

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

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

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

**&**

**SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपीलसं./I.T.A.No.541/VIZ/2025  
(निर्धारण वर्ष/ Assessment Year:2016-17)**

<b>Late Rama Kumari Munna [Represented by Shri Shivayya Munna, Husband &amp; Legal Heir] 3-17-3, Kunchanapalli Guntur – 522501 Andhra Pradesh  [PAN: FOspm4540E]</b>	<b>Vs.</b>	<b>Income Tax Officer – Ward – 2(1) Guntur</b>
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Sri K. Prasad, Sr. DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	10.02.2026
घोषणा की तारीख/Date of Pronouncement	:	18.02.2026

**आदेश /ORDER**

**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee (since deceased) through her legal heir is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 26.12.2024, which in turn arises from

the order passed by the Assessing Officer (for short, “A.O”) under section 147 r.w.s. 144 of the Income-Tax Act, 1961 (for short, “the Act”), dated 31.03.2022 for the Assessment Year 2016-17. The assessee (through legal heir) has assailed the impugned order on the following grounds of appeal before us:

“1. That, on the facts and in the circumstances of the case and in law, the order passed by the Assessing Officer u/s 147 r.w.s. 144 of the Income-tax Act, 1961, dated 31.03.2022, and upheld by the Learned Commissioner of Income Tax (Appeals), NFAC, vide order u/s 250 dated 26.12.2024, is erroneous, contrary to the provisions of the Act, and against the facts of the case.

2. The Learned CIT(A) and the lower authorities have erred in holding that the Joint Development Agreement (JDA) dated 18.03.2016 constituted a transfer within the meaning of section 2(47)(v) of the Income-tax Act, 1961, without properly appreciating the following:

(i) That the JDA did not effectuate any identifiable transfer of property, inasmuch as there was no individual demarcation or allocation of flat numbers, parking areas, or common areas to the appellant;

(ii) That no possession enabling the developer to exercise rights of ownership or effect sale was delivered; the land was handed over only for the limited purpose of construction, as evident from the express covenants of the JDA dated 18.03.2016;

(iii) That the JDA itself contemplated execution of a Supplementary Deed, which was duly executed on 12.09.2017, after which alone the plans were finalised and allocation of constructed area took place, thereby crystallising the rights of the respective parties;

(iv) That the authorities below failed to consider binding and persuasive judicial precedents, which have consistently held that mere execution of a development agreement, without delivery of complete possession and without crystallisation of rights, does not amount to a transfer exigible to capital gains tax in the year of such agreement.

3. The Learned CIT(A) has further failed to adjudicate the ground relating to non-issuance of mandatory notice u/s 143(2) of the Income-tax Act, which vitiates the assessment proceedings in law.

4. In view of the above grounds, and such other grounds as may be urged at the time of hearing, the appellant prays that the impugned order of the Ld. CIT(A), NFAC, dated 26.12.2024, be quashed and the additions made by the Assessing Officer be deleted.”

2. Shorn off unnecessary details, the income of the assessee was assessed by the A.O vide his order passed under section 147 r.w.s. 144 of the Act, dated 31.03.2022, determining her income at Rs.93,47,704/-.

3. Aggrieved, the assessee assailed the impugned assessment order before the CIT(A), who vide his order dated 26.12.2024 dismissed the same both on the legal issues raised by the assessee regarding the validity of the jurisdiction assumed by the A.O for initiating the re-assessment proceedings vide notice issued under section 148 of the Act dated 29.03.2021, as well as on the merits advanced regarding the addition of Rs.93,47,704/- made by the A.O under the head “Long Term Capital Gains” (for short, “LTCG”).

4. The legal heir of the assessee (since deceased) has assailed the impugned order passed by the CIT(A) dated 26.12.2024 before us.

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

6. Shri C. Subrahmanyam, CA, the learned Authorized Representative (for short, “Ld.AR”) for the assessee (through legal heir), at the threshold of hearing of the appeal, submitted that the appeal involved a delay of 192 days. Elaborating on the reasons leading to the delay, the Ld. AR submitted that as the assessee had much prior to the disposal of the appeal by the CIT(A) unfortunately expired on 02.07.2022, and her legal heir (husband) who, being an illiterate agriculturist was oblivion of the proceedings as well as the disposal of the appeal by the CIT(A), thus the same had resulted to the delay

in filing of the present appeal. The Ld. AR submitted that it was only when Shri Shivayya Munna, i.e., husband of the assessee (since deceased), was visited by an Inspector of the Income Tax Department that he had gathered about the outstanding demand payable by his wife (since deceased). Carrying his contention further, the Ld. AR submitted that the Shri Shivayya Munna (supra), on learning about the outstanding demand in the case of the assessee (since deceased), had approached an Income Tax Practitioner (for short, "ITP") and, as per his advice, had filed the present appeal, which, by the time, was delayed by 190 days. The Ld.AR submitted that as the delay in filing of the present appeal had crept in primarily for two-fold reasons viz., (i) the unfortunate demise of the assessee; and (ii). illiteracy of the assessee's legal heir, i.e., husband, who had remained unaware of the appellate proceedings and the dismissal of the appeal, therefore, the same not being backed by any lackadaisical approach or conduct on the part of the said legal heir, in all fairness and in the interest of justice, be condoned.

