

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

**BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT**  
**AND**  
**SHRI MANJUNATHA G. ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.429/Hyd./2026**  
Assessment Year 2020-2021

Prabhakar Mada, Hyderabad – 500 055. PAN BDAPM4650G (Appellant)	vs.	The Income Tax Officer- (INT. TAXN)-1, Hyderabad PIN – 500 004. Telangana. (Respondent)
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For Assessee :	Sri D V Anjaneyulu, C.A.
For Revenue :	Sri P Dhivahar, CIT-DR

Date of Hearing :	24.03.2026
Date of Pronouncement :	17.04.2026

**आदेश / ORDER**

**PER VIJAY PAL RAO, VICE PRESIDENT :**

This appeal by the Assessee is directed against the Final Assessment Order dated 28.01.2026 passed u/sec.147 r.w.s.144C(13) of the Income Tax Act [in short "the Act"], 1961 in pursuance to the Directions of the Disputes Resolution Panel [in short "DRP"] dated 27.12.2025 passed u/sec.144C(5) of the Act.

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

1. *“The order of the DRP U/s.144C(5) is erroneous in law, contrary to the facts and circumstances of the case, and against the principles of equity, natural justice.*
2. *The DRP ignored to adjudicate Ground No. 2 raised before it, wherein the appellant specifically challenged the jurisdiction of the Assessing Officer. The order passed by the AO, i.e., ITO (International Taxation)-1, Hyderabad, without having no jurisdiction under the proviso to Section 6(1) read with Section 124(1)(b) of the Act, since the return was filed under the status of "Resident," along with passport details evidencing residential status. Therefore, the very assessment order passed is legally invalid and void ab initio.*
3. *The DRP erred in upholding the disallowance of ₹27,10,916 towards the cost of improvement towards the 3units sold under his own supervision simply sustained by alleging that no FIR or complaint was filed against the JDA which was incurred by the Appellant to put into salable condition towards kitchen platform, flooring, plastering of walls, and other essential finishing works as the JDA failed as per the agreements. The expenditure was duly explained and supported by evidence.*
4. *The DRP sustained addition U/s.69A of Rs.36,80,000/- which represents advance received from the buyer through HDFC which was subsequently registered in the name of purchaser and also the addition of ₹8,00,000/- U/s.69A has been made without providing proper details or clear reasoning. No specific basis,*

*transaction reference, or explanation was provided even during the assessment proceedings. The addition is arbitrary and unsustainable in law.*

*5. For these and other reasons that may be urged at the time of hearing, the appellant prays the Honorable Tribunal to kindly cancel the Assessment/delete the additions sustained by the Hon'ble DRP.”*

3. In ground no.2 the assessee has challenged the validity of the assessment order passed by the Assessing Officer for want of jurisdiction.

4. The learned Authorised Representative of the Assessee has submitted that this issue was raised by the assessee before the DRP in ground no.2.1. However, the learned DRP has not adjudicated this issue regarding the jurisdiction of the Assessing Officer. The learned Authorised Representative of the Assessee has referred to the return of income filed by the assessee at page nos.1 and 2 of the paper book and submitted that the assessee has declared his residential status as ‘resident’ in the return of income which was taken up for scrutiny by the Assessing Officer. However, the Assessing Officer/Income Tax Officer-(Int. Taxn.)-1,

Hyderabad issued show cause notice u/sec.142(1) of the Act and passed the draft assessment order dated 29.03.2025, against which, the assessee filed objections before the DRP including the objection against the jurisdiction of Income Tax Officer-(Int. Taxn.)-1, Hyderabad, not vested when the assessee has declared his residential status as 'resident'. The learned Authorised Representative of the Assessee has further submitted that even as per the passport of the assessee and immigration details the assessee is a resident for the previous year relevant to the assessment year under consideration, but, the DRP has not adjudicated this issue raised by the assessee and consequently, the Assessing Officer passed the Final Assessment Order which is invalid for want of jurisdiction. The learned Authorised Representative of the Assessee has referred to the provisions of sec.120 r.w.s.124(1) of the Act and submitted that the Income Tax Authority vested with the power to assess as per class of assessee can pass the assessment order and therefore, any other Authority not having the jurisdiction and power renders the Order as nullity. In support of his

contention, he has relied upon the decision of Hon'ble Andhra Pradesh High Court in the case of **Vijay Nathulal Sharma vs. DCIT [2025] 472 ITR 535 (AP)** as well as Judgment of Hon'ble Calcutta High Court in the case of **PCIT vs. Shree Shoppers Ltd., [2024] 468 ITR 18 (Cal.)**. The learned Authorised Representative of the Assessee has also relied upon the decision of ITAT, Delhi B-Bench, Delhi in the case of **MS Ekta Gupta vs. ITO [2024] 230 TTJ 398 (Del.)**. Thus, the learned Authorised Representative of the Assessee has submitted that the impugned order passed by the Income Tax Officer-(Int. Taxn.)-1, Hyderabad is not sustainable in law and liable to be quashed.

5. On the other hand, the learned DR has submitted that the assessee has not filed any return of income u/sec.139 of the Act. Prior to this assessment year the status of the assessee was 'non-resident' and therefore, the Assessing Officer issued notice u/sec.148A(b) and then u/sec.148 of the Act. In response to the said notices, the assessee has filed his return of income. The learned DR has thus submitted that as per the provisions of sec.6(1)(c) read

with clause (b) of Explanation, the assessee's residential status for the year would be "non-resident".

