आयकर अपीलीय अधिकरण, हैदराबाद पीठें, हैदराबाद
INCOME TAX APPELLATE TRIBUNAL,
HYDERABAD BENCHES, HYDERABAD

BENCH: A

SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, HON'BLE ACCOUNTANT MEMBER

ITA 156/HYD/2026 (निर्धारण वर्ष/Assessment Year: **2018-19**)		
DRF EMPLOYEES WELFARE SOCIETY, HYDERABAD.	**Vs.**	**ITO,** **WARD- 6(1)** HYDERABAD.
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**AAAAD0604L**
अपीलार्थी द्वारा/Appellant represented by:		**Shri K K Chaitanya, Senior Advocate a/w Shri Tata Krishna, Advocate**
प्रत्यर्थी द्वारा/Respondent represented by:		**Ms Seema Meena, CIT-DR**

सुनवाई की तारीख / Date of conclusion of hearing:	**17-07-2026**
घोषणा की तारीख / Date of pronouncement:	**14-10-2026**

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee society, an Association of Persons (AOP), is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [for short, "CIT(A)"] dated 12/12/2025, which in turn arises from the order passed by the Assessing Officer (for short, "AO") under

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section 143(3) r.w.s 144B of the Income Tax Act, 1961 (for short, "the Act") dated 24/09/2021 for Assessment Year (AY) 2018-19. The assessee society has assailed the impugned order on the following grounds of appeal before us:

"1. The Order of the Learned CIT (A), NFAC is not justified in law and on facts and circumstances of the case.

2. The assessment order is invalid and bad in law being barred by limitation under section 153(1) read with TOLA, 2020.

3. Without prejudice, the assessment order passed after 31.03.2021 under section 143(3) read with section 1448 is invalid and bad in law in terms of section 143(3D).

4. Without prejudice, the assessment order is bad in law and void ab initio as the impugned notice under section 143(2) dated 28.09.2019 served by NeAC, is contrary to section 143(2) read with Rule 12E and Notification No. SO 3279(E) (NO.65/2019 (F.NO.187/2/2019-ITA-1], dated 13.09.2019.

5. Without prejudice, the Assessment Order is non est being passed in violation of procedure laid down in section 144B(1) (iii) as the National Faceless Assessment Centre (NaFAC) failed to issue intimation as required under the said provision.

6. Without prejudice to the above, the action of the Learned Assessing Officer, NaFAC, in issuing notice under section 142 (1) dated 02.09.2021 post issuance of draft assessment order dated 19.04.2021, is contrary to the provisions and procedure laid down under section 144B of the IT Act.

7. Without prejudice to the above, the impugned Assessment Order passed by the Learned Assessing Officer, NaFAC, without issuing show cause notice as per the mandate under section 144B(1)(xxv)(b) is bad in law..

8. Without prejudice to the above, the addendum show cause notice dated 13.09.2021 even if treated as a show cause notice under section 144B(1)(xxv)(b) is bad being unaccompanied by revised draft assessment order which is in violation of SOP issued in this regard.

9. Without prejudice, the addendum show cause notice dated 13.09.2021 is bad as it did not provide the Appellant reasonable time to respond to the same.

10. Without prejudice, the impugned assessment is bad in law as the revised draft assessment order, (assuming that the same was made on 13.09.2021], is barred by limitation in terms of Para S. 3

of the SOP for AU contained in Circular F. NO. PR. CCIT/NeAC/SOP/2020-21 dated 19.11.2020.

11. Without prejudice, the assessment order is bad being passed by the "Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer".

12. Without prejudice, the assessment order signed by one Mr. Vishesh Prakash having email ID 'delhi.dcit2.1.neac@incometax.gov.in' is invalid being contrary to section 144B(7)(i)(a) as it stood prior to its' substitution vide Finance Act, 2022.

13. The Learned CIT(A) is not justified in upholding the high-pitched assessment in a non-speaking order without dealing with several grounds of the Appellant.

14. As regards the capital gain is chargeable to tax in the hands of the Members of the Appellant and not in the hands of the Appellant:

14.1. The Lower Authorities have erred in levying tax on the Appellant by failing to appreciate that its members are owners of the subject land by virtue of their beneficial ownership and by virtue of section 2(47)(vi) and tax if any is liable to be imposed on the members and such tax has, in fact, been duly discharged by the members.

14.2. The Lower Authorities have failed to appreciate that once the members become owners of subject land by virtue of section 2(47)(vi) read with Explanation 1 thereunder, such deeming fiction excluded any other person including the Appellant to be regarded as owner thereof.

14.3. The Lower Authorities have erred in mixing up ownership caused by section 2(47)(vi) and legal ownership under common law to hold that the Appellant society is liable to tax by wrongly relying on section 2(31) and certain recitals in the Development Agreement cum General Power of Attorney [JDA].

14.4. Without prejudice to the above, the Lower Authorities have failed to appreciate that no income accrued or arose in the hands of the Appellant by reason of doctrine of mutuality.

14.5. Without prejudice to the above, the revenue having accepted the incomes offered by the members in their individual returns and the taxes paid by them in respect of the transfer of land in question and assessed the same in hands of members in some cases, could not have brought to tax the very same income in the hands of the Appellant and this action of revenue amounts to blowing hot and cold culminating in double taxation.

15. Without prejudice, as regards addition made under the head "Capital Gains" in respect of Development Agreement:

15.1. The Lower Authorities have erred in making the impugned addition under the head capital gains under section 45 when the

conditions of section 2(47)(v)/(vi) did not exist in the impugned assessment year.

15.2. The Lower Authorities erred in perversely holding that the Appellant delivered possession to the developer during the impugned assessment year ignoring the terms of JDA dealing with permissive possession and by misconstruing the declaration cum affidavit dated 30.01.2019 under RERA.

15.3. Without prejudice to the above, the Lower Authorities have failed to appreciate that no income accrued or arose to the Appellant during the impugned assessment year, as by merely signing of JDA the Appellant did not secure any right to receive income during the said year.

15.4. Without prejudice to the above, the Lower Authorities have failed to appreciate that even if any income accrued or arose, howsoever remotely or superficially, such income got diverted to members of the Appellant by operation of doctrine of diversion of income by overriding title.

15.5. Without prejudice to the above, the Lower Authorities have erred in determining full value consideration [FVC) on the basis of their ipse dixit instead of applying section 50D which provides for adoption of stamp duty value of 70% of subject land on the date of transfer.

15.6. The Lower Authorities erred in perversely excluding application of section 50D on the basis that FVC was ascertainable by failing to appreciate that ascertainability of FVC is with reference to time of transfer and not with reference to factors existing in subsequent years.

15.7. The Lower Authorities have erred in determining FVC with reference to owner's share of super built up area (incoming asset thereby indirectly invoking section 45(5A) which did not apply to the Appellant.

15.8. The Lower Authorities have erred in determining FVC of owner's share of super built up area by applying the irrelevant factor of developer's estimated cost of construction.

15.9. Without prejudice, the Lower Authorities have erred in considering the developer's estimated cost of construction on the basis of data which related to FY 2019-20 and thereafter, without appreciating that the building plan itself was not sanctioned in the impugned assessment year.

15.10. Without prejudice to the above, the Lower Authorities have erred in determining FVC for the impugned assessment year on the basis of GST invoice dated 30.08.2021 raised by the developer.

15.11. Without prejudice to the above, the Lower Authorities have erred in adopting the rate per sft as per the aforesaid GST invoice without appreciating that the same included value of land which was not the subject matter of alleged transfer at all.

15.12. Without prejudice, the Lower Authorities have erroneously added Rs. 8,40,37,416/- representing the value of 13,000 sft of super built up area [13,000 X Rs. 6,464.42 per sft] to the FVC, by wrongly brushing aside the contention of the Appellant that it had to forego the said area from out owner's share of 8,50,724 sft.

15.13. Without prejudice, the Lower Authorities are not justified in adding GST of Rs. 26,35,10,556/- payable by the Appellant to the FVC, instead of reducing the same from the FVC as per the claim of the Appellant that owners have to incur the same as one of the conditions in the JDA, thus resulting in unjust double addition of Rs. 52,70,21,112/-.

15.14. Without prejudice, the Lower Authorities have erred in adding GST of Rs. 26,35,10,556/- payable by the Appellant to the FVC, without appreciating the same being expenses incurred in connection with the transfer, were required to be reduced from the full value of consideration in terms of section 48(i).

15.15. The Lower Authorities are not justified in adding amenity charges of Rs. 3,00,000/- per flat payable by the owner to the FVC, instead of reducing the same from the FVC as per the claim of the Appellant that owners have to incur the same as one of the conditions in the JDA, thus resulting in unjust double addition of Rs. 6,00,000/- per flat.

15.16. Without prejudice, the Lower Authorities have erred in adding the amenity charges of Rs. 3,00,000/- per flat payable by the owner to the FVC, without appreciating the same being expenses incurred in connection with the transfer, were required to be reduced from the full value of consideration in terms of section 48(i).

16. Without prejudice, the Lower Authorities are not justified in failing to give credit of the taxes paid by the members of the Appellant with respect to transfer of 70% of subject land under the JDA while computing the tax liability in the hands of the Appellant.

17. The Lower Authorities are not justified in making various observations which are incorrect, perverse and contrary to the facts.

18. The Learned Assessing Officer has erred in failing to give effect to the order of the Learned CIT(A) dated 12.12.2025.

19. The Lower Authorities have failed to appreciate that dividend earned from liquid fund of Rs. 12,36,217/ is wholly exempt under section 10(35) of the IT Act and are not justified in taxing the said dividend income as business income to the extent of Rs.9,30,269/- and as income from other sources to the extent of Rs. 2,36,217/-.

20. The Lower Authorities are not right in law and on facts in levying interest under sections 234B & 234C.

21. The Lower Authorities are not justified in levying the aforesaid interests, when the impugned additions are not tenable.

For the above Grounds and for such other Grounds which may be allowed by the Honorable Members to be urged at the time of hearing, it is prayed that the aforesaid Appeal be allowed."

2. Succinctly stated, the assessee society is registered under the Andhra Pradesh (Telangana Areas) Society Registration Act, 1350 *Fasli* (Act 1 of 1350F). The assessee society, which is registered as an AOP with the Income Tax Department and has been filing its Income tax returns claiming income and expenditure in its own hands, filed its return of income for AY 2018-19 on 03/07/2018, declaring an income of Rs. 2,36,217/-. The return of income filed by the assessee society was processed under section 143(1) of the Act, and its income was determined at Rs. 11,69,596/-. Subsequently, the case of the assessee society was selected for "limited scrutiny," and a notice under section 143(2) of the Act, dated 28/09/2019, was issued and served upon it.

3. During the course of the assessment proceedings, the AO observed that the assessee society had acquired and taken possession of 20.12 acres of land at Kondapur Village in August, 1997 in two tranches, viz., (i) vide registered sale deed dated 08/08/1997 for purchase of 2 acres - 0 guntas of land situated at Sy. No. 98 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District; and (ii) vide agreement of sale-cum-irrevocable General Power of Attorney (GPA), dated 06/10/1997,

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16/10/1997 and 20/10/1997 for acquiring 18.13 acres of land which was registered in the name of the assessee society during the subject year.

4. The AO observed that the assessee society had on 25/01/2018 executed a Registered Joint Development Agreement-cum-Irrevocable GPA in favor of M/s. My Homes Constructions (P) Ltd (for short, "MHCPL"). It was observed that, as per the aforesaid Registered Joint Development Agreement-cum-Irrevocable GPA, the assessee society was entitled to 30% of the super built-up area and proportionate rights in land ownership from MHCPL in the form of 2 and 3-BHK luxury flats. It was further observed that MHCPL had registered the project "My Home Mangala, Kondapur" with RERA, Telangana, under Project RERA ID P02400000281. Also, it was observed that, as per the encumbrance certificate (EC), the Chartered Accountant's report, and the affidavit uploaded on the RERA Telangana website, the aforesaid developer had already started booking flats in the said project and had received part payments from prospective buyers.

5. The AO issued notice under section 133(6) of the Act to MHCPL. In reply, MHCPL submitted that the total saleable area of the project is 28,97,804 sq ft. Also, as per the information provided, the cost of the project, as per the Chartered Accountant's report, was Rs. 849,50,92,000/-, and thus the per Sq. ft rate of development was Rs.2,931.56 per Sq. ft.

Apart from that, the AO observed that the aforesaid developer had filed a certificate from the SRO, Ranga Reddy District, to the effect that the fair market value (FMV) of the subject property admeasuring 98,373 sq yd was Rs. 500/- per sq yd.

