

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

श्री विजय पाल राव, उपाध्यक्ष एवं
श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.228/Hyd/2025**
(निर्धारण वर्ष / Assessment Year:2013-14)

1. Shri Srinivas Pampati, Karimnagar. PAN: ABOPPO603R	Vs.	Income Tax Officer, Ward-2, Karimnagar.
---	------------	--

आ.अपी.सं / **ITA No.229/Hyd/2025**
(निर्धारण वर्ष / Assessment Year:2013-14)

2. Shri Hanmandlu Pampati, Karimnagar. PAN: ABMPP0324R	Vs.	Income Tax Officer, Ward-2, Karimnagar.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Lalith Kishore Sharma, Advocate.	
राजस्व द्वारा / Revenue by:	Dr. Sachin Kumar, SR-DR	
सुनवाई की तारीख / Date of hearing:	17/09/2025	
घोषणा की तारीख / Pronouncement:	08/10/2025	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M. :

These two appeals are filed by Shri Srinivas Pampati & Shri Hanmandlu Pampati ("the assesseees"), feeling aggrieved by the

separate orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), dated 04.12.2024 & 05.12.2024 respectively for the A.Y. 2013-14. Since the grounds raised by the assesseees are identical, they are heard together and one consolidated order is being passed for the sake of convenience and brevity.

ITA No.229/Hyd/2025

2. The assessee has raised the following grounds of appeal :

Section No.	Grounds of Appeal
Sec. 154	The Order passed by the Ld. AO ought to be subjected to rectification in as much as the actual share of the Appellant out of the co-owners falls to only 5.33 percent but the Orders were framed considering 16 percent falling to the share of all the three brothers which would vitally affect the proceedings.
Sec. 48	On the facts and circumstances of the case, the Order passed by the Ld. AO is bad in law in as much as the mode of computation of the capital gains by way of reducing the cost of acquisition and cost of improvement as laid down under sec. 48 was not followed or considered.
Sec. 54F	The Order of the Ld. AO is bad in law, unjust and unwarranted in as much as the provisions of sec. 54F were misunderstood by the Ld. AO as against the legislative intention and also existing judicial pronouncements already placed on record during the assessment proceedings which is quite evident from the decision relied upon.

General	The Appellant craves leave to add, alter, amend, delete any of the grounds as aforesaid during the course of Appellate proceedings, and would submit the relevant Judicial decisions relied upon in the written Submissions to follow.
---------	--

3. The brief facts of the case are that, the assessee is an individual who filed his return of income for assessment year 2013–14 on 27.03.2014 declaring total income of Rs.6,14,920/-. On the basis of information available with the Learned Assessing Officer (“Ld. AO”), it was found that during the year under consideration the assessee had not offered capital gains on transfer of immovable property of Rs.1,71,13,333/-. Accordingly, the Ld. AO reopened the case of the assessee under section 147 of the Income Tax Act, 1961 (“the Act”). After passing order under section 148A(d) of the Act, notice under section 148 of the Act was issued to the assessee on 29.07.2022. In response to the said notice, the assessee filed return of income on 29.01.2023 declaring total income of Rs.5,16,650/-. During reassessment proceedings, on the basis of submissions of the assessee, the Ld. AO noticed that the assessee along with three

others had entered into a Development Agreement-cum-General Power of Attorney (“JDA”) with M/s. Shriyam Infrastructure(“Developer”) on 02.03.2013. As per the said JDA, the assessee and the other three persons were joint owners of land measuring 6380 sq. yds. on which they agreed to permit the developer for construction of a multi-storeyed residential complex. The JDA provided that the total constructed area would be 1,28,350 sq. ft., out of which the landowners jointly would receive 32% and the developer 68%. The Stamp Duty Authority determined the total value of the JDA at Rs.10,26,80,000/-. Accordingly, on the basis of the valuation done by Stamp Duty Authority, the Ld. AO computed the assessee’s share therein at Rs.1,71,13,333/-. The Ld. AO called for details regarding cost of acquisition as well as claim of exemption under section 54F of the Act from the assessee. However, no details were furnished by the assessee. Consequently, the Ld. AO treated the entire amount of Rs.1,71,13,333/- as long-term capital gain in the hands of the assessee and completed assessment under section 147

read with section 144B of the Act on 19.05.2023 at a total income of Rs.1,76,29,983/-.

4. The assessee carried the matter in appeal before the Ld. CIT(A). However, the assessee remained unresponsive to the notices issued by the Ld. CIT(A). The Ld. CIT(A), therefore, upheld the order of the Ld. AO and dismissed the appeal of the assessee.

5. Aggrieved with the order of the Ld. CIT(A), the assessee is in further appeal before this Tribunal. The Learned Authorised Representative (“Ld. AR”) invited our attention to para no.10 of the JDA placed at page no.44 of the paper book. He submitted that as evident from this para, the landowners had only granted a limited licence to the developer to enter upon the land for the restricted purpose of carrying out construction activity. He pointed out that it is clearly stated that possession of the land shall be deemed to have been delivered only at the time of formal handing over of the built-up area falling to the share of the landowners, and until then, the developer had no rights of absolute possession. It was further

contended that during the year under consideration, the absolute possession of land was not handed over to the developer. The Ld. AR also submitted that no consideration had been received by the assessee or the other landowners during the year under consideration from the developer. Therefore, the requirement of “transfer” under section 2(47)(v) of the Act was not satisfied. He also invited our attention to para no. 4.5.1 of the order of the Ld. AO, wherein the Ld. AO has stated that the photographs of the property was also submitted during reassessment proceedings, to show that the flats were still under construction and had not been completed. In view of these facts, he argued that there was no “transfer” within the meaning of section 2(47)(v) of the Act and, therefore, no capital gains could be brought to tax under section 45(1) of the Act in the impugned year. Finally, the Ld. AR prayed that the addition of Rs.1,71,13,333/- sustained by the Ld. CIT(A) be deleted.

