Capital Gain, since the assessee has held the property for more than three years. He therefore pleaded that the denial of exemption under section 54F of the Act by treating the capital gains as short-term gains is bad in law and prayed for deletion of the same.

7. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] heavily relied on the orders of the Ld. CIT(A).

8. We have heard both the sides and perused the material available on record. It is an admitted fact that the assessee has disclosed capital gains during the A.Y.2017-18 arising out of the sale of property which the assessee received as consideration for transferring his rights of 67% of the land in favour of M/s.Bhagawahti Constructions. From the documents available on record, we

find that the assessee has furnished the computation statement for the A.Y.2017-18 disclosing the sale of two flats while computing the Long-Term Capital Gain. Further, the assessee has also enclosed the copies of sale deeds and the purchase deed for claiming the deduction under section 54 of the Act. The only contention of the revenue is that the assessee has entered into a joint development agreement during the F.Y. 2016-17 and hence the sale of property during the same financial year shall be treated as short-term gains and cannot be considered as Long-Term Capital Gain. Further it is noticed from the records available before us that the assessee has entered into joint development agreement with M/s. Bhagawahti Constructions vide document no. 3663/2012 dated 17.10.2012 by transferring 67% of its rights over the schedule land in favour of M/s. Bhagawahti Constructions, this constitutes transfer as contemplated under section 2(47) of the Act. Since the assessee got 11 flats as consideration from the builder from the transferring of his rights during the A.Y.2013-14, the sale of two flats during the A.Y. 2017-18 shall be considered as a Long-Term Gain as it is held by the assessee for a period more than three years. Ld. AO based on the revised return filed by the assessee for the A.Y.2013-14 on 29.07.2016 erred in considering that the joint development agreement was entered on during the F.Y. 2016-17. We therefore find no merit in the argument of the Ld. DR and direct the Ld. AO to consider the capital gain arising out of the sale of two flats as disclosed by the assessee while filing the return of income as “Long Term” and accordingly the deduction claimed under

section 54 of the Act shall also stands allowed. Thus, Ground No. 2 raised by the assessee is allowed.

9. Since the Ground No. 2 is allowed in favour of the assessee, Ground No. 3 regarding the taxing of the capital gains under section 115BBE at 60% does not arise and hence not adjudicated.

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

Order pronounced in the open court on 22nd August, 2025.

Sd/-
(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 22.08.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : Murali Mohan Reddy Bonthu
14/4, FlatNo. 503
Sree SatyaSai Towers
Main RoadNunna
Andhrapradesh - 521212
2. राजस्व/ The Revenue : Income Tax Officer – Ward – 3(1)
CR Building, 1st Floor Annex
M.G. Road, Vijayawada – 522002
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