6. The AO, on a perusal of the record, i.e., the replies submitted by the assessee society, documents submitted with RERA, Telangana, and reply filed by MHCPL in response to notice under section 133(6) of the Act, issued a show cause notice (SCN) dated 19/04/2021 to the assessee society wherein it was called upon to explain that as to why the capital gain from the transfer of the land to MHCPL may not be brought to tax in its hands during the year under consideration. In response, the assessee society vide its reply dated 21/04/2021 furnished its objections. However, the AO, after perusing the objections raised by the assessee society, did not find them acceptable and, based on his exhaustive deliberations concluded that the JDA cum registered GPA dated 25.01.2018 executed between the assessee society and MHCPL amounted to a transfer of 8,56,028 Sq. ft. of built-up area (70% of the super built-up area) under Section 53A of the Transfer of Property Act, 1908 and Section 2(47) of the Act. Apart from that, the AO observed that 13000 Sq. ft. of built-up area was allotted by the assessee society to Sri. Surakanti Shashikanth Reddy (7500 Sq ft) and Smt. P. Swetha (5500 Sq. ft). Thereafter, the AO adopted the consideration receivable for 8,69,028 Sq. ft. [8,56,028 Sq. ft (+) 13,000

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Sq. ft] of the super built-up area transferred by the assessee society during the subject year at Rs. 561,77,59,078/-, viz. (i) value of consideration receivable for 8,56,028 Sq. ft. of super built-up area transferred to MHCPL @ Rs. 6264.42 per Sq. ft. based on the Invoice No. JDA/2021-2022/01 dated 30.08.2021 raised by MHCPL on the assessee society: Rs. 553,37,21,662/- (on which value of construction the assessee society had paid GST of Rs. 26,35,10,556/-); and (ii). value of 13000 Sq. ft. of built-up area allotted by the assessee society to Sri. Surakanti Shashikanth Reddy and Smt. P. Swetha: Rs. 8,40,37,416/- (which was determined by adopting the value at which land was conveyed by the assessee society to MHCPL, i.e., @ Rs. 6264.42 per Sq. ft.), and thereafter taking the Indexed cost of acquisition as per the Fair Market Value (FMV) of the subject land as on 01.04.1981 at Rs. 500/- per Sq. Yard (as per certificate submitted by the assessee society), determined the resultant LTCG at Rs. 532,73,85,238/-

7. Aggrieved, the assessee society assailed the order passed by the AO under section 143(3) r.w.s 144B of the Act, dated 24/09/2021 before the CIT(A), who did not find favor with the multi-facet contentions raised by the assessee society both regarding the validity of the jurisdiction assumed by the AO for framing of the impugned assessment, as well as the merits of the case, and principally concurred with the view taken by the AO. Accordingly, the CIT(A) upheld the AO's computation of long-term capital gains (LTCG) on the transfer of the property pursuant to the Joint

Development Agreement dated 25/01/2018 at Rs. 532,73,85,238/-. However, the CIT(A), taking cognizance of the assessee's contention regarding the revised area allocated to it as per the Supplemental Allocation-cum-Supplemental Agreement, dated 25/11/2022, as per which the share of the assessee society was reduced from 8,69,341 sq ft to 8,50,724 sq ft, directed the AO to consider the said claim and compute its revised income accordingly. Thus, the CIT(A) partly allowed the appeal filed by the assessee society.

8. The assessee society, aggrieved with the CIT(A) order, has carried the matter in appeal before us.

9. We have heard the Ld. Authorized Representatives of both parties, perused the orders of the authorities below and the material available on record, and considered the judicial pronouncements pressed into service by them to drive home their respective contentions.

10. Before coming to the controversy in hand, we deem it apposite to briefly cull out the facts leading to the same.

11. We find on a perusal of the record that the assessee society was incorporated in the year 1997 under the Andhra Pradesh (Telangana Areas) Society Registration Act, 1350 *Fasli* (Act 1 of 1350F), with the intention of building houses for the scientists of Dr. Reddy's Research Foundation (DRF). Although the assessee society had initially invited only

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employees of DRF to join the society, but thereafter, staff of other companies of Dr. Reddy's Group also became members of the society, and the amounts payable by the members were linked to the area of the plot applied for by them.

12. Thereafter, a resolution was passed by the assessee society, wherein land admeasuring 20 acres -13 guntas in Sy. No. 98 of Kondapur Village, Hyderabad, was identified. The initial application amount pooled in by the members was utilized for acquiring the land parcel in the Financial Year 1997-98 by two modes, viz., (i) registered sale deed dated 08/08/1997 for purchase of 2 acres - 0 guntas of land situated at Sy No. 98 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District; and (ii) agreement of sale-cum-irrevocable GPA dated 06/10/1997, 16/10/1997 and 20/10/1997 for acquiring 18.134 acres of land. Thereafter, the assessee society filed an application with the Hyderabad Urban Development Authority (HUDA) for approval of the layout. As per the records, tentative approval was received from HUDA in September 1998.

13. We find on a perusal of the record that the members of the assessee society, with the objective of building houses on the aforesaid parcel of land admeasuring 20 acres - 13 guntas, deliberated on entering into a Joint Development Agreement (JDA) with a reputed builder for construction of high-rise apartments and villas. Thereafter, the assessee

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society, in its Extraordinary General Meeting (EGM) dated 27/09/2015, discussed the offers made by various real estate developers and, after considering the same, resolved to accept the offer made by MHCPL.

14. The assessee society, aggrieved with the order of the CIT(A) who has principally upheld the AO's computation of long-term capital gains (LTCG) on the transfer of the subject property pursuant to the Joint Development Agreement dated 25/01/2018 at Rs. 532,73,85,238/-, has carried the matter in appeal before us.

15. We have heard the Learned Authorized Representatives of both parties, perused the orders of the authorities below and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

16. Shri K K Chaitanya, Ld. Senior Advocate (for short, “Sr-AR”) for the assessee society, at the threshold of hearing of the appeal, submitted that the assumption of jurisdiction by the AO for framing the impugned assessment vide his order passed under section 143(3) r.w.s 144B of the Act, dated 24/09/2021 has been assailed considering the multiple serious infirmities, which are spread over Grounds of appeal Nos. 2 to 13 of the present appeal. However, the Ld. Sr. AR submitted that he is confining his contentions regarding four such infirmities which go to the very root of the

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assumption of jurisdiction by the AO as well as the consequential framing of the impugned assessment, viz., (i) assessment order passed by the AO under section 143(3) r.w.s 144B of the Act, dated 24/09/2021 r.w. Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short, "TOLA") r.w. notifications issued post TOLA extending the time limits which are not applicable to the case of the present assessee society, reveals that the same is barred by limitation; (ii) that as the notice under section 143(2) of the Act as per the new regime of faceless assessment which could have been issued either by the Jurisdictional Assessing Officer (JAO) or prescribed authority, but in the present case had been issued by the Assessment Unit of National Faceless Assessment Centre, is not in accord with the clear mandate of law, thus renders the consequential assessment order so passed in absence of valid assumption of jurisdiction as invalid and void-ab-initio; (iii) that as the assessment order has been passed in the present case in violation of procedure laid down in section 144B(1)(iii) of the Act, wherein the National Faceless Assessment Centre (NaFAC) was statutorily obligated to intimate the assessee society that the assessment in its case shall be framed in accordance with the procedure laid down under the said section, therefore, the same is rendered as invalid and void-ab-initio; and (iv) that as per section 144B(1)(xxv) of the Act, the National Faceless Assessment Centre (NaFAC) which upon receiving the revised draft assessment order

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was statutorily obligated to have forwarded the same to the assessee society and by serving a notice provided it an opportunity to show cause as to why the proposed variation should not be made, had dispensed with the statutory obligation of forwarding the said revised draft assessment order which contained variations prejudicial to the interest of the assessee society in comparison to the draft assessment order and thus failed to provide an opportunity to the assessee society by serving a notice calling upon it to show cause as to why the proposed variation should not be made, as a result whereof the impugned order of assessment passed under section 143(3) r.w.s 144B of the Act, dated 24/09/2021 is rendered as invalid and void ab initio.

17. As the Ld. Sr. AR has specifically assailed the validity of the jurisdiction assumed by the AO for framing the impugned assessment vide his order passed under section 143(3) r.w.s 144B of the Act, dated 24/09/2021, we shall first deal with the same.

Re: Assessment framed by the AO under section 143(3) r.w.s 144B of the Act, dated 24/09/2021 is barred by limitation:

18. The Ld. Sr. AR has vehemently submitted before us that the impugned assessment order passed in the present case under section 143(3) r.w.s 144B of the Act, dated 24/09/2021 is barred by limitation on a conjoint reading of section 153(1) of the Act r.w. Taxation and Other Laws (relaxation and Amendment of Certain Provisions) Act, 2020 (for short,

"TOLA") r.w. notifications extending the time period for framing the assessment. The Ld. Sr. AR submitted that the notifications issued post TOLA cannot apply to the case of the assessee society. It was submitted that, as per section 153(1) of the Act, the assessment for AY 2018-19 was required to be completed within 18 months from the end of the assessment year; therefore, the ordinary period of limitation expired on 30/09/2020. Elaborating on his contention, it was submitted that the subsequent extension of the limitation period as per notifications issued pursuant to TOLA cannot validly extend the statutory limitation period prescribed under section 153(1) of the Act.

18.1 Per contra, Ms Seema Meena, Ld. CIT-DR objected to the aforesaid contention of the Ld. Sr. AR. It was submitted that the assessment order passed by the AO, as per section 153(1) r.w. TOLA, r.w. subsequent notifications extending the time limit, was framed well within the prescribed time limit and cannot be held to be barred by limitation.

18.2. We have given thoughtful consideration to the contentions advanced by the Learned Authorized Representatives of both parties. Admittedly, in the normal course, the assessment in the case of the assessee society for AY 2018-19 as per the "first proviso" to section 153(1) of the Act ought to have been framed

within a period of 18 months from the end of the relevant assessment year, which would have expired on 30/09/2020. However, the question for which our indulgence has been sought is whether the period prescribed under section 153(1) of the Act stood validly extended by virtue of TOLA and the notifications issued thereafter.

18.3. We may herein observe that TOLA was enacted in the backdrop of the unprecedented disruption caused by the Covid-19 pandemic. Section 3(1) of TOLA thereof empowered the Central Government, by notification, to extend the time limit specified in, or prescribed or notified under, the specified Acts for the completion or compliance of specified actions falling within the period stipulated therein. We find that, as per the power so conferred, the Central Government has issued successive notifications extending the time limits for completion of, inter alia, assessments under the Income Tax Act.

18.4. We find that notification No.93/2020, dated 31/12/2020 extended the relevant period up to 31/03/2021. Thereafter, further notifications were issued which modified/extended the relevant dates. Finally, Notification No.74/2021, dated 25/06/2021 provided that, in relation to assessment or re-assessment under the Income

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Tax Act, where the time limit for completion of the action under section 153 or section 153B had expired on 30/06/2021 by virtue of the earlier extensions, such time limitation would stand further extended to 30/09/2021.

18.5. In our view, based on the aforesaid notifications, the contention of the Ld. Sr. AR that the limitation necessarily expired on 30/09/2020 overlooks the effect of the statutory relaxation introduced by the TOLA-allowed notifications issued in exercise of the power conferred thereunder. We are of the firm view that the original period under section 153(1) and the subsequently extended period must be read together. Accordingly, once the statutory power under TOLA was validly exercised and the period for completion of assessment was extended by the notifications issued thereunder, the date of 30/09/2020 (supra) ceased to be the operative outer date for completion of assessment falling within the scope of the notifications.

18.6. At this stage, we may herein observe that the **Hon'ble Supreme Court** in **Assistant Commissioner of Income Tax (International Taxation) and Ors. vs. Shelf Drilling Ron Tappmeyer Limited and Ors. (2025) 177 taxmann.com 262 (SC)**, while considering the case of the assessee company before them

for AY 2018-19, had observed that the ordinary period of 18 months under section 153(1) would have expired on 30/09/2020, but that, owing to the operation of TOLA and the notifications issued thereunder, the due date stood extended to 30/09/2021.

18.7. We shall now deal with the Ld. Sr. AR's contention that the notifications extending the limitation period for framing the assessment, issued after the expiry of the original period under section 153(1) of the Act, render it invalid. We are unable to concur with the aforesaid contention of the Ld. Sr. AR. We say so for the reason that, as the subject notifications were issued under the authority conferred upon the Central Government by TOLA, wherein the latter constituted the statutory source of power for extending the specified time limits, the claim of the Ld. Sr. AR's submission that the notifications extending the time limits issued subsequent to the expiry of the original period under section 153(1) of the Act are devoid of any force of law does not merit acceptance.

18.8. At this stage, we may herein observe that the Notification No.74/2021 specifically referred to the completion of assessment or re-assessment under the Income Tax Act and expressly extended the time limit under section 153 or 153B of the

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Act, in the circumstances specified therein, up to 30/09/2021. We are of the view that the subject Notification No.74/2021 was not an administrative/executive instrument purporting to amend section 153 of the Act, but was a notification issued pursuant to the enabling statutory provisions contained in TOLA. In this context, we may observe that it was the Parliament which enacted a temporary statutory relaxation mechanism empowering the Central Government to extend the specified statutory time limits in view of the exceptional circumstances prevailing during the relevant period. Accordingly, the notifications issued pursuant thereto operated within that statutory framework.

18.9. Coming to the facts involved in the present case, we are of the view that as the original time period for framing of assessment under section 153(1) of the Act expired on 30/09/2020, which, thereafter stood extended pursuant to TOLA and the notifications issued thereunder upto 30/09/2021, therefore, the assessment order in the present case having been passed under section 143(3) r.w.s 144B of the Act, dated 24/09/2021, i.e., before 30/09/2021 was well within the aforesaid period of extended limitation. Accordingly, the Ld. AR's contention that the assessment order passed by the AO under section 143(3)

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r.w.s 144B of the Act is barred by limitation is rejected. The **Ground of appeal Nos. 2** is dismissed.