7. Per contra, Sri K. Prasad, Learned Senior Departmental Representative (for short, "Ld. DR") objected to the seeking of the condonation of the delay of 192 days by the legal heir of the assessee (since deceased). It was submitted by him that as the delay involved is inordinate, therefore, the same does not merit condonation.

8. We have given thoughtful consideration to the contentions advanced by the Ld.Authorized Representatives of both parties regarding the delay involved in filing of the present appeal before us, and are of the firm conviction that, as there are justifiable reasons leading to the impugned delay viz., (i) the unfortunate demise of the assessee on 02.07.2022; and (ii). illiteracy of the assessee's legal heir, i.e, husband, who had

remained oblivion both about the ongoing appellate proceedings followed by the dismissal of the appeal, therefore, in our view, the said delay merits to be condoned. Our aforesaid view that a liberal approach should be adopted while considering an application filed by an appellant seeking condonation of the delay involved in filing the same is supported by the judgment of the **Hon'ble Supreme Court** in the case of **Vidya Shankar Jaiswal vs. The Income Tax Officer, Ward-2, Ambikapur in Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31st January, 2025**, wherein the Hon'ble Apex Court while setting aside the order of the Hon'ble High Court of Chhattisgarh, which had approved the declining of the condonation of delay of 166 days by the Income Tax Appellate Tribunal, Raipur Bench, had observed, that a justice oriented and liberal approach should be adopted while considering the application filed by an appellant seeking condonation of the delay involved in the appeal. We thus, in terms of our aforesaid observation, condone the delay of 192 days involved in filing the present appeal by the assessee (through legal heir) before us.

9. Coming to the core issue involved in the present appeal, the Ld.AR submitted that the order passed by the CIT(A) suffers from a serious infirmity. Elaborating on his contention, the Ld.AR submitted that though the assessee viz., Smt. Rama Kumari Munna had unfortunately expired on 02.07.2022 i.e., during the course of the pendency of proceedings before the CIT(A), which had culminated vide an order dated 26.12.2024, but the said impugned order had been passed by the CIT(A) in the name of the assessee (since deceased) viz., “*Rama Kumari Munna, 3-173-3 Kunchanapalli, Guntur – 522501, Andhra Pradesh, India*”. The Ld.AR submitted that as the impugned

order has been passed by the CIT(A) in the name of the deceased assessee, therefore, the same cannot be sustained and is liable to be set-aside.

10. Per contra, Sri K. Prasad, Learned Senior Department Representative (for short “Ld. DR”) did not object to the aforesaid contention advanced by the assessee’s counsel regarding the validity of the CIT(A) order that was passed in the name of the deceased assessee.

11. We have given thoughtful consideration to the contentions advanced by the learned Authorized Representative of both parties in the backdrop of the orders of the authorities below and the material available on record.

12. Admittedly, it is a matter of fact based on the copy of the “death certificate” of the assessee filed by the Ld. AR before us, which reveals that the assessee had expired way back on 02.07.2022, i.e., during the pendency of the proceedings before the CIT(A), who had disposed of the appeal vide his order dated 26.12.2024. In our view, as the legal heir of the assessee (since deceased) had failed to bring to the notice of the CIT(A) the factum of death of the assessee on 02.07.2022, therefore, for the said reason, the first appellate authority had failed to seek the impleading of the legal heir on record.

13. Be that as it may, we are of the firm conviction that, as the assessee had expired on 02.07.2022, therefore, the order passed by the CIT(A) dated 26.12.2024 in her name viz., “Rama Kumari Munna, 3-173-3 Kunchanapalli, Guntur – 522501, Andhra Pradesh, India” being non-est in the eyes of law cannot be sustained and is liable to be set-aside.

14. We, thus, in terms of our aforesaid deliberations, set-aside the order passed by the CIT(A) to his file with a direction to re-adjudicate the appeal after impleading the legal heir/heirs on record. Needless to say, the Ld. CIT(A) shall in the course of the set-aside proceeding, afford a reasonable opportunity of being heard to the legal heir/heirs of the assessee.

15. As we have set-aside the matter to the file of the CIT(A) for fresh adjudication in terms of our aforesaid observations, therefore, we refrain from advertng to and adjudicating the other issues based on which the impugned order has been assailed before us.

16. Resultantly, the appeal filed by the assessee (since deceased) is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 18<sup>th</sup> February, 2026.

Sd/-  
(**ओंकारेश्वर चिदारा**)  
(**OMKARESHWAR CHIDARA**)  
**लेखा सदस्य /ACCOUNTANT MEMBER**

Dated: 18.02.2026

\*Giridhar, Sr.PS

Sd/-  
(**रवीश सूद**)  
(**RAVISH SOOD**)  
**न्यायिक सदस्य/JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Late Rama Kumari Munna**  
**[Represented by Shri Shivayya**  
**Munna, Husband & Legal Heir]**  
3-17-3, Kunchanapalli  
Guntur – 522501  
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 2(1)**  
Guntur
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