

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

Before Shri Manjunatha G., Accountant Member
and
Shri Ravish Sood, Judicial Member

आ.अपी.सं /**ITA No.1288/Hyd/2025**
(निर्धारण वर्ष/Assessment Year: 2018-19)

Nemi Chand, 1-2-8/11A, 302, 3 rd Floor, Srinivas Street No.1, Himayat Nagar, Hyderabad, Telangana. PAN: ACHPR2242L	Vs.	Income Tax Officer, Ward-1, Guduru.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:		Sri Sridhar Jhawar, CA
राजस्व द्वारा/Revenue by:		Dr. Sachin Kumar, Sr. AR
सुनवाई की तारीख/Date of Hearing:		12/11/2025
घोषणा की तारीख/Date of Pronouncement:		26/11/2025

आदेश / ORDER

PER. RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 13/06/2025 which in turn arises from the order passed by the Assessing Officer under section 143(3) r.w.s 144B of the Income-tax Act, 1961 (for short, "Act"), dated 23/04/2021 for the Assessment Year 2018-19. The assessee has

assailed the impugned order on the following grounds of appeal before us:

1. "Whether on the facts and circumstances of the case and in law whether the order of the Learned Commissioner of Income tax was pervasive in considering the Income from capital gains as business income in terms of provisions of section 2(14) read with section 2(47)
2. Whether on the facts and circumstances of the case and in law. WHARE capital gain was invested in purchase/construction of residential house within time limit prescribed under section 2 54(1), assessment order allowing assesses claim under section 54 could not be treated as erroneous and prejudicial to interest of revenue only because capital gain was not deposited in capital gain account scheme.
3. Any other ground (if any) that may be urged at the time of hearing."

2. Succinctly stated, the assessee had filed his return of income for AY 2018-19 on 31/08/2018 declaring an income of Rs.27,21,340/-. Subsequently, the case of the assessee was selected for limited scrutiny assessment under the E-Assessment Scheme-2019 for verifying the deduction claimed by him under the head capital gains.

3. During the course of the assessment proceedings, the AO observed that the assessee in his return of income had raised the claim for deduction under section 54 of the Act amounting to Rs. 24,59,649/-. On being queried, it was the claim of the assessee that the subject deduction was claimed with respect to the residential house that he had purchased during the immediately succeeding year, i.e., Financial Year 2018-19. However, the AO observed that verification of the return of

income of the assessee did not reveal any deposit made by him in Capital Gain Account Scheme, 1964 (CGAS). Thereafter, the assessee vide his reply through ITBA portal on 17/11/2020 furnished the requisite details as were called for by the AO. On perusal of the record, it transpires that the assessee had claimed that he had in tranches purchased certain lands at Chevella Village, Ranga Reddy District over the years, viz., (i) land admeasuring Ac.7.20 Guntas vide registered sale deed No.7774/06, dated 08/06/2006: Rs. 11,25,000/- (subject to separate stamp duty charges of Rs. 1,42,600/-; (ii) land admeasuring Ac.3.13 Guntas situated at Chevella Village, Ranga Reddy District purchased by the assessee along with seven other owners, vide registered sale deed No.11272/06, dated 13/09/2006: Rs.8,31,500/- (subject to separate stamp duty of Rs. 79,115/-) – wherein the assessee's 1/8th share, i.e., 0.39125 Acres worked out at Rs.1,03,939/- (subject to separate stamp duty of Rs.9,889/-); and (iii) land situated at Chevella Village, Ranga Reddy District admeasuring 0.10 Guntas purchased by the assessee along with one another person, vide registered deed 5353/2015, dated 17/12/2014: Rs.3,75,000/- (subject to separate stamp duty of Rs.22,600/-) – wherein the assessee's 1/2 share in the subject land was Ac. 0.05 Guntas: Rs.1,87,500/- (stamp duty: Rs. 11,300/-). The assessee submitted before the AO that though he wanted