Re: Assessment order is bad in law and void ab initio since the notice under section 143(2) dated 28.09.2019 was issued by the National e-Assessment Centre (for short, "NeAC"):

19. We find that the assessee society has assailed before us the validity of the notice issued under section 143(2) of the Act. The learned Sr. AR submitted that the assessment order is bad in law and void ab initio since the notice under section 143(2) dated 28.09.2019 was issued by the National e-Assessment Centre (for short, "NeAC"), whereas, according to him, the authority competent to issue such notice, at the relevant point of time, was the prescribed Income-tax Authority authorized in terms of section 143(2) r.w Rule 12E of the Income-tax Rules, 1962 and Notification No.65/2019 [F.No.187/2/2019-ITA-I], S.O.3279(E), dated 13.09.2019.

19.1. The Ld. Sr. AR drawing our attention to the copy of the notice u/s 143(2) of the Act dated 28.09.2019, submitted that the same revealed that it had been issued by the "Assessing Officer, NeAC". The Ld. AR submitted that the aforesaid aspect was material and would go to the validity of the impugned assessment because the statutory scheme applicable on that date did not authorize the AO, NeAC, to act as the prescribed Income-tax Authority for the purpose of issuing notice under section 143(2) of the Act. Elaborating on his contention, the Ld. Sr. AR

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referred to section 143(2) of the Act, which provides that where a return has been furnished under section 139 or in response to a notice under section 142(1), and the AO or the prescribed Income-tax Authority considers it necessary to ensure that the assessee has not understated income or computed excessive loss or underpaid tax, he shall serve on the assessee a notice requiring him to attend his office or produce or cause to be produced any evidence on which the assessee may rely in support of his return. It was submitted that the expression "Assessing Officer" has a defined meaning under section 2(7A) of the Act. The Ld. Sr. AR submitted that the term "Assessing Officer" means an Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under section 120(1) or (2) or any other provision of the Act. The Ld. Sr. AR submitted that jurisdiction over the assessee society vested in the Income-tax Officer, Ward 6(1), Hyderabad, who could issue the notice under section 143(2) of the Act. Alternatively, the Ld. Sr. AR submitted that the said notice could be issued by such other prescribed Income-tax Authority as had been specifically authorized by the CBDT in accordance with Rule 12E. The Ld. Sr. AR referred to Rule 12E of the Income-tax Rules, 1962, which, at the relevant time, contemplated that the prescribed Income-tax Authority for the purposes of section 143(2) shall be an Income-tax Authority not below the

rank of an Income-tax Officer who has been authorized by the CBDT to act as such authority for the purposes of section 143(2) of the Act. Carrying his contention further, the Ld. Sr. AR placed reliance upon Notification No.65/2019 [F.No.187/2/2019-ITA-I], S.O.3279(E), dated 13.09.2019, which was issued by the CBDT in exercise of powers under sections 120(1), 120(2) and 143(2), read with Rule 12E, and authorized the Assistant Commissioner of Income-tax (e-Verification), having headquarters at Delhi, to act as the prescribed Income-tax Authority for the purposes of section 143(2) of the Act, in respect of returns furnished under section 139 or in response to a notice under section 142(1) of the Act during the financial year commencing on 01.04.2018. The Ld. AR, based on his aforesaid contentions, submitted that on 28.09.2019, the statutory authority specifically authorized to issue a notice under section 143(2) of the Act was the Assistant Commissioner of Income-tax (e-Verification), Delhi. The Ld. Sr. AR vehemently submitted that the aforesaid notification did not authorize an “Assessing Officer, NeAC” to issue such notice.

19.2. The Ld. Sr. AR further submitted that the E-assessment Scheme, 2019, notified vide Notification No.61/2019 dated 12.09.2019, and the directions issued under section 143(3B), could not override the specific statutory requirement governing the authority competent to issue

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a notice under section 143(2) of the Act. It was submitted that the fact that the proceedings were to be conducted electronically or that the case was subsequently dealt with through NeAC could not cure the absence of jurisdiction at the very stage of issuance of the notice. The Ld. AR submitted that as the notice dated 28.09.2019 constituted the foundation for assumption of jurisdiction for framing the assessment under section 143(3) of the Act, therefore, if the notice itself was issued by an authority not competent to issue the same, the subsequent assessment proceedings could not acquire jurisdiction merely because the assessee participated in the proceedings. The Ld. Sr. AR, based on his aforesaid contentions, submitted that, as the very foundation for framing the impugned assessment was missing, the assessment order deserved to be quashed as void ab initio.

19.3. Per Contra, the Ld. CIT-DR, on the other hand, opposed the jurisdictional objection. It was submitted that the notice dated 28.09.2019 was issued in the context of the E-assessment Scheme, 2019 and that the entire assessment proceedings were conducted through the electronic mechanism prescribed by the CBDT. The Ld. CIT-DR submitted that the use of the designation “AO, NeAC” in the electronic notice could not, by itself, render the notice invalid. Elaborating further on her contention, the Ld. CIT-DR submitted that as the assessee society had not assailed the

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validity of the jurisdiction assumed by the AO, NeAC within the time frame contemplated under Section 124(3) of the Act, it was divested of its right to challenge the same for the first time in the course of the present proceedings. The Ld. CIT-DR further submitted that the notice under Section 143(2) was issued within the statutory period prescribed, and the same was duly served upon the assessee society, and the latter had participated in the assessment proceedings without raising any objection before the AO or during the assessment proceedings regarding the competence of the authority issuing the notice. The Ld. CIT-DR submitted that the aforesaid objection raised by the assessee-appellant was technical in nature and could not invalidate the assessment, when the assessee society had admittedly received the notice, participated in the proceedings, and was subsequently assessed under section 143(3) r.w. section 144B.

19.4. We have given thoughtful consideration to the contentions advanced by the Ld. ARs of both parties on the subject issue, in the backdrop of the orders of the authorities below and the material available on record, as well as the statutory framework applicable on the date of issuance of the notice. At the threshold, we may herein observe that the objection raised by the assessee society pertains to the competence and jurisdiction of the income-tax authority which issued the notice under

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Section 143(2) of the Act. In this regard, Section 124(3) of the Act will have material bearing on adjudication of the subject issue, as the said provision places a statutory embargo upon an assessee from calling in question the jurisdiction of an AO after the expiry of the prescribed period, where such objection has not been raised within the time stipulated therein. We find that the **Hon'ble Supreme Court** in the case of **DCIT (Exemption) & Anr. v. Kalinga Institute of Industrial Technology (2023) 454 ITR 582 (SC)**, while considering a similar objection regarding the jurisdiction of the AO, took note of the fact that the assessee before them had participated in the assessment proceedings and had not questioned the jurisdiction of the AO within the period prescribed under Section 124(3)(a) of the Act. The Hon'ble Supreme Court observed that Section 124(3)(a) precludes the assessee from questioning the jurisdiction of the AO if the same is not called in question within 30 days of receipt of the notice under Section 142(1) of the Act. The Hon'ble Supreme Court accordingly allowed the Revenue's appeal and held that the facts did not warrant interference with the assessment on jurisdictional grounds.

19.5. Coming to the facts involved in the present case, we find that it is not the case of the assessee society that it had, within the prescribed period contemplated under Section 124(3) of the Act, called in question the jurisdiction or competence of the authority which had issued the notice

under Section 143(2) of the Act. Rather, the assessee society has raised the aforesaid objection for the first time in the present appellate proceedings before us. We are, therefore, of the considered view that, in view of the statutory bar contained in Section 124(3) of the Act and the law laid down by the Hon'ble Supreme Court in DCIT (Exemption) & Anr. Vs. Kalinga Institute of Industrial Technology (supra), the assessee society cannot now be permitted to assail the AO's jurisdiction on the aforesaid ground. We may herein observe that the objection of the assessee society, even if considered from the perspective of the authority which issued the notice under Section 143(2) of the Act, is ultimately an objection concerning the jurisdiction of the income-tax authority. Once the assessee society, having participated in the assessment proceedings, failed to raise such objection within the period prescribed under Section 124(3) of the Act, the statutory consequence contemplated by the said provision follows. Accordingly, the assessee society cannot be permitted to keep such an objection in reserve and raise the same for the first time in the appellate proceedings after the assessment has been completed.

19.6. We, therefore, in terms of our aforesaid observations, find no merit in the contention of the Ld. AR that the assessment order is bad in law or void ab initio merely on the ground that the notice under Section 143(2) of the Act was issued by the National e-Assessment Center

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(NeAC). As the assessee society has failed to raise the aforesaid objection within the time prescribed under Section 124(3) of the Act, it is precluded from questioning the AO's jurisdiction in the present proceedings. Accordingly, the aforesaid **Ground of appeal No. 4** raised by the assessee society is dismissed.

Re: NaFAC has failed to issue intimation to the assessee society that assessment in its case shall be completed in accordance with the procedure laid down under section 144B(1)(iii) of the Act:

20. The Ld. AR has objected to the alleged non-issuance of the intimation under section 144(B)(1)(iii) of the Act, which contemplates an intimation to the assessee that the assessment in its case shall be completed in a faceless manner in accordance with the procedure laid down under the said section.

20.1. Before proceeding further, we may herein observe that the assessment year before us is AY 2018-19 and the assessment order under section 143(3) r.w.s 144B of the Act was passed on 24/09/2021. Accordingly, the provisions of section 144B of the Act, as applicable on the date of completion of the assessment, will be relevant for the adjudication of the aforesaid objection.

20.2. Section 144B of the Act was inserted w.e.f. 01/04/2021 and prescribed the procedure to be followed for making a faceless

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assessment. As it stood during the relevant period, section 144B(1)(iii) provided, inter alia, that where the assessee had furnished a return under section 139 and a notice under section 143(2) had been issued by the AO or the prescribed income tax authority, the NaFAC shall intimate the assessee that the assessment in his case shall be completed in accordance with the procedure laid down under section 144B of the Act. Accordingly, in a case where the assessee had furnished its return of income and notice under section 143(2) of the Act had been issued, section 144B(1)(iii) specifically envisaged an intimation by NaFAC informing the assessee society that the assessment in its case would thereafter be completed in accordance with the procedure prescribed under section 144B of the Act.

20.3. We principally concur with the Ld. Sr.AR that the aforesaid statutory requirement cannot be dispensed with because section 144B did not merely prescribe a change in the mode of communication between the assessee and the department, but prescribed a detailed statutory procedure governing the assessment, including communication through the NaFAC, consideration of the assessee's responses, preparation of the draft assessment order, providing of an opportunity against proposed variations prejudicial to the interest of the assessee and

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the manner in which the final assessment order was to be passed. At this stage, we may herein observe that as has been brought to our notice by the Ld. Sr. AR the **Hon'ble High Court of Madras** in **CPF (India) Private Limited v. Additional/Joint/Deputy /Assistant Commissioner of Income Tax/Income Tax Officer [2024] 158 taxmann.com 600 (Madras)**, has observed that an intimation under section 144B(1)(iii) of the Act, which informs an assessee of the fact that the assessment would be made in terms of section 144B of the Act is important as the framing of the faceless assessments under section 144B comes with its own set of obligations and rights in making assessment. In the said case, on a challenge by the assessee company to the assessment framed in its case on the ground that the intimation contemplated under section 144B(1)(iii) of the Act had not been furnished, the Hon'ble High Court observed that the expression employed in the provisions was "shall", which is prima facie indicative of being mandatory, though the same may be rebutted by other instructions such as the object and scope of the enactments and consequence flowing from such construction, had set aside the assessment proceedings with a liberty to the Revenue to proceed afresh in accordance with law, commencing from the stage of issuing the intimation under section 144B(1)(iii) of the Act.

20.4. However, we find that the facts involved in the present case before us stand on a different footing. We say so for the reason that, as observed by the CIT(A), and rightly so, the assessee society's contention that it did not receive intimation that the assessment proceedings were faceless is unfounded and baseless. The CIT(A) had observed that Para-3 of the notice under section 143(2) of the Act mentioned that the replies were to be submitted by the assessee society online through e-proceedings. Apart from that, the notice under section 143(2) of the Act, dated 28/09/2019, was sent to the assessee society along with a brief note on “e-Assessment Scheme-2019” (NeAC cases only), Pages 378 to 380 of APB.

20.5. We thus, in the backdrop of the aforesaid facts are of a firm conviction that the assessee society was in unequivocal terms vide Para 3 of notice under section 143(2) of the Act, dated 28/09/2019 that was accompanied with a note on “e-Assessment Scheme 2019” (NeAC cases only) was not only intimated that the submissions or any evidence on which it seeks to rely in support of its return of income were to be submitted to the NeAC physically in “e-proceedings” facility through its account in e-filing website (www.incometaxindiaefiling.gov.in), but as per the accompanying note on “e-Assessment Scheme 2019 (NeAC Cases only) was also

made aware about the new scheme of faceless assessment in electronic mode involving no human interference as was introduced by the Hon'ble Finance Minister while presenting the Budget-2019, which, e-Assessment Scheme 2019 (SO 3264(E)) had been notified on 12/09/2019 in the official Gazette and was made conversant about the salient features of the said e-Assessment Scheme, 2019. Accordingly, we are unable to persuade ourselves to concur with the Ld. Sr. AR's contention that the NaFAC had failed to intimate that the assessment proceedings in its case were to be carried out in a faceless manner as was required on its part under section 144B(1)(iii) of the Act, and reject the same. The **Ground of appeal No.5** is dismissed.

