आयकर अपीलीय अधिकरण, विशाखापटणम पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam

Before Shri Ravish Sood, Judicial Member
and
Shri Balakrishnan S., Accountant Member

आ.अपी.सं /**ITA No.133/Viz/2025**
(निर्धारण वर्ष/Assessment Year:2018-19)

Vivek Industries, 8-1, Kamayyathopu Kanuru, Vijayawada. PAN: AANFM5215A	Vs.	Income Tax Officer, Ward-2(3), Vijayawada.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri GVN Hari, Advocate	
राजस्व द्वारा/Revenue by:	Shri Badicala Yadagiri, CIT-DR	
सुनवाई की तारीख/Date of Hearing:	20/11/2025	
घोषणा की तारीख/Date of Pronouncement:	05/12/2025	

आदेश / **ORDER**

PER. RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi, dated 19/02/2025, which in turn arises from the order passed by the Assessing Officer (for short, ”AO”) under Section 143(3) r.w.s 144B of the Income-tax Act, 1961 (for short, “Act”), dated 08/09/2021, for the Assessment Year 2018-19. The assessee has

assailed the impugned order of the CIT(Appeals) on the following grounds of appeal before us.

> "1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.
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> 2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in treating the appellant as a partnership firm whereas the status of the appellant is an Association of Persons.
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> 3. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in determining the Long Term Capital Gain at Rs.5,52,09,964/-.
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> 4. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in determining the Short Term Capital Gain at Rs.61,34,440/-.
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> 5. The learned Commissioner of Income-Tax (Appeals) erred in not allowing deduction u/s 54F and 54EC of the I.T. Act. The learned Commissioner of Income-Tax (Appeals) ought to have observed the fact that the capital gain was admitted and assessed in the assessment of the members of the AOP and, therefore, cannot be assessed in the assessment of the firm.
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> 6. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the ratio laid down by the Supreme Court in the case of Murlidhar Jhawar and Purna Ginning and Pressing Factory (1966) 60 ITR 95 (SC) and the circulars issued by the CBDT are applicable to the facts of the appellant's case.
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> 7. The learned Commissioner of Income-Tax (Appeals) ought to have seen that when the income is assessed in the hands of the members of AOP or the partners of the firm, it cannot be assessed in the assessment of the firm.
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> 8. The learned Commissioner of Income-Tax (Appeals) erred in giving any direction u/s 150 in the case of AOP whereas the direction can be in the case of the assessee only.
>
> 9. Any other ground that may be urged at the time of hearing."

2. Succinctly stated, the assessee firm which is engaged in the business of manufacturing/production of HDEP pipes and other plastic

materials and by-products had filed its return of income for the subject year, i.e., AY 2018-19 on 11/08/2018, declared an income of Rs. NIL. Subsequently, the case of the assessee firm was selected for “limited scrutiny assessment” for verifying its claim for deduction of “capital gains”.

3. During the course of the assessment proceedings, the AO issued notice under section 142(1) of the Act, which was replied by the assessee. On a perusal of the submissions filed by the assessee firm, it was observed by the AO that the assessee firm was constituted vide a partnership deed executed on 14/10/2003 had claimed to have carried on its business activity only up to 06/02/2017. Also, it was observed by the AO that the assessee firm had stated to have purchased 7500 sq mtrs of land at Mankhal Village, Maheswaram Mandal, RR District for a consideration of Rs.11,25,000/- vide a registered sale deed No.3345/2004, dated 11/10/2004 registered with SRO, Maheswaram Mandal, RR District.

4. The AO observed that the assessee firm had during the subject year sold the aforementioned property, viz., 7500 sq mtrs of land at Village Mankhal, Maheswarama Mandal, RR District against which it had raised a claim for deduction under section 54D of the Act. Also, the AO observed that it was the claim of the assessee firm that due to losses it

had discontinued its business and for the last two years was only collecting rent from its immovable property and had no other stream of income. Accordingly, it was the claim of the assessee that pursuant to discontinuance of the business the assessee firm had lost its identity as a partnership firm and was transformed into an Association of Persons (AOP). The assessee firm based on its aforesaid claim had submitted that as the AOP had thereafter decided to sell the property but the prospective buyer had deducted the tax at source (TDS) using the PAN of the assessee firm, therefore, though the capital gains on the sale of the subject property was offered in the name of the individual members of the AOP that was offered for tax, but considering the fact that the tax was deducted at source in the hands of the assessee firm, the latter had raised a claim for credit of the same in its return of income.