to sell his land but had no individual expertise, therefore, he had joined hands with several other individual land holders and thereafter given a General Power of Attorney (GPA) to M/s. Mishri Developers, a partnership firm, to develop and sell the lands of the assessee vide three different GPA agreements, i.e., registered No.8397/2016, 8398/2016 and 8399/2016, dated 27/10/2016. It was submitted by the assessee that his share in the total land pool of the partnership firm was 4.712%. It was further submitted by the assessee that the afore mentioned partnership firm, viz., M/s. Mishri Developers (supra) had thereafter developed the above lands in plots and sold the same vide various registered sale deeds. In so far as the subject year under consideration was concerned, it was submitted by the assessee that the afore mentioned firm, viz., M/s. Mishri Developers (supra) sold the total plots admeasuring 52.797.86 sq yards for a total consideration of Rs.7,67,70,162/- and his share in the afore mentioned sale consideration amounted to Rs. 36,17,648/-. The assessee based on the aforesaid facts submitted before the AO that the long term capital gains (LTCG) on the aforesaid transaction of sale of land worked out at Rs. 24,59,649/- during the year under consideration, i.e., AY 2018-19. Elaborating further on his contention, the assessee had submitted before the AO that as he had purchased a residential house situated at 8-2-693/2/24 at Plot No.24, Road No.12, Banjara Hills,

Hyderabad for a total consideration of Rs.1,42,00,000/- and had invested the entire amount of sale consideration of Rs.36,17,648/- in the afore mentioned house property, therefore, the entire amount of long term capital gain of Rs. 24,59,649/- by him as exempt under section 54 of the Act.

4. The assessee had further submitted before the AO that M/s. Mishri Developers (supra), comprised of five partners, viz., (a) Sri Rikab Chand; (b) Sri Ugamraj Nahar; (c) Sri Ashok Kumar Kothari; (d) Sri R. Nemichand (i.e., the assessee); and (e) Sri Prakash Chand, who all were the lawful GPA holders of the land owners and were authorized to do the acts and duties mentioned in the GPA.

5. The AO based on the aforesaid facts as were brought to his notice, observed that the firm, viz., M/s. Mishri Developers (supra) was represented by the individual land owners (including the assessee) mentioned in the GPA agreements who had joined hands with the motive of earning profits. The AO called upon the assessee to put forth an explanation that now when he along with other land owners have joined hands, pooled their lands and given the same to a developer to develop plots and sell the same, therefore, why the profit/accretion arising therefrom may not be considered as his business income and

accordingly his claim for deduction under section 54 of the Act may not be rejected.

6. As the assessee has failed to come forth with any satisfactory explanation, therefore, the AO held the entire amount of consideration of Rs. 36,17,648/-, i.e., the sale consideration received by the assessee as his unexplained money under section 69A of the Act.

7. Alternatively, the AO observed that as the assessee along with certain other land owners had joined hands, pooled their lands and given the same to a developer firm, viz., M/s. Mishri Developers (supra) which was comprised of five partners who were also the independent land owners (including the assessee), thus, it was evident that they had associated with a motive to earn profit. Accordingly, the AO based on his aforesaid observations concluded that the income/accretion arising on the sale of the lands was to be considered as the business income of the assessee and, thus, his claim for deduction under section 54 of the Act was liable to be rejected.

8. The AO thereafter vide the order under section 143(3) r.w.s 144B of the Act, dated 23/04/2021 after treating the entire amount of sale consideration falling to the share of the assessee of Rs. 36,17,648/- as

having been sourced out of his unexplained money under section 69A of the Act, determined his income at Rs. 63,38,988/-.

9. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without success.

“6.1.3 Decision:

I have carefully examined the assessment order u/s 143(3), written submissions of the appellant, Income Tax Return and related judicial rulings on the subject matter.