Re: The AO, NaFAC has passed the impugned assessment order without issuing a show cause notice as per the mandate under section 144B(1)(XXV)(b) of the Act, which thus renders the order so passed by him as invalid and void ab initio:

21. The assessee society has claimed that though a show cause notice (SCN) along with a draft assessment order was made available to it, but certain additions/variations which were not contained in the aforesaid SCN and draft assessment order were incorporated for the first time in the final assessment order without giving the assessee society an opportunity to respond to such

fresh variations by way of a revised show cause notice and revised draft assessment order.

21.1. Before proceeding further, we deem it apposite to examine the statutory scheme applicable to the assessment in the present case before us. Section 144B of the Act prescribed a sequential procedure, as per which the Assessment Unit (AU) was required to take into account the relevant material available on record, and where anything prejudicial to the interest of the assessee was proposed, the assessee was required to be afforded an opportunity to respond to such proposed variation. Apart from that, the procedure also contemplated further action, where, after considering the assessee's response, the proposed variations were modified or further variations were proposed. Accordingly, the purpose of the draft assessment order and the accompanying show cause notice was not merely to provide a formal communication of the proposed assessment but to provide the assessee with a meaningful opportunity to meet out the proposed prejudicial variations before the assessment was finalized.

21.2. We are of the view that if a particular addition was already proposed in the draft assessment order and the assessee society was afforded an opportunity to explain the same, then a

mere change in the computation or quantification of that addition would stand on a different footing. However, where an entirely new addition of a new prejudicial variation, based on a new issue or a different source of income, is introduced for the first time in the final assessment order without affording the assessee an opportunity to meet such variation, then such action would defeat the statutory procedure prescribed under section 144B(xvi) and 144B(xxv) of the Act.

21.3. Coming to the facts involved in the present case, the crucial question for which our indulgence has been sought is not merely whether a draft assessment order was furnished, but whether every prejudicial variation ultimately incorporated in the final assessment order had been put across to the assessee society in accordance with the statutory procedure.

21.4. We find that it is the claim of the assessee society that the AO/NaFAC vide his show cause notice, dated 19/04/2021, had proposed to compute the sale consideration receivable by the assessee society on the transfer of 8,69,028 Sq. ft. of built-up area under Section 53A of the Transfer of Property Act, 1908 and Section 2(47) of the Act at Rs. 561,77,59,078/-, viz. (i) value of consideration receivable for 8,56,028 Sq. ft. of super built-up area transferred to MHCPL @ Rs.

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6264.42 per Sq. ft. based on the Invoice No. JDA/2021-2022/01 dated 30.08.2021 raised by MHCPL on the assessee society: Rs. 553,37,21,662/- (on which value of construction the assessee society had paid GST of Rs. 26,35,10,556/-); and (ii). value of 13000 Sq. ft. of built-up area allotted by the assessee society to Sri. Surakanti Shashikanth Reddy and Smt. P. Swetha: Rs. 8,40,37,416/- (which was determined by adopting the value at which land was conveyed by the assessee society to MHCPL @ Rs. 6264.42 per Sq. ft.), and thereafter taking the Indexed cost of acquisition as per the Fair Market Value (FMV) of the subject land as on 01.04.1981 at Rs. 500/- per Sq. Yard (as per certificate submitted by the assessee society), determined the resultant LTCG at Rs. 532,73,85,238/-

21.5. The Ld. AR submitted that the AO after issuing the original draft assessment order a/w show cause notice had thereafter by adopting the total consideration receivable on the transfer of the subject property at Rs.561,77,59,078/- i.e., @ Rs.6464.42 per sq ft as against that as was originally proposed vide the SCN, dated 19/04/2021 at Rs.2,931.56 per sq ft, had thereafter without affording the assessee society an opportunity introduced a new prejudicial variation for the first time in the final assessment order, which was in clear violation of section 144B(1)(xxv)(b) of the Act. The Ld. Sr. AR submitted that as per section 144B(1)(xxv)(b) of the Act, in case the variations proposed

in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, then an opportunity is mandatorily required to be provided to the assessee by serving a notice calling upon him to show cause as to why the proposed variation should not be made. The Ld. Sr. AR submitted that, as the AO had dispensed with the aforesaid statutory obligation, which he was scrupulously required to adhere to, the consequential assessment framed by him cannot be sustained and is liable to be struck down.

21.6. We have given thoughtful consideration to the Ld. AR's contentions and principally concur with him that in case the variation in the draft assessment order is prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, then, the AO/NaFAC is statutorily obligated to provide an opportunity to the assessee by serving a notice calling upon him to show cause as to why the proposed variation should not be made. However, we find that the facts in the present case reveal that the AO/NaFAC, based on the assessee society's submissions dated 06/09/2021, observed that the draft assessment order required modification that was

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prejudicial to the assessee. Therefore, the AO/NaFAC, in order to meet the ends of justice and in line with the principles of natural justice, issued another addendum show cause notice to the assessee society on 13/09/2021, wherein it was called upon to explain, viz., (i) that as it had, as per the GST Invoice No. JDA/2021-22/01 admitted Rs. 553,37,21,662/- as the value of sale consideration receivable on which it had paid GST of Rs.26,35,10,556/-, then why the said value may not be adopted for the purposes of computing capital gains in so far as 8,56,028 Sq. ft. of super built-up area (70% of the super built-up area) transferred to MHCPL was concerned; and (ii) that in regard to 13000 sq ft super built up area, as no dispute/defect in titles was noticed, therefore, the assessee society was called upon to explain as to why the aforesaid area be deducted while computing the sale consideration. For the sake of clarity, we deem it apposite to cull out the aforesaid show cause notice, dated 13/09/2021 issued by the AO/NaFAC, to the assessee society proposing to make the aforesaid variations which were prejudicial to the assessee society, as under:

> "2.12. Based on the submission of the assessee dated 06.09.2021, the Draft assessment order required modification which was prejudicial to the assessee. Therefore, to meet the ends of justice and in line with the principles of natural justice, another addendum show cause notice was issued to the assessee on 13.09.2021 asking the following:-

> 1. As per documents submitted by you, for GST invoice No. JDA/2021-2022/01, wherein you have admitted Rs. 553,37,21,662/- as the value of consideration receivable. You have also paid GST of Rs.26,35,10,556/- for the same invoice value. Kindly show cause as to why the same should not be adopted for the purpose of capital gains.
>
> 2. In regards to 13,500 sq ft super built up area, no dispute/defect in titles was noticed. Please submit proof as to why the same should be deducted from your consideration."

21.7. We find that the assessee society, in response to the aforesaid show cause notice, dated 13/09/2021, had furnished its reply on 17/09/2021. Thereafter, the AO, taking cognizance of the aforesaid reply of the assessee society, had adopted the total consideration at Rs.561,77,59,078/- as the amount receivable by the assessee society on the transfer of the subject property.

21.8. We are of the considered view that as per the aforesaid facts, now when the AO/NaFAC had, vide the show cause notice, dated 13/09/2021, validly put the assessee society to notice about the proposed variations regarding the total value of sale consideration which he sought to adopt based on the invoice No. JDA/2021-22/01, dated 30/08/2021 raised by MHCPL, and the fact that no dispute/defect in titles was noticed regarding the 13000 sq ft of the built up area allotted to the aforesaid two persons, viz., (i) Sri Surakanti Shashikanth Reddy (7500 Sq. ft); (ii) Smt. P. Swetha (5500 Sq. ft), which, thus, were to be separately added to the sale consideration receivable, and

the assessee society had, vide its reply dated 17/09/2021, objected to the same, it is incomprehensible that, as to on what basis it is claimed that the assessee society had, without being put to notice and having been afforded sufficient opportunity to explain as to why the said proposed variation should not be made, suffered the aforesaid variation in the final assessment order which is prejudicial to its interest. In our view, as the very basis on which the assessee society claims that the variation made by the AO/NaFAC in the final draft assessment order, which is prejudicial to the interest of the assessee society to the extent that a substantially higher value was adopted as the sale consideration receivable for the purpose of computing capital gains without putting it to show cause as to why the proposed variation should not be made, is totally devoid and bereft of any substance, thus, the same is accordingly rejected. **Grounds of appeal Nos. 7 to 9** are rejected.

22. Before proceeding further and adverting to the contentions advanced by the Ld. Sr. AR regarding the merits of the case, we may herein observe that as the assessee society has, on certain other specific grounds of appeal, assailed the validity of the jurisdiction assumed by the AO for framing the assessment and the consequential assessment order

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passed by him vide his order passed under section 143(3) r.w. Section 144B of the Act, we deem it apposite, for the sake of completeness and to avoid multiplicity of litigation, to deal with and adjudicate the said other grounds raised before us.

Re: Validity of assessment order in view of section 143(3D) of the Act:

23. The assessee society has, without prejudice to its other contentions, challenged the validity of the assessment order on the ground that the assessment was completed after 31.03.2021 and, therefore, could not validly be governed by the earlier framework contained in sections 143(3A) and 143(3B) of the Act. The assessee society has claimed that the assessment order passed after 31.03.2021 under section 143(3) r.w. Section 144B of the Act, dated 24.09.2021 is invalid and bad in law under Section 143(3D) of the Act.

23.1. We have given thoughtful consideration to the aforesaid issue raised by the assessee society before us and are unable to persuade ourselves to concur with the same. Sections 143(3A) and 143(3B) formed part of the statutory framework under which the Faceless Assessment Scheme, 2019, was implemented. Section 143(3D) subsequently provided that the provisions of sub-sections (3A) and (3B) of Section 143 would not apply to an assessment made under Section 143(3) or Section 144 on or

after 01.04.2021. Accordingly, w.e.f. 01.04.2021, the earlier statutory framework under Sections 143(3A) and 143(3B) ceased to govern the assessments made on or after that date. We find that the **Hon'ble High Court of Delhi** in **Gurgaon Realtech Ltd. v. National Faceless Assessment Center (2021) 436 ITR 280 (Delhi)**, considered the effect of Section 143(3D) and held that an assessment order passed after 31.03.2021 could not be made under Sections 143(3A) and 143(3B) and was required to be passed in accordance with Section 144B of the Act.

23.2. Coming to the facts involved in the present case before us, we find that the assessment proceedings were initiated before 01.04.2021, since notice under section 143(2) was issued on 28.09.2019. The question, therefore, is not whether the assessment proceedings could continue after 31.03.2021, but whether, upon continuation of the pending proceedings after 01.04.2021, the assessment was completed in accordance with the statutory procedure then applicable. We find that the CBDT by its order in F. No. 187/3/2020-ITA-1, dated 06.09.2021 issued under section 144B(2) of the Act, has specifically provided that assessment proceedings pending as on 31.03.2021, including cases where the notice under section 143(2) had been issued by the erstwhile NeAC or NaFAC, were to be completed under section 144B with effect from 01.04.2021. We find that in the present case, the assessment order

dated 24.09.2021 has been expressly passed under section 143(3) r.w. section 144B of the Act. We are of the firm conviction that the mere fact that the proceedings had originated under the earlier NeAC mechanism does not establish a violation of section 143(3D) of the Act. Rather, the issue to be examined is whether the assessment, when finally completed on 24.09.2021, was conducted in accordance with the mandatory requirements of Section 144B of the Act, which prescribes a specific procedure in cases where a variation prejudicial to the assessee's interests is proposed. We are of the view that, as the assessment in the present case, which was initiated by notice issued under section 143(2) of the Act on 28.09.2019, i.e., before 01.04.2021, was thereafter concluded after following the procedure prescribed under section 144B of the Act, vide order passed by the AO/NFAC under Section 143(3) r.w. Section 144B of the Act, dated 24.09.2021; the assessment therein framed will not be rendered invalid merely because the proceedings had commenced under the earlier faceless assessment mechanism. We thus, finding no substance in the aforesaid claim of the assessee society, reject the same.

The **Ground of appeal No. 3** is dismissed.

Re: Notice under section 142(1) dated 02.09.2021 issued after the draft assessment order dated 19.04.2021 is contrary to the provisions and procedure laid down under Section 144B of the Act.

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24. The assessee society has raised a further ground, without prejudice to its other contentions, wherein it has challenged the notice issued under Section 142(1) of the Act dated 02.09.2021. The assessee society has claimed that as the draft assessment order had already been prepared on 19.04.2021, the issuance of a further notice under Section 142(1) on 02.09.2021 was contrary to the procedure prescribed under Section 144B of the Act.

24.1. We have given thoughtful consideration to the aforesaid claim of the assessee society. Before proceeding further, we deem it apposite to cull out the chronology of events that will have a bearing on the adjudication of the present issue before us. As observed by us hereinabove, a draft assessment order was prepared on 19.04.2021. Thereafter, notice under section 142(1) was issued on 02.09.2021, and the final assessment order was ultimately passed on 24.09.2021.