5. The AO after deliberating on the aforesaid contentions of the assessee firm found it not only to be incomprehensible but also not legally tenable. The AO observed that the assessee firm had come forth before him with a set of claims, viz., (i) that as the assessee firm had discontinued its business, therefore, it had lost its identity and was thereafter to be treated as an AOP; and (ii) that the capital gains arising on the sale of the subject property was disclosed by the respective

individual partners/members of the partnership firm/AOP based on the profit share ratio in their respective returns of income.

6. The AO was unable to concur with the aforesaid contentions of the assessee firm. The AO held a firm conviction that as the subject property was sold by the partnership firm, therefore, the capital gain on the transfer of the same was mandatorily required to be disclosed in the hands of the assessee firm only. Also, the AO did not find any basis regarding the assessee's claim for deduction under section 54D of the Act. Accordingly, the AO was of the view that the capital gain arising on the sale of the subject property was liable to be assessed only in the hands of the assessee firm and could not be brought to tax in the hands of any other entity, i.e., either in the hands of the AOP and/or the partners of the assessee firm.

7. The AO based on his aforesaid deliberations, concluded that as the subject property was said to have been purchased for the purpose of the business of the assessee firm and the rental income thereafter earned was also offered in the latter's hands, coupled with the fact that the assessee firm had itself disclosed the long term capital gain (LTCG) of Rs.5,88,59,928/- in its return of income for the subject year, which, however was claimed as a deduction under section 54D of the Act, therefore, there could be no justification for raising a claim that the capital

gains on the transfer of the subject property was not exigible to tax in its hands, but was to be looked into in the hands of the individual persons. Also, the AO observed that as the capital gain on the transfer of he subject property was not on account of any compulsory acquisition of land and building, therefore, the claim of the assessee firm for deduction under section 54D of the Act was both misconceived and misplaced.

8. Thereafter, the AO observed that the assessee firm in its return of income had while computing the long term capital gains of Rs. 5.88 crores (approx.) on the sale of the subject property had raised claim for deductions, viz., cost of acquisition (indexed), cost of improvement (indexed), and expenses related to transfer. Further, the AO observed that the assessee firm had failed to place on record any documentary evidence which would substantiate its aforesaid claim for deductions. Further, the AO observed that a perusal of the computation of income of the members of the AOP (partners of the firm), revealed that the deduction for the cost of improvement was related to building. The AO was of the view that the aforesaid claim for deduction of cost of improvement did not merit acceptance for the reasons, viz., (i) that as the building was used for the business purposes, therefore, the same could not be considered as a capital asset; and (ii) that as the assessee firm would have claimed depreciation on building, therefore, for the said

reason also the claim for deduction of cost of improvement could not be accepted. Accordingly, the AO declined the assessee's claim for deduction of cost of improvement (indexed) and also the expenses related to transfer. Apart from that, the AO observed that as the assessee firm had failed to place on record any material which would substantiate the portion of the sale consideration that was relatable to the "building" which was to be subjected to short term capital gain (STCG), therefore, concluded that the entire sale consideration could not be considered as long term capital gain. Accordingly, the AO in absence of details, apportioned the sale consideration of Rs.6,50,33,500/- as long term capital gain/short term capital gain, viz., (i) long term capital gain on sale of land: Rs.5,52,09,964/-; and (ii) short term capital gain: Rs.61,34,440/-.

9. The assessee being aggrieved with the order passed by the AO under section 143(3) r.w.s 144B of the Act, dated 08/09/2021 carried the matter in appeal before the CIT(A), but without success.

10. The assessee firm 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, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

12. Before proceeding further, we deem it apposite that before dealing with the contentious issues and multi facet facts involved in the present case, to briefly cull out the background of the case.

13. On a perusal of the record, we find that the assessee firm was constituted vide partnership deed, dated 14/10/2023 for the purpose of carrying on the business of manufacture and trading of HDEP pipes and other plastic material under the name and style of Vivek Industries. As observed by us herein above, the assessee firm had during the subject year sold property, viz., Plot No.15 in Survey No.460/2, 461, 462/2, 469 to 482 admeasuring 7500 sq mtrs, situated at Industrial Development Area, Mankal Mandal, Ranga Reddy District vide a registered sale deed, dated 03/02/2018 to M/s. While Cliff Tea Pvt Ltd, Kolkata for a consideration of Rs.6.50 crores.