The Appellant had purchased land at different dates. Besides appellant many more people have purchased the lands around same area and sold it. Appellant have submitted the sale proceeds as capital gain whereas AO has treated sale proceeds as unexplained credit and business receipts without prejudice. Since the deed have been submitted by the appellant the addition on account of unexplained credit is deleted. Regarding whether the sale is business or not the deed submitted were analysed. The following points are noted as below:

- (1) There were 34 sellers mentioned in the deed
- (2) All these sellers are represented by GPA holder M/s Mishri Developers
- (3) The land are together held by 34 sellers
- (4) The land is part of a layout by the name "Model Colony"
- (5) The land were purchased in the year 2006, 2007, 2009, 2014, 2015
- (6) The deed mentions that the land mentioned forms a single block having thrown the above entire land into a common pool with the intention to develop the same into a layout comprising residential plots
- (7) The layout has taken sanction from Hyderabad Metropolitan Development Authority in 2016.

The above facts in the deed shows that sale of land is not a simple stand alone transaction. The transaction is an organized activity to commercially exploit the land. The seller have pooled the land together and made layout for residential plots. This would fall under the definition of business activity and sale from the same would be taxable under the head business. Appellant submission that they have pooled together to get a better deal is not acceptable as the deed clearly mentions that there is pooling to develop a common layout and approval has been taken from Hyderabad Metropolitan Development Authority. Thus, the transaction is to be considered business transaction and income computed accordingly. AO to provide

opportunity of being heard to appellant. Accordingly, grounds of appeal no. 1 to 4 are dismissed.

6.2 Grounds of Appeal No. 5 & 6:-

Both the above grounds are interlinked and hence are taken-up together. These grounds of appeal are regarding claim of deduction u/s 54F of the Act.

6.2.1 Decision:

Once the receipts have been held as business receipts the issue of claim of deduction u/s 54F of the Act is infructuous and is dismissed. Thus grounds of appeal no. 5 & 6 are dismissed.

6.3 Ground of appeal No. 7:

The ground of appeal No. 7 relates to charging interest under section 234C.

6.3.1 This ground pertains to appellant's contention that AO wrongly charged interest 234C of the Act. Charging of such interest is consequential and mandatory and there is also no discretion provided as regards the manner of computation thereof. However, AO is directed to charge interest as per the relevant provisions of the Act while giving effect to this appeal order. Ground is therefore dismissed.

6.4 Ground of appeal No. 8:-

This ground is general in nature and the appellant has not filed any specific submission on this ground. There is nothing apparent from record to support such ground and hence do not need any independent adjudication.

7. Result:

In the result, the appeal filed by the appellant for A.Y. 2018-19 is treated as "Dismissed".

10. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

11. We have heard the Learned Authorized Representatives of both parties, perused the orders of the lower authorities and the material available on record.

12. Shri Sridhar Jhavar, Chartered Accountant, the Learned Authorized Representative (for short, "Ld. AR") for the assessee, at the threshold of hearing of the appeal submitted that both the authorities below had grossly erred in law and facts of the case in treating the sale consideration received by the assessee on the sale of land of Rs.36,17,648/- as unexplained money under section 69A of the Act. Apart from that, the Ld. AR submitted that both the authorities below had most arbitrarily declined the claim of the assessee for deduction under section 54 of the Act.

13. Elaborating on his contention, the Ld. AR submitted that now when the subject amount was received by the assessee as sale consideration of the land falling to his share i.e., on sale of part of the land situated at Chevella Village, Ranga Reddy District, therefore, it was incomprehensible and beyond understanding as to how the said sale consideration so received by the assessee from an explainable source could be held as the assessee's as unexplained money under section 69A of the Act. The Ld. AR to buttress his contention submitted that the factum of sale of the subject land by the assessee along with other land

owners during the subject year had not been doubted by either of the authorities below. Also, the Ld. AR in order to buttress his aforesaid contention had drawn our attention to some of the sample sale deeds pertaining to the subject year as were placed on our record.