24.2. At the threshold, we may herein observe that we are unable to accept the assessee's proposition in its absolute form that issuance of a notice under section 142(1) becomes impermissible merely because a draft assessment order has already been prepared. We say so because Section 142(1) is an independent statutory provision enabling the AO to call for accounts, documents, information, or explanations that may be necessary for the purposes of making an assessment. We are of the view

that the mere fact that a draft assessment order has been prepared earlier cannot, by itself, extinguish the statutory power vested in the AO under section 142(1) of the Act. Rather, the manner in which the power under section 142(1) was exercised after preparation of the draft assessment order has to be examined in the context of the mandatory procedure prescribed under section 144B of the Act.

24.3. We find that Section 144B lays down a statutory mechanism for faceless assessment. As per the prescribed mechanism, the assessment unit is required to consider the material available on record and the assessee's response, formulate the proposal for determining income or loss, and prepare the draft assessment order. In a case where a variation prejudicial to the assessee's interests is proposed, the prescribed procedure requires that the assessee be afforded the opportunity contemplated before the assessment is finalized. Therefore, the statutory scheme seeks to ensure that the assessee is given an effective opportunity in respect of the variation which ultimately forms the basis of the assessment. We find that the **Hon'ble High Court of Bombay** in **Trendsutra Client Services Pvt. Ltd. v. Assistant Commissioner of Income-tax (2021) 283 Taxman 558 (Bom)**, has emphasized that where an assessment contains variations prejudicial to the assessee, the mandatory procedure under section 144B cannot be bypassed merely

because notices under section 142(1) had been issued and replies had been furnished. The Court treated compliance with the prescribed procedure as essential to the validity of the assessment. Similarly, the **Hon'ble High Court of Delhi** in **Bharat Aluminum Company Ltd. v. Union of India (2022) 442 ITR 101 (Delhi)** examined a situation where the variation ultimately incorporated in the draft/final assessment differed from the matter in respect of which the assessee had earlier been given an opportunity. The Hon'ble Court emphasized that the assessee must be provided with an effective opportunity to respond to the variation which is ultimately proposed.

24.4. Coming to the facts involved in the present case before us, we are of the view that the validity of the notice issued under Section 142(1) of the Act dated 02.09.2021 cannot be decided merely by reference to its date. Rather, what is relevant is the purpose for which the notice was issued and the manner in which the material obtained pursuant thereto was used for framing the assessment. We find on a perusal of the assessment order that the AO, vide his notice issued under Section 142(1) of the Act, dated 02.09.2021, had, based on the minutes of the Video Conference (VC) dated 02.09.2021, called upon the assessee company to submit, viz. (i). documents submitted and discussed during VC; (ii). submit the supplementary deed with the other litigating party for 13000 Sq.

ft. of super built-up area as was discussed during VC; (iii). submit GST letter as was discussed during VC; (iv). submit sale agreements of at least 10 flat buyers executed by M/s MHCPL; and (v). submit the allocation documents to the members of the assessee society, as discussed during the VC, and also submit the sale deed/registered documents to that effect. In response, the assessee society thereafter submitted the documents and submissions as called for, except for any proof of litigation with the third parties to whom the super built-up area of 13000 Sq. Ft. was claimed to have been allotted from its share. Also, the assessee society, in response to the aforesaid SCN, dated 02.09.2021, had submitted a supplementary agreement for allocation of flats between the assessee and MHCPL.

24.5. We are of the view that as the notice issued under Section 142(1) of the Act dated 02.09.2021, has merely sought clarification, reconciliation or supporting material in relation to matters which were discussed in the course of the Video Conference on 02.09.2021, and thereafter, the AO based on the reply/documents filed by the assessee society in response to the said notice on 06.09.2021, considering that the draft assessment order required modification which was prejudicial to the interest of the assessee society, issued to it another addendum show cause notice (SCN) dated 13.09.2021, wherein it was called upon to explain, viz. (i). that as per the GST Invoice No. JDA/2021-2-22/01 it had

admitted Rs. 553,37,21,662/- as the value of consideration receivable and had, on the said value, paid GST of Rs. 26,35,10,556/-, then as to why the said value should not be adopted for the purpose of capital gains; and (ii). that in regard to 13500 Sq. ft *(sic)* of super built-up area, as no dispute/defect in titles was noticed, then as to why the value of the said area be deducted from the consideration receivable. We find that the assessee society had thereafter responded to the aforesaid SCN, dated 13.09.2021, and both requested a VC and furnished its reply dated 17.09.2021.

24.6. We thus, in terms of our aforesaid observations, are of the view that the addition, variation or alteration in the final assessment order on the subject issue is founded upon material or information obtained as per the procedure prescribed under section 144B of the Act. In our view, as the final assessment order merely gives effect to the draft assessment order and the subsequent notice was confined to clarification or verification of matters already forming part of the assessment proceedings, which, as observed by us hereinabove, were duly replied to by the assessee society, therefore, no infirmity arises from the issuance of the notice by the AO under section 142(1) of the Act, dated 02.09.2021. The **Ground of appeal No. 6** being devoid of any substance is dismissed in terms of our aforesaid observations.

Re: That the impugned assessment is bad in law as the revised draft assessment order, (assuming that the same was made on 13.09.2021), is barred by limitation in terms of Para S. 3 of the SOP for AU contained in Circular F. NO. PR. CCIT/NeAC/SOP/2020-21 dated 19.11.2020:

25. We shall now deal with the contention of the assessee Society that, without prejudice to the other grounds, the impugned assessment is bad in law as the revised draft assessment order dated 13.09.2021 was barred by limitation in terms of Para S.3 of the Standard Operating Procedure (SOP) for the Assessment Unit issued vide Circular F. No. Pr.CCIT/NeAC/SOP/2020-21 dated 19.11.2020.

25.1. We have considered the contention of the assessee Society and perused the material available on record. We are of the view that Para S.3 of the SOP for the Assessment Unit issued vide Circular F. No. Pr.CCIT/NeAC/SOP/2020-21 dated 19.11.2020 provides that the draft assessment order should ideally be submitted within a reasonable time and not later than 15 days of receipt of complete and final information required for submission of the draft order. In our view, the said provision is an internal procedural guideline governing the functioning of the Assessment Unit and does not prescribe any independent statutory period of limitation for completion of assessment.

25.2. Coming to the facts of the present case, we find that the original draft assessment order was passed on 19.04.2021. Thereafter, during the assessment proceedings, the assessee Society, inter alia, furnished an Invoice No. JDA/2021-2022/01 dated 30.08.2021, reflecting construction services of Rs. 5,53,37,21,662/- and GST of Rs.26,35,10,556/-. Also, the issue regarding the additional 13,000 square feet of super built-up area was examined in the subsequent proceedings. As is discernible from the record, the AO thereafter issued a notice under Section 142(1) of the Act, dated 02.09.2021, and afforded the assessee society an opportunity to explain the aforesaid matters.

25.3. We may herein observe that the revised draft assessment order was thus not a mere delayed reiteration of the original draft order. Rather, it followed the receipt and examination of further material furnished during the assessment proceedings and the consequential opportunity afforded to the assessee Society. We find that the SOP itself contemplates the examination of further information and clarifications received from the assessee during the assessment proceedings. Apart from that, we find that the expression “not later than 15 days” in Para S.3 of the SOP cannot be construed as a statutory period of limitation, breach of which would, by itself, render the assessment proceedings void or the assessment order barred by limitation. We are firmly of the view that the statutory limitation

for completion of assessment is governed by the provisions of the Income-tax Act and not by the aforesaid internal SOP.

25.4. We, thus, are of the view that in the backdrop of the facts of the present case, merely because the revised draft assessment order was prepared/submitted on 13.09.2021, the assessment cannot be held to be barred by limitation based on the contents of Para S.3 of the SOP. Accordingly, the aforesaid contention of the assessee society is rejected, and the **Ground of appeal No. 10** is dismissed.

Re: The assessment order is invalid on the ground that the same has been digitally signed by Shri Vishesh Prakash, Deputy Commissioner of Income-tax, through the official email identifier DCIT.2.1.NEAC@ incometax.gov.in, and that such action is contrary to the provisions of section 144B(7)(i)(a) of the Act, as the said provision stood prior to 2022:

26. We have carefully considered the aforesaid claim of the assessee appellant. In our considered view, the assessee society has raised an alternative ground contending that the impugned assessment order is invalid as being contrary to section 144B(7)(i)(a) of the Act, as the said provision stood prior to its substitution by the Finance Act, 2022. It has been submitted that the assessment order has been digitally signed by Shri Vishesh Prakash, Deputy Commissioner of Income-tax, through the email identifier DCIT.2.1. NEAC@ incometax.gov.in, whereas section 144B(7)(i)(a), as applicable to the relevant period, required an electronic

record to be authenticated by the National Faceless Assessment Center by affixing its digital signature. Also, it is the grievance of the assessee Society that, without prejudice, the impugned assessment order is bad in law, as it has been passed by an Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income-tax Officer.

26.1. In this regard, we deem it appropriate to refer to the last page of the assessment order, i.e., Page 79, which reveals that the same has been digitally signed by Shri Vishesh Prakash with the endorsement "Certification Signature by Vishesh Prakash delhi.dcit2.1.neac@ incometax.gov.in> Validity unknown", dated 24.09.2021 at 14:59:50 IST.

26.2. We have considered the grievance of the assessee Society and perused the provisions of Section 144B of the Act as was applicable to the year under consideration. Section 144B(3) of the Act provides for the constitution of Assessment Units for the purposes of making faceless assessments and expressly provides that the expression "assessment unit" refers to an Assessing Officer having such powers as may be assigned by the CBDT. Further, section 144B(4) specifically provides that an Assessment Unit may comprise, inter alia, an Additional Commissioner/Joint Commissioner and a Deputy Commissioner/Assistant Commissioner/Income-tax Officer.

26.3. Thus, under the faceless assessment mechanism, the authority of an officer to make an assessment does not depend merely upon his designation as an Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner or Income-tax Officer, but upon the powers assigned to him as an officer of the concerned Assessment Unit under section 144B. The statutory scheme itself recognizes officers of the rank of Assistant Commissioner and Income-tax Officer as authorities who may constitute an Assessment Unit.

26.4. We may herein observe that, under section 144B of the Act, the Assessment Unit itself is the statutory mechanism through which the assessment is made in the faceless regime. The electronic record must be authenticated by the concerned unit by affixing its digital signature. Consequently, the mere appearance of the name and designation of the particular officer who digitally authenticated the electronic record does not, by itself, invalidate the assessment, when such officer was functioning as an officer of the duly constituted Assessment Unit.

26.5. We are of the view that in the present case before us, the assessee Society has not brought any material on record to establish that Shri Vishesh Prakash was not an officer of the concerned Assessment Unit or that he lacked the powers assigned to the Assessment Unit under Section 144B of the Act. In our view, the assessee's contention, therefore,

rests merely on the designation/email identifier appearing on the digital signature and does not establish any lack of jurisdiction or competence in passing the impugned assessment order.

26.6. We thus, in the backdrop of our aforesaid observations, find no merit in the grievance of the assessee society that the impugned assessment order was passed by an incompetent authority. Accordingly, the **Grounds of appeal Nos. 11 and 12** are dismissed in terms of our aforesaid observations.

Re: The lower authorities have failed to appreciate that no income accrued or arose in the hands of the assessee Society by reason of the doctrine of mutuality:

27. We have considered the aforesaid claim of the assessee society and are unable to persuade ourselves to accept the same. The doctrine of mutuality is founded on the principle of complete identity between the contributors to a common fund and the participators therein, as a result whereof the principle applies where the surplus arises from dealings amongst the members themselves.

27.1. However, in the present case before us, the income in question arises from the development arrangement entered into by the assessee Society with M/s My Home Constructions Private Limited (MHCPL), an independent third party. We find that as per the JDA-cum-

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irrevocable GPA dated 24.01.2018, the assessee Society became entitled to 30% of the developed area, while MHCPL was entitled to 70%. In our view, the transaction giving rise to the impugned income was therefore between the assessee Society and an outside developer, and not a transaction amongst the members of the Society.

27.2. We may herein observe that the mere fact that the assessee Society was constituted by its members and that the property was ultimately intended for their benefit does not, by itself, attract the doctrine of mutuality. We say so because the income in question did not arise from contributions made by the members to a common fund or from dealings amongst the members, but from the development arrangement entered into with MHCPL, i.e., a third party. As the essential requirement of identity between contributors and participants is absent, the assessee society's claim that no income accrued or arose in its hands by reason of the doctrine of mutuality being devoid and bereft of any substance is accordingly rejected. The **Ground of appeal No. 14.4** is dismissed in terms of our aforesaid observations.

Re: The lower authorities have erred in determining the full value of consideration (FVC) on the basis of their ipse dixit, instead of applying section 50D of the Act, which, according to the assessee Society, provides for adoption of the stamp duty value of 70% of the subject land as on the date of transfer:

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28. We have given thoughtful consideration to the aforesaid claim of the assessee society. We may herein observe that the provisions of section 50D of the Act can be invoked where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined. In such a case, for the purposes of computing the income chargeable to tax as capital gains, the fair market value (FMV) of the asset on the date of transfer is deemed to be the full value of the consideration received or accruing as a result of such transfer.

28.1. However, in the case before us, we find that the AO, while framing the assessment, specifically observed that, as per the submissions dated 06.09.2021 and the VC presentation dated 02.09.2021, the assessee Society itself had admitted the value of the asset in the GST invoice. The said value was a definite and ascertained amount on which GST has also been paid by the assessee society. Although the AO had initially sought to adopt the fair market value of the super built-up area on the basis of the SRO value, but as the assessee society in the course of the assessment proceedings itself had admitted the value of Rs.5,53,37,21,662/- for 8,56,028 square feet of super built-up area, inclusive of GST, therefore, the AO had adopted the said value as the deemed sale consideration receivable by the assessee society.