6. We have considered the rival submissions as well as the relevant material on record. Undisputedly for the year under consideration the assessee has not filed any return of income u/sec.139(1) of the Act. Based on the information available with the Department regarding the interest income deposited in the bank account and cash deposits in the bank account of the assessee, the Assessing Officer issued notice u/sec.148 of the Act. In response to the said notice, the assessee filed return of income for the year under consideration on 02.04.2024 admitting income of Rs.7,60,820/-. Thereafter, the Assessing Officer has passed the Draft Assessment Order u/sec.144C(1) of the Act dated 29.03.2025 whereby an addition on account of long-term capital gains and unexplained money on account of deposits in the bank account of the assessee were proposed to be made by the Assessing Officer. The assessee filed his objection before the DRP and raised grounds of objection as reproduced in Para no.2 of the DRP Order as under:

*“2. Ground of Objection No.1: The draft order of the Learned AO in proposing total additions of Rs.86,79,916/- of which Rs. 27,10,916/-under long term capital gains and Rs.59,69,000/-u/s 69A as unexplained money and invoking Section 115BBE is erroneous in law, contrary to the facts probabilities of the case and against principles of equity and natural justice.*

*2.1 The very order passed by the AO i.e ITO (INT TAXN)-1 Hyd is not having jurisdiction under the provision of Section 6(1) read with section 124(1)(b) is not under his jurisdiction as the return itself is filed under the status of resident and also enclosed details of Passport and NRE account in proof of the same as held in CIT v B.K Dhote [1967] 66 ITR 457 (SC) and therefore the very order passed is legally invalid and ab-intio-void.*

*2.2 The Learned AO erred in law in proposing addition of Rs.27,10,916 as income from capital gains by disallowing the cost of construction without considering the same which was incurred to the assessee as the developer couldn't comply with the terms of development agreement and left the project as such the assessee incurred cost to bring the flats to saleable condition and completion certificate has not been obtained has sold the property in semi-finished condition and claimed the expenditure under the head cost of improvement and therefore it shall be allowed.*

*2.3 The Learned AO proposing the addition of Rs.59,69, 000/- though the assessee brought to the knowledge of the learned AO, the identity of the parties, credit worthiness and genuineness of transactions and also as per settled case laws stated in statement of facts, is prayed that direction may be given to drop the additions.*

*2.4 For these and other grounds that may be urged at the time of hearing, the assessee prays the Honourable DRP to kindly give the direction that learned AO is not having any such jurisdiction to pass such order under Section 144(C)(1) of the Act as the order becomes superfluous.*

*2.5 The Assessee also urge and Prays the Honourable DRP to kindly permit the personal appearance.”*

6.1. Thus, as per ground no.2.1 before the DRP, the assessee has raised an issue of jurisdiction of the Assessing Officer who passed the Draft Assessment Order as the assessee is a resident and also declared his status in the return of income as ‘resident’. However, the Draft Assessment Order was passed by the Income Tax Officer-(Int. Taxn.)-1, Hyderabad without jurisdiction over the assessee. The DRP has not adjudicated that issue while passing the Directions dated 27.12.2025 and the issue on merits were decided against the assessee and consequently, the Assessing Officer passed the impugned Final Assessment Order dated 28.01.2026.

6.2. It is pertinent to note that once the assessee has declared his status as ‘resident’ in the return of income filed in response to notice u/sec.148, the Assessing Officer before

proceeding further to scrutinise the return of income filed by the assessee ought to have decided the residential status of the assessee. Further, even in case when the assessee has not raised this issue before the Assessing Officer prior to the Draft Assessment Order, once the assessee has raised this issue before the DRP, then, the DRP as well as the Assessing Officer before passing the Final Assessment Order were required to adjudicate this issue. Since the residential status of the assessee is required to be verified and examined as per the provisions of sec.6 of the Act and the actual period of stay of the assessee in India is to be verified from the relevant record including the passport of the assessee and this exercise has not been done either by the Assessing Officer or by the DRP, therefore, in the facts and circumstances of the case, the Final Assessment Order passed by the Assessing Officer/Income Tax Officer-(Int. Taxn.)-1, Hyderabad, is set aside and the matter is remanded to the record of the DRP for adjudication of the issue raised by the assessee in ground no.2.1 as reproduced above. Since the matter is remanded to the record of the DRP for adjudication of the legal issue raised

by the assessee which goes to the root of the matter, therefore, we do not propose to go into the other issues raised by the assessee on merits of the additions.

7. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17.04.2026.

Sd/-  
[MANJUNATHA G.]  
ACCOUNTANT MEMBER  
Hyderabad, Dated 17<sup>th</sup> April, 2026.  
VBP

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT

Copy to :

1.	Prabhakar Mada, Hyderabad – 500 055. C/o. Anjaneyulu & Co. #30, Bhagyalakshmi Nagar Colony, Gandhi Nagar, Hyderabad – 500 080. Hyderabad. Telangana.
2.	The Income Tax Officer-(INT. TAXN)-1, Aaykar Bhawan, Opposite LB Stadium, Basheerbagh, Hyderabad – 500 004. Telangana.
3.	The CIT (Disputes Resolution Panel)-1, Kendriya Sadan, 4 <sup>th</sup> Floor, Koramangala, BANGALORE. PIN – 560 034. State of Karnataka.
4.	The DR, ITAT, “B” Bench, Hyderabad.
5.	Guard file.

BY ORDER