14. Apropos, the claim of the assessee that the profit/accretion on the sale of the subject land was rightly disclosed as long term capital gains against which a claim for deduction under section 54 of the Act was raised, the Ld. AR submitted that the assessee had never transferred his share of land to the partnership firm, viz., M/s. Mishri Developers, and the latter was only engaged to negotiate far better price of the land. Elaborating further on his contention, the Ld. AR submitted that as per section 2(47) of the Act, executing of a GPA in favour of any entity or individual is not to be considered as a transfer. It was, thus, the Ld. AR's claimed that there was never any kind of transfer of the subject land by the assessee to the afore mentioned partnership firm, viz., M/s. Mishri Developers through execution of GPA. The Ld. AR drawing support from section 2(14) of the Act, i.e., definition of "capital asset" submitted that the same therein contemplates that the property of any kind held by an assessee, whether or not connected with his business or profession is a 'capital asset'. Accordingly, the Ld. AR based on the joint reading of section 2(14) r.w.s 2(47) of the Act, submitted that the transfer of the

subject land by the assessee to the extent of his share was rightly disclosed by him under the head “income from capital gains” and the same could not have been brought to tax under the head “income from business or profession”. Carrying his contention further, the Ld. AR submitted that as the assessee had thereafter purchased a residential house on 19/10/2018, i.e., after filing of his return of income but within the prescribed time period of two years, therefore, irrespective of the fact that the sale consideration was not deposited in Capital Gain Account Scheme, the investment made in the residential houser was entitled for deduction under section 54(1) of the Act.

15. Per contra, Dr. Sachin Kumar, the Learned Senior Departmental Representative (for short, “Ld. Sr. DR”) relied upon the orders of the lower authorities. The Ld. Sr. DR submitted that as the assessee had joined hands with the other land owners with a motive to earn profit on the sale of the subject land, i.e., by commercially exploiting the same, therefore, both the authorities below had rightly observed that the income/accretion on the sale of the subject land was liable tot be assessed as the business income of the assessee and not under the head capital gains.

16. We have thoughtfully considered the contentions advanced by the Learned Authorized Representative of both parties in the backdrop of the orders of the authorities below.

17. Admittedly, it is a matter of fact borne from record that the assessee who had over the years purchased the subject land at Chevella Village, Ranga Reddy District in tranches had thereafter joined hands/associated with other land owners.

18. At the threshold, we may herein observe that now when the amount of Rs.36,17,648/- (supra) had been received by the assessee as his share of sale consideration on the sale of land situated at Chevella Village, Ranga Reddy District, therefore, the said amount so received by him from an explained source could not have been brought within the meaning of unexplained money under section 69A of the Act. We, thus, in terms of our aforesaid observation vacate the view taken by the authorities below who had held the amount of Rs. 36,17,648/- (supra) as having been sourced out of the assessee's unexplained money under section 69A of the Act.

19. Apropos, the observation of the Ld. AO that as the assessee along with the other land owners had voluntarily associated with other land owners with a motive to earn profit by pooling their lands, developing the

same and negotiating for a lucrative consideration by giving General Power of Attorney (GPA) to a developer, viz., M/s. Mishri Developer, wherein the latter was to develop the plots and sell the said consolidated land on behalf of the aforesaid land owners (including the assessee), therefore, as observed by the AO and rightly so, the profit/accretion on the sale of the subject land which was backed by a clear motive to earn profit by the aforesaid land owners (including the assessee), was in the nature of adventure in the nature of trade, and, thus, the profit arising therefrom was to be assessed as business income in the hands of the assessee. Accordingly, once the income arising on the transfer of the land falling to the share of the assessee is to be assessed as business income, therefore, we concur with AO that there remained no occasion for him to raise a claim for deduction under section 54 of the Act. Accordingly, finding no infirmity in the view taken by the AO who had rightly declined the assessee's claim for deduction under section 54 of the Act, we uphold the same. Resultantly, we herein modify the order of the CIT(A) in terms of our aforesaid observations.

20. In the result, appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 26th November, 2025.

Sd/- (MANJUNATHA G.) ACCOUNTANT MEMBER	Sd/- (RAVISH SOOD) JUDICIAL MEMBER
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Hyderabad,

Dated: 26th November, 2025

OKK / SPS

Copy to:

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2	Income Tax Officer, Ward-1, Gudur, Andhra Pradesh-524101.
3	The Pr. CIT, Tirupati.
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order

Sr. Private Secretary,
ITAT, Hyderabad.