28.2. We have given thoughtful consideration to the matter and concur with the view taken by the AO. In our view, once the consideration/value of the subject property is definite, ascertained and ascertainable, the foundational condition for invoking section 50D is absent. As observed hereinabove, the said provision applies only where the consideration received or accruing as a result of the transfer is not ascertainable or determinable. The same, therefore, cannot be invoked in the present case.

28.3. We thus find no merit in the contention of the assessee Society that the full value of consideration was required to be determined by applying section 50D. Accordingly, **Grounds of appeal Nos. 15.5 and 15.6** raised by the assessee Society, being devoid and bereft of any substance, are dismissed.

Re: The lower authorities have erred in determining the full value of consideration with reference to the owner's share of the super built-up area, thereby indirectly invoking section 45(5A) of the Act, which, admittedly, does not apply to the assessee society being an AOP:

29. We shall now deal with the claim of the assessee Society that the lower authorities have erred in determining the full value of consideration with reference to the owner's share of the super built-up

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area, thereby indirectly invoking section 45(5A) of the Act, which, admittedly, does not apply to the assessee society being an AOP.

29.1. We find that section 45(5A), inserted by the Finance Act, 2017 w.e.f. 01.04.2018, provides for deferment of chargeability of capital gains arising from the transfer of land or building, or both, under a specified agreement, to the previous year in which the certificate of completion of the whole or part of the project is issued by the competent authority. However, the provision expressly applies only where the assessee is an individual or a Hindu undivided family.

29.2. We have given thoughtful consideration and principally concur with the AO that, since the assessee before us is an AOP, the benefit of section 45(5A) is not available to it. Consequently, the chargeability of capital gains arising from the transfer of the subject property cannot be postponed to the year in which the competent authority issues the completion certificate under section 45(5A) of the Act.

29.3. We further find that the AO, at no stage, invoked section 45(5A) for determining the tax liability of the assessee Society. Rather, the AO referred to the said provision only in support of the proposition that the statutory deferment contemplated therein is specifically confined to an individual or an HUF. The computation of capital gains for the assessee

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Society was otherwise made in accordance with the applicable provisions in the subject year of transfer of the property itself. We may herein observe that merely referring to a statutory provision to demonstrate the scope of a specific legislative concession cannot be construed as invoking that provision for determining the assessee's tax liability. Since section 45(5A) itself excludes an AOP from its ambit, the assessee Society's contention that the AO indirectly applied the said provision is misconceived. Accordingly, we find no merit in the aforesaid contention of the assessee society and reject the same. The **Ground of appeal No. 15.7** is dismissed in terms of our aforesaid observations.

Re: The lower authorities have erred in determining the full value of consideration (FVC) with reference to the owner's share of the super built-up area by adopting the value disclosed in the GST invoice dated 30.08.2021, amounting to Rs.5,53,37,21,662/-, which pertains to a period much subsequent to the date of the JDA dated 24.01.2018 and, therefore, could not constitute the consideration accruing as a result of the transfer in the previous year relevant to AY 2018-19:

30. We shall now deal with the contention of the assessee Society that the lower authorities have erred in determining the full value of consideration (FVC) with reference to the owner's share of the super built-up area by adopting the value disclosed in the GST invoice dated 30.08.2021, amounting to Rs.5,53,37,21,662/-, which pertains to a period much subsequent to the date of the JDA dated 24.01.2018 and, therefore,

could not constitute the consideration accruing as a result of the transfer in the previous year relevant to AY 2018-19.

30.1. We have given thoughtful consideration to the aforesaid claim of the assessee society. Admittedly, it is a matter of record that the transfer has been held by the lower authorities to have taken place pursuant to the JDA dated 24.01.2018. However, the invoice issued by MHCPL, relied upon by the AO, is dated 30.08.2021 and relates to construction services provided by the developer in respect of the super built-up area that falls to the share of the assessee Society. Thus, the said value came into existence much after the date of the alleged transfer.

30.2. We may herein observe that Section 45(5A), inserted by the Finance Act, 2017 with effect from 01.04.2018, carves out a specific exception to the general rule contained in Section 45(1) of the Act. It provides that, in the case of an assessee being an individual or HUF who transfers land or building, or both, under a specified agreement, the capital gain shall be chargeable in the previous year in which the completion certificate is issued and, for the purposes of section 48, the stamp duty value of the assessee's share in the project as on the date of such certificate, together with the monetary consideration, if any, shall be deemed to be the full value of consideration.

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30.3. We concur with the claim of the assessee Society to the limited extent that section 45(5A) is not applicable to the present assessee society, being an AOP. Consequently, the special statutory mechanism under which the year of chargeability as well as the deemed FVC are linked to a subsequent event, namely, the issue of the completion certificate, is unavailable to the assessee Society.

30.4. In the context of the issue in hand, support can also be drawn from the judgment of the **Hon'ble Supreme Court** in **Navin Jindal v. Assistant Commissioner of Income Tax, (2010) 320 ITR 708 (SC)**, wherein the Hon'ble Apex Court has observed that chargeability and computation have to go hand in hand and that computation is an integral part of chargeability under the Act. Applying the aforesaid principle, once the transfer is held to have taken place on 24.01.2018, the computation of capital gains, including determination of the FVC, has to be with reference to the consideration received or accruing as a result of that transfer. In our view, as Section 45(5A) does not apply to an AOP, the FVC of the transfer transaction dated 24.01.2018 cannot be determined based on the value reflected in an invoice raised by the developer more than three years thereafter. The value reflected in the subsequent invoice may constitute relevant material, but the same cannot, merely on that basis, be adopted

as the FVC without determining its nexus with the consideration received or accruing as a result of the transfer on the relevant date.

30.5. We thus, in terms of our aforesaid observations, set aside the issue regarding the quantification of the sale consideration receivable by the assessee Society to the file of the AO, who is directed to determine and compute the same with reference to the date of transfer, i.e., 24.01.2018, in accordance with law and after affording due opportunity of being heard to the assessee Society. Accordingly, **Grounds of appeal Nos. 15.8 to 15.11** raised by the assessee Society are allowed for statistical purposes in terms of our aforesaid observations.

Re: That the Lower Authorities have erroneously added Rs. 8,40,37,416/- representing the value of 13,000 sft of super built up area [13,000 X Rs. 6,464.42 per sft] to the FVC, by wrongly brushing aside the contention of the Appellant that it had to forego the said area out of the owner's share of 8,50,724 sft:

31. We shall now deal with the grievance of the assessee society that the lower authorities were not justified in adding an amount of Rs.8,40,37,460/-, representing the value of 13,000 sq. ft. of super built-up area, computed at Rs.6,464.42 per sq. ft. (13,000 sq. ft. × Rs.6,464.42), to the full value of consideration by rejecting its contention that the said area had to be forgone out of its share of 8,50,724 sq. ft.

31.1. We find that the contention of the assessee society is that, as per the terms governing its entitlement under the JDA, its share of the super built-up area stood restricted to 8,50,724 sq. ft. and that the aforesaid 13,000 sq. ft. was required to be carved out of its said share and allotted to two specified persons, viz. (i). Sri. Surakanti Shashikanth Reddy (7500 Sq ft); and (ii). Smt. P. Swetha (5500 Sq. ft). According to the assessee Society, the said area, therefore, did not constitute any additional entitlement of the Society and its value could not have been separately added to the full value of consideration.

31.2. We have given thoughtful consideration and find that the aforesaid claim requires verification of the assessee Society's actual entitlement under the JDA and the subsequent arrangements relating to the said 13,000 sq. ft. We are of the view that it would be necessary to examine whether the aforesaid area was, in fact, carved out of the share of the assessee society and whether its value had already been factored into the consideration adopted for the transfer. We, therefore, restore this issue to the file of the AO for examining the JDA, the supplementary agreement, the relevant allotment documents and other supporting material and thereafter determine whether the 13,000 sq. ft. formed part of the assessee Society's entitlement of 8,50,724 sq. ft. If, on verification, it is found that the said area was required to be forgone out of the Society's

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own entitlement and that its value has already been considered in determining the full value of consideration, the same shall not be subjected to a separate addition. Needless to say, the assessee society shall be afforded reasonable opportunity of being heard and shall be at liberty to furnish all relevant evidence in support of its claim.

31.3. Before parting on the subject issue, we may herein observe that the CIT(A) had, while considering the claim of the assessee society, that pursuant to the supplemental allocation cum supplemental agreement dated 25.11.2022 the revised area allocated to it was changed from 8,69,341 Sq. ft to 8,50,724 Sq. ft directed the AO to take cognizance of the said fact and to compute the assessee society's revised income. Therefore, considering the subject issue before us, i.e., the claim of the assessee society that it had to forgo 13,000 Sq. ft of super built-up area of the subject property to the aforesaid two persons is inextricably interlinked and interwoven with the assessee's claim that the revised area allocated to it was reduced to 8,50,724 Sq. ft.; the AO is directed to also consider the said aspect in the course of the set-aside proceedings while determining the area of the super built-up area allocated/falling to the share of the assessee society. Accordingly, the **Ground of appeal No. 15.12** raised by the assessee society is allowed for statistical purposes in terms of our aforesaid observations.

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Re: That the Lower Authorities are not justified in adding GST of Rs. 26,35,10,556/- payable by the Appellant to the FVC, instead of reducing the same from the FVC as per the claim of the Appellant that owners have to incur the same as one of the conditions in the JDA, thus resulting in unjust double addition of Rs. 52,70,21,112/-:

32. We shall now deal with the grievance of the assessee society that the lower authorities are not justified in adding GST of Rs.26,35,10,556/- payable by the assessee society to the full value of consideration, instead of reducing the same therefrom, as claimed by the assessee society on the ground that it was required to incur the said GST liability as one of the conditions of the Joint Development Agreement, which, thus, has resulted in an unjust double addition of Rs.52,70,21,112/-

32.1. We find that it is the contention of the assessee society that the GST liability of Rs.26,35,10,556/- was not an additional benefit or consideration accruing to it, but was a liability required to be discharged by it in terms of the JDA. According to the assessee society, if the said amount has been included in determining the full value of consideration and the same liability is again borne by the society, the effect would be to tax the same amount twice.

32.2. We find that the aforesaid claim of the assessee society requires examination with reference to the terms of the JDA, the GST invoice, the basis on which the construction consideration was

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determined, and the actual manner in which the GST liability was discharged. It is also necessary to ascertain whether the GST component has been included in the amount adopted by the AO as the full value of consideration and, if so, whether its separate consideration has resulted in a double addition. We, therefore, restore this issue to the file of the AO with a direction to examine the aforesaid aspects and determine in accordance with law, whether the GST component forms part of the full value of consideration and whether the assessee society is entitled to any consequential reduction or deduction in respect thereof. The AO shall, in the course of the set aside proceedings, ensure that the same component is not subjected to taxation twice. Needless to say, the assessee society shall be afforded reasonable opportunity of being heard and shall be at liberty to furnish all relevant particulars and documentary evidence in support of its claim. Accordingly, the **Grounds of appeal Nos. 15.13 and 15.14** raised by the assessee society are allowed for statistical purposes in terms of our aforesaid observations.

Re: The lower authorities are not justified in adding amenity charges of Rs.3 lakh per flat, payable by the owner, to the full value of consideration (FVC), instead of reducing the same from the FVC, as claimed by the assessee Society:

33. We shall now deal with the grievance of the assessee society that the lower authorities are not justified in adding amenity charges of

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Rs.3 lakh per flat, payable by the owner, to the full value of consideration (FVC), instead of reducing the same from the FVC. It is the claim of the assessee society that it was required to incur the said expenditure as a condition under the JDA, and that the approach of the lower authorities has resulted in an unjust double addition of Rs. 6 lakh per flat.

33.1. We have considered the aforesaid contention. Section 48(i) of the Act provides for deduction, from the full value of consideration, of expenditure incurred wholly and exclusively in connection with the transfer of the capital asset. Therefore, the allowability of the amenity charges would depend on whether the said payment was, in fact, incurred by the assessee Society and had a direct and proximate nexus with the transfer of the subject property.

33.2. We find that in the present case, the assessee Society has claimed that, under the terms of the JDA, the owners were required to bear amenity charges of Rs.3 lakh per flat and that, notwithstanding this liability, the said amount has been included in the value adopted by the lower authorities for determining the FVC. We are of the view that if the said amount has already been factored into the value adopted as consideration and thereafter added to the FVC, the same component cannot obviously be brought to tax twice.

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33.3. We may herein observe that the issue cannot be decided merely on the basis of the nomenclature of the payment as “amenity charges”. It is necessary to examine the relevant provisions of the JDA, the basis on which the amount of Rs.3 lakh per flat was determined, the number of flats to which the liability relates, the invoices or other supporting documents, the actual payment or discharge of the liability by the assessee society and, most importantly, the manner in which the said amount has been considered while determining the FVC.