14. On a perusal of the record, we find that the assessee firm had thereafter filed its return of income for the subject year, i.e., AY 2018-19 on 11/08/2018, wherein it had under the head “income from capital gain” disclosed the sale consideration (of the subject property) of Rs.

6,50,33,500/-, but had claimed that the long-term capital gains of Rs.5,88,29,928/- arising on the said sale transaction was disclosed in the hands of the partners of the assessee firm (dissolved), and thus not offered for tax any part of the capital gains on the aforesaid sale transaction in its returned income.

15. On the other hand, we find on a perusal of the record that the partners of the assessee firm had in the returns of income disclosed their respective shares in the capital gain on the sale transaction based on their profit-sharing ratio in the firm. Also, the said partners had against the amount of capital gains (share) claimed exemptions under section 54F and 54EC of the Act, as a result whereof the resultant income under the said head was substantially scaled down.

16. Controversy involved in the present appal before us hinges around multi facet aspects, viz., (i) as to whether or not the discontinuance of the business of the partnership firm, if any, on 06/02/2016 (supra) would lead to vesting of the ownership of the subject property with the partners of the assessee firm collectively in the status as that of an AOP; (ii) that whether or not the respective partners were justified in disclosing the capital gain of the sale/transfer of the subject property in their respective profit ratio in their returns of income for the year under consideration; and (iii) that as to whether or not the AO is justified in treating the subject

property, viz., building (short term capital asset) and (ii) land (long term capital asset) and computing the income of the assessee under both the said respective heads of income.

17. At the threshold, we may herein observe that though it is the claim of the assessee based on a letter dated 06/02/2017 that was filed with the Assistant Commercial Tax Officer, Vanasthalipuram Circle, Hyderabad that it had discontinued its business, but the same will not conclusively prove that the said business was actually discontinued. We say so, for the reason that the assessee firm had not filed any application intimating the discontinuance of its business with the concerned Assessing Officer as required per the mandate of section 176(3) of the Act.

18. Be that as it may, we are of a firm conviction that the discontinuance of the business of the assessee firm would by no way result to vesting the ownership of the subject property held by the partnership firm with the individual partners, either in the status as that of individual partners of the firm or members of an AOP. Although, the Ld. AR had in the course of hearing of the appeal pressed into service the judgment of the Hon'ble Jurisdictional High Court of Andhra Pradesh in the case of Phabiomal and Sons vs. CIT (1986) 158 ITR 773 (AP) but the same being distinguishable on facts would not carry the case of the

assessee firm any further. We say so, for the reason that in the aforementioned case the Hon'ble High Court had observed that as the assessee firm before them was not actually carrying on business, there was no valid partnership for the subject assessment year before them. Accordingly, in the backdrop of the aforesaid facts that the Hon'ble High Court had observed that the rental income derived by the partnership firm in the absence of carrying of any actual business was to be assessed in the hands of the individual partners as co-owners as contemplated under section 26 of the Act. Although, the Hon'ble High Court had held that the income had to be assessed in the hands of the partners as co-owners, but the said proposition cannot be stretched to the extent to conclude that the ownership of the subject property from which rental income was being received would get vested with the individual partners. Accordingly, reliance placed by the Ld. AR on the judgment of the Hon'ble High Court in the case of Phabiomal and Sons vs. CIT (supra), being distinguishable, is both misconceived and misplaced.

19. Coming back to the issue on hand, i.e., as to whether or not the capital gain arising on the transfer of the subject property was to be assessed in the hands of the assessee firm, we are of a firm conviction that as the registered sale deed No.1625/2018, dated 03/02/2018, vide

which the subject property had been sold by the assessee firm, the latter has been shown as the vendor-owner, therefore, the capital gain on the transfer of the subject property without any choice has to be offered for tax in the hands of the assessee firm.

20. We shall now deal with the issue as to whether or not the capital gain arising on the sale of the subject property had rightly been apportioned by the AO while framing the assessment in the ratio of 90:10 for long term capital gain (on sale of land) and short term capital gain (on sale of building). In our view, the aforesaid issue can safely be answered by referring to the registered sale deed of the assessee firm, which, as pointed out by the Ld. AR and rightly so, reveals that the subject property that was sold was the land admeasuring 7500 sq mtrs for a consideration of Rs.6.50 crores. Based on the aforesaid facts, we are of a firm conviction that the assessee firm had vide the subject sale deed, dated 03/02/2018 only transferred the land admeasuring 7500 sq mtrs for a consideration of Rs.6.50 crores. Accordingly, the capital gain arising on the transfer of the subject property, i.e., land is liable to be brought to tax in the hands of the assessee firm under the head long term capital gain (LTCG).