6. Per contra, the Learned Departmental Representative (“Ld. DR”) relied on the orders of the lower authorities. He submitted that the assessee had remained largely non-responsive during

assessment proceedings, having failed to provide details of cost of acquisition or exemption claimed. He further submitted that even before the Ld. CIT(A), the assessee remained unresponsive and therefore cannot now claim to raise fresh arguments before the Tribunal. The Ld. DR argued that the Ld. AO had rightly computed capital gains based on the stamp duty valuation, and in absence of cooperation from the assessee, the addition was justified. However, considering the legal arguments now raised by the Ld. AR, the Ld. DR submitted that the matter, if required, may be remitted back to the file of the Ld. AO for proper verification.

7. We have heard both the parties and perused the material available on record. We have also carefully examined para no.10 of the JDA placed at page no.44 of the paper book, which is to the following effect :

“ 10. That the First Party land owners have granted license to the Second Party to enter the land under development to the Second Party developers for the limited purpose of carrying on the construction activity in accordance with terms mentioned herein, and the possession of land for all practical and administrative purpose be deemed to have

been given only at the time of passing of consideration in the form of built up area handed over to the landowners i.e., the First Party. However the First Party Land Owners shall not be entitled to interfere in the construction activity in any manner or obstruct the Second Party developers in connection with the process of construction or in taking any decision, in appointing the employees, labourers, contractors etc., in execution of the construction work. However the land owners are at liberty to make inspection of the construction work during the course of the work at all reasonable times and shall not cause any hindrance or obstructions to the construction work.”

8. On perusal of above, it is evident that the developer was permitted to enter the land only for the limited purpose of carrying out construction activity in accordance with the terms of the JDA. It is further stipulated that possession for all practical and legal purposes would be deemed to have been given only upon handing over of the built-up area to the landowners by the developer. The fact that no consideration was received by the assessee during the year under consideration further strengthens the conclusion that there was no transfer in the year within the meaning of section 2(47)(v) of the Act. In such circumstances, the essential conditions of

transfer having not been satisfied, there can be no charge of capital gains under section 45(1) of the Act in this assessment year.

9. We also note that during reassessment proceedings, the assessee had submitted photographs showing that the project was still under construction, which substantiates that the transaction was not complete. Therefore, we hold that the addition of Rs.1,71,13,333/- made by the Ld. AO and sustained by the Ld. CIT(A) is unsustainable. The same is directed to be deleted.

10. As regards the other issues raised by the Ld. AR regarding the validity of issue of notice under section 148 of the Act and deduction under section 54F of the Act, since we have already allowed the appeal on merits, these issues are kept open and not adjudicated.

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

ITA No.228/Hyd/2025

12. The assessee has raised the following grounds of appeal :

Section No.	Grounds of Appeal
Sec. 154	The Order passed by the Ld. AO ought to be subjected to rectification in as much as the actual share of the Appellant out of the co-owners falls to only 5.33 percent but the Orders were framed considering 16 percent falling to the share of all the three brothers which would vitally affect the proceedings.
Sec. 48	On the facts and circumstances of the case, the Order passed by the Ld. AO is bad in law in as much as the mode of computation of the capital gains by way of reducing the cost of acquisition and cost of improvement as laid down under sec. 48 was not followed or considered.
Sec. 54F	The Order of the Ld. AO is bad in law, unjust and unwarranted in as much as the provisions of sec. 54F were misunderstood by the Ld. AO as against the legislative intention and also existing judicial pronouncements already placed on record during the assessment proceedings which is quite evident from the decision relied upon.

General	The Appellant craves leave to add, alter, amend, delete any of the grounds as aforesaid during the course of Appellate proceedings. and would submit the relevant Judicial decisions relied upon in the written Submissions to follow.
---------	--

13. The issues involved in this appeal is identical to the issues involved in the appeal in ITA No.229/Hyd/2025, wherein we have allowed the appeal of the assessee. Therefore, our discussion and findings in ITA No.229/Hyd/2025 are mutatis mutandis applicable to

this appeal also. As the appeal of the assessee in ITA No.229/Hyd/2025 has been allowed, this appeal is also allowed.

14. To sum up, both the appeals filed by the assesseees are allowed for statistical purposes.

Order pronounced in the open Court on 8th Oct., 2025.

Sd/-

**(VIJAY PAL RAO)
VICE PRESIDENT**

Hyderabad,

Dated: 08.10.2025.

Sd/-

**(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER**

** Reddy gp/PVV*

Copy of the Order forwarded to :

1.	1. Shri Srinivas Pampati, 2-5-78, Prakasham Gunj, Karimnagar-505001 2. Shri Hanmandlu, 2-83, Prakasham Gunj, Karimnagar-505001
2.	ITO, Ward-2, Karimnagar.
3.	Pr.CIT (Central), Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,