33.4. We, therefore, considering the totality of the facts pertaining to the issue in hand, deem it appropriate to restore this issue to the file of the AO for fresh examination. The AO shall examine whether the amenity charges of Rs. 3 lakh per flat were an obligation of the assessee Society under the JDA, whether the same were actually incurred wholly and exclusively in connection with the transfer, and whether the said amount has already been included in the value adopted for determining the FVC. If the same component has already formed part of the FVC and has thereafter again been added, the AO shall ensure that such double addition does not survive. If, on the other hand, the amount qualifies as an expenditure incurred wholly and exclusively in connection with the transfer, the admissibility of deduction under section 48(i) shall be examined in accordance with law. Needless to say, the assessee society

shall, in the course of the set-aside proceedings, be afforded an adequate opportunity of being heard. The **Grounds of appeal Nos. 15.15 and 15.16** raised by the assessee society are allowed for statistical purposes in terms of our aforesaid observations

Re: The lower authorities were not justified in failing to give credit for the taxes actually paid by the respective members of the cooperative society in respect of the transfer of 70% of the subject land under the JDA, while computing the tax liability in the hands of the assessee Society:

34. We shall now deal with the grievance of the assessee society that the lower authorities were not justified in failing to give credit for the taxes actually paid by the respective members of the society in respect of the transfer of 70% of the subject land under the JDA, while computing the tax liability in the hands of the assessee society.

34.1. We may observe that this issue is inextricably interlinked or in fact interwoven with the claim of the assessee society that the transfer transaction was liable to be brought to tax in the hands of the members and not in the hands of the assessee society. We have, for the reasons recorded hereinafter, held that the transfer of the development rights under the JDA dated 24.01.2018 was effected by the assessee society and that the resultant capital gains are liable to be assessed in its hands.

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34.2. Having held so, the claim of the assessee society for credit of the taxes actually paid by the respective members in respect of the same transfer transaction requires verification. The AO shall examine the assessment particulars and the taxes actually paid by the respective members, and verify whether such taxes relate to the same income/transfer transaction that has been brought to tax in the hands of the assessee society. We, therefore, restore this issue to the file of the AO for examining the claim of the assessee society and, after verification of the relevant records and the taxes actually paid by the respective members, determine whether and to what extent such credit is legally allowable in the hands of the assessee society in accordance with law. Needless to say, the assessee society shall be afforded adequate opportunity of being heard and shall furnish all necessary particulars and supporting evidence in this regard. Accordingly, **Ground of appeal No. 16** raised by the assessee society is allowed for statistical purposes in terms of our aforesaid observations.

35. Coming to the grievance of the assessee society that the lower authorities were not justified in making various observations which, according to the assessee society, are incorrect, false and contrary to the facts on record, we observe that no specific contention was raised before us in respect of the said grievance. In the absence of any specific

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contention having been raised or argued before us nor anything discernible from the record, the aforesaid ground of appeal is treated as not pressed. Accordingly, **Ground of appeal No. 17** is dismissed as not pressed in terms of our aforesaid observations.

36. Coming to the grievance of the assessee Society that the AO has failed to give effect to the order of the CIT(A) dated 12.12.2025, we observe that the said grievance does not emanate from the impugned order which has been assailed before us. The issue, therefore, does not arise for our consideration in the present appeal. Accordingly, **Ground of appeal No. 18** is dismissed as infructuous.

Re: That the lower authorities were not justified in treating the dividend income earned from the liquid fund, amounting to Rs. 12,36,217/-, as taxable income

37. We shall now deal with the grievance of the assessee society that the lower authorities were not justified in treating the dividend income earned from the liquid fund, amounting to Rs. 12,36,217/-, as taxable income by assessing the same partly under the head “Profits and Gains of Business or Profession” and partly under the head “Income from Other Sources”, instead of allowing its claim of exemption under section 10(35) of the Act.

37.1. We find from the orders of the authorities below that the aforesaid claim was not examined by the AO in the course of the limited scrutiny proceedings, on the ground that the issue was beyond the scope of the jurisdiction vested with him. However, the assessee society was permitted to raise the said grievance in the proceedings under section 154 of the Act. We further find that the assessee society's application under section 154 of the Act was rejected by the AO/CPC. The CIT(A), while taking cognizance of the said order, upheld the view taken by the AO and observed that the assessee society ought to have filed an appeal against the order passed under section 154 of the Act. We are unable to subscribe to the aforesaid reasoning. In our view, once the assessee society's claim was specifically raised and rejected in the order passed under section 154 of the Act, the substantive claim requires examination on the merits. We further observe that, for the year under consideration, Section 10(35) provided an exemption in respect of income received from units of a Mutual Fund specified under Section 10(23D) of the Act, subject to the conditions prescribed therein. Accordingly, we restore the issue to the AO's file to examine the nature of the liquid-fund investment and the relevant supporting evidence, and to determine whether the receipt qualifies for exemption under section 10(35) of the Act, as applicable to the year under consideration. The AO shall thereafter determine the correct tax treatment of the said receipt in accordance with law. Needless

to say, the assessee society, in the course of the set-aside proceedings, shall be afforded a reasonable opportunity of being heard and shall be at liberty to furnish the relevant particulars and supporting evidence. Accordingly, the **Ground of appeal No. 19** raised by the assessee society is allowed for statistical purposes in terms of our aforesaid observations.

37.2. We find that the assessee society, vide Ground of appeal No. 20, has assailed the levy of interest under sections 234B and 234C of the Act. In this regard, we may observe that, as held by the **Hon'ble Supreme Court** in **CIT vs. Anjum M.H. Ghasawala (2001) 252 ITR 1 (SC)**, the levy of interest is mandatory. Accordingly, the AO is directed to recompute the assessee society's interest liability, while giving effect to our aforesaid order. The **Ground of appeal No. 20** is disposed of in terms of our aforesaid observations.

38. We shall now deal with the contentions advanced by the Ld. Sr. AR as regards the merits of the case, wherein he has assailed the validity of the addition made by the AO on two grounds, viz. (i). that the execution of the registered Development Agreement-cum-Irrevocable GPA dated 24.01.2018 did not result in a transfer of the assessee's rights in the subject property within the meaning of section 2(47) of the Act; and (ii). alternatively, the impugned capital gain ought to have been assessed

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in the hands of the individual members who were the beneficial owners of the subject property and not in the hands of the assessee society.

Re: That as to whether the registered Development Agreement-cum-Irrevocable GPA dated 24.01.2018 resulted in a transfer of the assessee's rights in the subject property within the meaning of section 2(47) of the Act:

39. We find that the principal controversy involved in the present case for which our indulgence has been sought is as to whether or not the registered Development Agreement-cum-Irrevocable GPA (JDA) dated 24.01.2018 executed between the assessee society and the developer, viz. MHCPL resulted in a transfer of the assessee's rights in the subject property within the meaning of section 2(47) of the Act?

39.1. We have given thoughtful consideration to the contentions advanced by the Ld. Authorized Representatives of both parties, perused the orders of the authorities below and the material available on record, and considered the judicial pronouncements that they have pressed into service to drive home their respective contentions. Also, we have examined the development agreement (JDA) dated 24.01.2018, the RERA documents, the declarations and affidavits furnished by the parties, the correspondence with the statutory authorities and the other documents relied upon by the AO and the assessee society.

39.2. In our considered view, the issue cannot be decided merely by looking at the nomenclature of the Joint Development Agreement (JDA) or by applying section 53A of the Transfer of Property Act in isolation. Rather, the substance of the rights created under the registered development agreement and the manner in which those rights were subsequently exercised must be examined.

39.3. Before proceeding further, we deem it apposite to cull out Section 2(47) of the Act, as the primary controversy involved in the present appeal hinges around determining the scope and gamut of the said statutory provision, which during the relevant period read as under:

> "2(47) "transfer", in relation to a capital asset, includes,—
>
> (i) the sale, exchange or relinquishment of the asset; or
> (ii) the extinguishment of any rights therein; or
> (iii) the compulsory acquisition thereof under any law; or
> (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or
> (iva) the maturity or redemption of a zero coupon bond; or
> (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or
> (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.
>
> Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.
>
> Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any

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manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;"

We find that Section 2(47) of the Act contains an inclusive definition of the expression "transfer". Clause (v) of Section 2(47) covers transactions involving allowing possession of immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act (5 of 1882). Clause (vi) of Section 2(47), on the other hand, covers any transaction which has the effect of transferring or enabling the enjoyment of immovable property. We further find that "Explanation 2" to Section 2(47) of the Act, inserted by the Finance Act, 2012 with retrospective effect from 01.04.1962, further clarifies that transfer includes disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement or otherwise.

39.4. We are of the view that the definition of the term "transfer" as embodied in Section 2(47) of the Act requires us to examine the actual rights and obligations created between the parties pursuant to the registered Development Agreement-cum-Irrevocable GPA (JDA) dated 24.01.2018. We are conscious of the settled position of law that a

simpliciter development agreement by itself does not invariably result in a transfer. However, we also cannot remain oblivious to the fact that merely describing an agreement as a development agreement or claiming that possession was given only for development cannot conclude the issue where the contractual and surrounding circumstances show that substantial rights in the property were parted with. We may herein observe that the **Hon'ble Supreme Court** in **Seshasayee Steels (P.) Ltd. Vs. ACIT (2020) 421 ITR 46 (SC)** has held that mere permission or license to enter upon the property for the purpose of development would not, by itself, establish the transfer contemplated by section 2(47)(v) or (vi) of the Act. Also, the Hon'ble Apex Court has examined whether there was an actual transfer of enjoyment of the property.

39.5. Coming to the facts involved in the present case, we find that the registered Development Agreement-cum-Irrevocable GPA (JDA) dated 24.01.2018 goes substantially beyond a mere license to enter upon the land. We say so because, as per the said JDA, the developer was granted extensive contractual rights. It was authorized to undertake development, approach and deal with statutory authorities, obtain finance, market and sell the flats falling to its share, and otherwise perform all acts necessary for the implementation of the project. On the other hand, the assessee society agreed not to interfere with or countermand the

developer's acts in relation to the development. We are of the firm view that the rights that got vested with the developer, viz. MHCPL are not merely incidental rights ordinarily associated with a contractor engaged to construct a building. Apart from that, we are of the view that the fact that the original title documents and link documents were to be handed over by the assessee society to the developer, who thereafter acted upon the JDA, obtained approvals, proceeded with the project, registered the project with RERA and entered into transactions with prospective purchasers further evidences that the rights that got vested with the developer were substantially beyond a mere license to enter upon the land. Also, we are of the view that the documents filed with RERA in connection with the project, viz., the declaration and affidavit recording the legal title of the parties and the rights arising under the development agreement, assume particular significance in this factual background and reveal that the project had moved beyond a mere preliminary or exploratory stage. We further find that the subsequent conduct of the parties, wherein the project was registered with RERA, approvals were obtained, construction was undertaken by the developer which had already sold on booking 784 flats (received advance) and was left with unsold inventory of only 548 flats, the developer was permitted to obtain finance and deal with the project commercially, fortifies our conviction that the rights were transferred under the development agreement. We are,

therefore, in the backdrop of the aforesaid facts unable to accept the Ld. Sr. AR's contention that the Joint Development Agreement (JDA) merely permitted the developer to enter upon the property for the limited purpose of construction while all substantive rights continued to remain with the assessee society. In our view, the contractual arrangement, read along with the subsequent conduct of the parties, reveals beyond doubt that the assessee society had parted with substantial rights and control over the property in favor of the developer.

39.6. Apropos the judgment of the **Hon'ble Supreme Court** in **CIT v. Balbir Singh Maini (2017) 398 ITR 531 (SC),** as has been relied upon by the Ld. Sr. AR, we find that the Hon'ble Apex Court, in the said judgment, has held that, for section 2(47)(v) of the Act, the conditions under section 53A of the Transfer of Property Act must be satisfied. Also, the Hon'ble Apex Court, in its order, emphasized the importance of registering the agreement as statutorily required. However, we find that the factual position in the present case is materially different and distinguishable. We say so, for the reason that, unlike the facts involved in the aforesaid case before the Hon'ble Apex Court, in the present case before us, the development agreement is a registered instrument and is not a case where the Revenue seeks to invoke an unregistered agreement merely on the basis of part performance.

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39.7. Insofar as the judgment of the **Hon'ble High Court of Punjab and Haryana** in the case of **C.S. Atwal v. CIT (2015) 378 ITR 244 (P&H)**, as has been relied upon by the Ld. Sr. AR, we find that the same too is distinguishable on facts. In the said case, the Hon'ble High Court found, inter alia, that the unregistered JDA did not satisfy the requirements of section 53A of the Transfer of Property Act and that the possession given to the developer was in the nature of a license for development. However, the facts involved in the present case before us are materially different. We say so because the agreement in the present case is not only registered and confers substantially wider rights upon the developer, but also because the development contemplated therein has actually been carried out. At this stage, we may herein observe that the earlier order of the coordinate bench of the Tribunal in **Charanjit Singh Atwal v. ITO [2013] 36 taxmann.com 10 (Chd)**, as has been pressed into service by the Ld. Sr. AR cannot be read in isolation from the subsequent judgment of the Hon'ble High Court of Punjab and Haryana in C.S. Atwal v. CIT (supra), as the legal position must be understood in light of that judgment. Apropos the judgment of the **Hon'ble High Court of Telangana** in **Smt. Shantha Vidyasagar Annam v. ITO (2025) 170 taxmann.com 754 (Telangana)**, we may herein observe that the said judgment of the Hon'ble Jurisdictional High Court has to be applied having regard to the particular

contractual and factual circumstances examined therein, and the same does not lay down that every development agreement necessarily falls outside the ambit of section 2(47) of the Act.