21. Coming to the core issue involved in the present appeal, we are of the view that as the subject property had been sold by the assessee

firm, i.e., the vendor/owner, therefore, the capital gain arising on the said sale transaction could have only been brought to tax in its hands. In other words, now when the assessee firm is the “right person” in whose hands the capital gain on the transfer of the subject property could have been assessed, therefore, by no means any part of the said capital gain could have been assessed in the hands of the individual partners. Our aforesaid conviction that the income is liable to be assessed only in the hands of the right person and a right person alone is supported by the judgment of the Hon’ble Supreme Cort in the case of ITO vs. C.H. Atchaiah (1998) 218 ITR 239 (SC).

22. Now, as observed by us herein above that the capital gain arising on the transfer of the subject property can only be assessed in the hands of the assessee firm, therefore, we are of a firm conviction that disclosing of the said capital gain by the respective partners in their returns of income for the subject year and paying/depositing of the corresponding taxes on the said portion of income by them, if any, being dehors the mandate of law cannot be sustained. In our view, as had happened in the present case, the partners of the assessee firm had wrongly disclosed the proportionate capital gains of the subject property in their respective returns of income, which, as observed by us herein above could only be assessed in the hands of the assessee firm, therefore, the

amount so wrongly included by them in their respective returns of income is to be excluded. Also, the credit of the taxes corresponding to the aforesaid income that was wrongly paid by the respective partners on the proportionate capital gains on the sale of the subject property (as disclosed in their respective returns of income) shall be allowed in the hands of the assessee firm, which as observed by us herein above is the "right person" liable to be assessed to tax with respect to capital gain arising from the sale of the subject property. Our aforesaid view is supported by the judgment of the Hon'ble Supreme Court in the case of ITO, Lucknow vs. Bachulal Kapoor (1996) 60 ITR 74 (SC). The Hon'ble Apex Court in its order had observed that where an income is wrongly assessed in the hands of the wrong entity, then, the AO while assessing the said entity in the correct status shall allow the credit of corresponding taxes which was paid by the wrong entity qua the income that was wrongly disclosed in its hands.

23. We, thus, in terms of our aforesaid deliberations herein conclude qua the multi facet issues involved in the present appeal before us, viz., (i) the subject property was sold by the assessee firm is liable to be assessed only in its hands; (ii) that no part of the capital gain on the sale of the subject property is liable to be assessed in the hands of the individual partners; (iii) discontinuance of the business of the assessee

firm, if any, will not result to vesting of the ownership of the property with the individual partners as owners; (iv) that as the subject property transferred by the assessee firm vide the Registered Sale deed No.1625/18, dated 03/02/20178 is “land” (long term capital asset), therefore, the capital gain arising on the sale of the subject property for a consideration of Rs.6.50 crores shall be assessed as income under the head long term capital gain; (v) the proportionate income (i.e., long term capital gain) on sale of the subject property as disclosed by the individual partners in their respective hands shall be excluded from their returns of income; and (vi) that the credit of the taxes corresponding to the long term capital gain wrongly disclosed by the respective partners in their returns of income for the subject year shall be given to the assessee firm while computing its tax liability.

24. We, thus, in terms of our aforesaid observations, partly allow the appeal filed by the assessee firm.

25. Resultantly, the appeal filed by the assessee firm is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 05th December, 2025.

Sd/- **(BALAKRISHNAN S.)** **ACCOUNTANT MEMBER**	**Sd/-** **(RAVISH SOOD)** **JUDICIAL MEMBER**

Hyderabad,
Dated 05th December, 2025
OKK / SPS

Copy to:

S.No	Addresses
1	Vivek Industries, 8-1, Kamayyathopu Kanuru, Vijayawada, Andhra Pradesh-520007.
2	Income Tax Officer, Ward-2(3), CR Building, Vijayawada, Andhra Pradesh.
3	The Pr. Commissioner of Income Tax,
4	The DR, ITAT, Visakhapatnam Bench
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