39.8. Coming back to the facts involved in the present case, we may herein observe that the crucial distinction is that the assessee society was not merely permitting construction on its land. Rather, as observed hereinabove, it executed a registered development agreement under which the developer acquired enforceable rights in a defined share of the project, was authorized to deal with governmental and statutory authorities, obtain finance, market and sell its share and exercise other rights necessary for development. Apart from that, the assessee society simultaneously agreed to restrictions that substantially curtailed its ability to independently deal with the property or to interfere with the developer's acts.

39.9. We are further of the view that the expression "enabling the enjoyment" contemplated in section 2(47)(vi) cannot be divorced from the nature and extent of the rights created by the transaction. In our view, where the owner parts with substantial rights and the developer is placed in a position to commercially exploit and enjoy the property in accordance with the agreement, the transaction may fall within the statutory definition

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of “transfer” even apart from a narrow scope of application of section 53A of the Transfer of Property Act.

39.10. We, thus, in terms of our aforesaid deliberations, are of a firm conviction that, in the backdrop of the facts of the present case, the registered Development Agreement-cum-Irrevocable GPA dated 24.01.2018 has resulted in a transfer of rights in the subject property in favor of the developer, viz. MHCPL within the meaning of section 2(47) of the Act. The **Grounds of appeal Nos. 15.1 to 15.4** are dismissed in terms of our aforesaid observations.

Re: That the capital gain ought to be assessed in the hands of the individual members and not in the hands of the assesee society:

40. The assessee society has raised before us an alternative contention that, even if there was a transfer, the capital gain ought to be assessed in the hands of the individual members and not in the hands of the assessee society. The Ld. Sr. AR has vehemently submitted that, as the subject land was acquired for the benefit of the individual members who had contributed amounts towards their respective plots, the capital gain arising on the impugned transfer of the subject land pursuant to the registered Development Agreement-cum-Irrevocable GPA dated 24.01.2018 could have been assessed only in their hands.

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40.1. We have given thoughtful consideration to the contentions advanced by the Ld. Authorized Representatives of both parties on the subject issue, perused the orders of the authorities below and the material available on record, and considered the judicial pronouncements pressed into service by them to drive home their respective contentions.

40.2. We find that the assessee society is a registered legal entity and the subject land admeasuring 20.13 acres at Kondapur village was acquired by it, viz. (i). vide a registered sale deed executed in August, 1997: 2 acres; and (ii) vide agreement of sale cum irrevocable GPA executed in August, 1997:18.13 acres (which was thereafter registered in the name of the assessee society on 03.07.2017). We may herein observe that the most important aspect having a bearing on the adjudication of the subject issue is that it was the assessee society that executed the registered development agreement dated 24.01.2018 with the developer, viz. MHCPL. Thus, the rights transferred under the development agreement were those held and exercised by the assessee society. We are of a firm conviction that the fact that the assessee society was constituted for the benefit of its members does not, by itself, convert the society's property into the property individually owned by the members for purposes of section 45 of the Act.

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40.3. Before proceeding further, we may herein observe that the **Hon'ble Supreme Court** in **ITO v. Ch. Atchaiah, (1996) 218 ITR 239 (SC)**, has made it clear that the Act does not confer any discretion or option with the AO to assess the same income either in the hands of an AOP or in the hands of its members, and the income has to be assessed in the hands of the person legally chargeable to tax. It was observed that the AO under the Income tax Act, 1961, unlike the 1922 Act, was not vested with any discretion to assess the income of the AOP either in the hands of the AOP or in the hands of the individual members, and was obligated to assess the income in the hands of the right person and the right person alone. We thus are of the view that, as per the aforesaid settled position of law, where the income belongs to the AOP, the mere fact that its members may have an interest in the income does not justify assessment in their individual hands.

40.4. We may herein observe that, as per Section 2(31)(v) of the Act, an AOP is a person separate and distinct from the individuals. Further, the principles governing an AOP, as explained by the **Hon'ble Supreme Court** in **(i). CIT v. Indira Balkrishna (1960) 39 ITR 546 (SC); (ii). G. Murugesan & Bros. v. CIT (1973) 88 ITR 432 (SC);** and **(iii). Meera & Co. v. CIT, (1997) 224 ITR 635 (SC)**, also do not support the proposition that the property legally held and transferred by an AOP must necessarily

be treated as property individually held by its members. We, thus, are of the firm view that now, when the assessee society has transferred 8,69,028 Sq. ft. [8,56,028 Sq. ft (+) 13,000 Sq. ft] of the super built-up area along with proportionate rights in the subject land during the under consideration, viz. (i) 8,56,028 Sq. ft. of built-up area (70% of the super built-up area) and its proportionate rights in the ownership of the land in favor of the developer, viz. MHCPL vide registered Development Agreement-cum-Irrevocable GPA dated 24.01.2018; and (ii). 13000 Sq. ft. of super built-up area allotted to Sri. Surakanti Shashikanth Reddy and Smt. P. Swetha, the capital gain arising on the said transfer transaction was without any discretion or option liable to be brought to tax only in the hands of the assessee society, i.e., the right person.

40.5. We have considered the order of the coordinate bench of the Tribunal in **Raj Ratan Palace Co-operative Housing Society Ltd. v. DCIT, (2011) 12 taxmann.com 172 (Mum)** as has been pressed into service by the Ld. Sr. AR, which thereafter has been affirmed by the **Hon'ble High Court of Bombay** in **CIT vs. Raj Ratan Palace Co-operative Housing Society Ltd., ITA No.2292 of 2011 dated 27.02.2013**, as well as the subsequent decision in **PCIT v. MIG Co-operative Housing Society Group II Ltd., (2024) 467 ITR 524 (Bom.)**. However, we find that the aforesaid judicial pronouncements turned upon

their own factual circumstances and are factually distinguishable. We say so because the Tribunal found that no part of the land had been transferred by the society and that the members had received the compensation in their individual capacities. However, the present case before us stands on a different footing. In the case before us, the assessee society itself acquired and held the subject land, obtained registration in its own name and thereafter executed the registered development agreement as an owner. Accordingly, the facts in the present case are materially different from those in the aforesaid cases, where the society merely acted as a representative or facilitating body for members who were themselves the real owners of the property.

40.6. Apropos the decision of the coordinate bench of the Tribunal in **ITO-41(2)(4), Mumbai v. RBI Employees Bhagvati Co-operative Housing Society Ltd., ITA Nos.3595 & 4073/Mum/2025, dated 27.10.2025**, as has been pressed into service by the Ld. Sr. AR, we find that the said decision is also distinguishable on facts. In that case, the individual members were found to be the real owners of the old flats and the society acted in a representative capacity. Rather, the development agreement itself identified the members as persons entitled to the new premises. However, in the present case before us, the registered title and

the development rights were vested in and exercised by the assessee society.

40.7. We may herein observe that the Ld. Sr. AR has also relied upon the **CBDT Circular No.9 dated 25.03.1969** and the orders of the **Hon'ble High Court of Karnataka** in **CIT v. Monarch Citadel Pvt. Ltd., (2014) 45 taxmann.com 477 (Karnataka)**, and that of the **Hon'ble High Court of Andhra Pradesh** in **CIT v. Nandanam Constructions, (1996) 222 ITR 737 (AP)**. However, we find that the aforesaid Circular and Judicial pronouncements deal with specific statutory concepts relating to ownership for the purpose of income from house property and cannot be mechanically imported into the determination of ownership and transfer for purposes of sections 2(47) and 45 of the Act.

40.8. We may also clarify that section 45(5A) has limited statutory application to an individual or HUF. The AO could not have treated section 45(5A) itself as the charging provision applicable to the assessee society. Nevertheless, the legislature's subsequent provision of a special mechanism to determine the year of taxability in specified development agreements cannot alter the legal character of the registered transaction in the present case. Our view is based upon section 2(47) read with section 45 and the actual rights created under the development agreement.

40.9. Coming to the Ld. Sr. AR's contention that one or more members of the assessee society may have been assessed separately, in our view, does not determine the legal character of the transaction executed by the society. We say so because there can be no estoppel against the statute. In fact, we are of the firm conviction that as held by the **Hon'ble Supreme Court** in **ITO v. Ch. Atchaiah (1996) 218 ITR 239 (SC)**, the AO is statutorily obligated to assess the income of the AOP in the hands of the AOP alone and is not vested with any discretion to assess the same in the hands of members; therefore, the fact that the said income has been assessed in the hands of an individual member cannot preclude the AO from assessing it in the hands of the right person and right person alone, i.e., the AOP. Our aforesaid view finds support from the judgment of the **Hon'ble Supreme Court** in **Distributors (Baroda) Pvt. Ltd. v. Union of India (1985) 155 ITR 120 (SC)**, wherein the Hon'ble Apex Court observed that perpetuating an error is no heroism. To rectify it is the compulsion of judicial conscience. At the same time, the Revenue cannot subject the very same income to tax twice merely because different proceedings have been undertaken. We may herein draw support from the principle laid down by the **Hon'ble Supreme Court** in **ITO v. Bachu Lal Kapoor (1966) 60 ITR 74 (SC).** In the said case, the Hon'ble Court observed that if income has been assessed in the hands of the wrong

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person, the law permits corrective action, subject to safeguards to ensure that the same income is not taxed twice.

40.10. We therefore, in terms of our aforesaid deliberations, hold that the capital gain arising from the transfer by the assessee society of 8,69,028 Sq. ft. of the super built-up area along with proportionate rights in the subject land during the year under consideration, viz. (i) 8,56,028 Sq. ft. of built-up area (70% of the super built-up area) and its proportionate rights in the ownership of the land in favor of the developer, viz. MHCPL vide registered Development Agreement-cum-Irrevocable GPA dated 24.01.2018; and (ii). 13000 Sq. ft. of super built-up area allotted to Sri. Surakanti Shashikanth Reddy and Smt. P. Swetha, is assessable only in the hands of the assessee society, i.e., the right person. We, thus, are of firm conviction that a member may have disclosed capital gain in his individual return, including by invoking section 45(5A), but the same does not shift the statutory liability arising from the transfer effected by the society. The **Grounds of appeal Nos. 14.1 to 14.3 and 14.5** are dismissed.

40.11. Before parting on the aforesaid issue, we may herein observe that our observation that the assessee society had transferred 8,69,028 Sq. ft. of the super built-up area along with proportionate rights in the subject land during the under consideration is subject to the final outcome

of the actual super built-up area allocated to the assessee society, which the AO has been directed to verify on two aspects, viz. (i). the claim of the assessee society that pursuant to the supplemental allocation cum supplemental agreement dated 25.11.2022 the revised area allocated to it was changed from 8,69,341 Sq. ft to 8,50,724 Sq. ft, and pursuant thereto the CIT(A) had, while considering the said claim, directed the AO to take cognizance of the said fact and compute the revised income of the assessee society; and (ii). the claim of the assessee society before us that it had to forgo 13,000 Sq. ft of super built-up area of the subject property out of the share allocated to it to two persons, which aspect had been set aside by us to the file of the AO for necessary verification in terms of our observations recorded at Para 31 to Para 31.3 hereinabove.

40.11. The **Grounds Nos. 1, 13, 17 and 21** raised by the assessee society, being general in nature, are dismissed as not pressed.

41. We, thus, in terms of our aforesaid observations, for the sake of clarity regarding the multi-facet contentions raised by the assessee society before us, cull out our view regarding the respective grounds of appeal raised before us as under:

Ground No.	Issue involved	View Taken
Ground of appeal No. 1, 13,17 & 21	General	Dismissed as not pressed.

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Ground of appeal No. 2	Assessment order is invalid being barred by limitation under Section 153(1) r.w. TOLA, 2020	Dismissed
Ground of appeal No. 3	Assessment order u/s 143(3) r.w Section 144B is invalid and bad in law in terms of Section 143(3D) of the Act.	Dismissed
Ground of appeal No. 4	The assessment order is bad in law and void ab initio, as the notice u/s 143(2) dated 28.09.2019 served by NeAC is contrary to Section 143(2) r.w. Rule 12E and Notification No. SO 3279(E) [No. 65/2019 (F.No. 187/2/2019-ITA-II], dated 13.09.2019	Dismissed
Ground of appeal No. 5	Assessment order is non est being passed in violation of procedure laid down in Section 144B(1)(iii) as the NaFAC failed to issue intimation as required under the said provision.	Dismissed
Ground of appeal No. 6	The notice u/s 142(1) dated 02.09.2021, post issuance of the draft assessment order dated 19.04.2021, is contrary to the provisions and procedure laid down under section 144B of the Act.	Dismissed
Grounds of appeal Nos. 7 & 8	The assessment order passed by the AO, NaFAC, without issuing "Show Cause Notice" (SCN) as per the mandate of Section 144B(1)(xxv)(b) of the Act is bad in law. Alternatively, the addendum SCN, dated 13.09.2021, issued under Section 144B(1)(xxv)(b) being not accompanied by a revised draft assessment order is in violation of the SOP issued in this regard.	Dismissed
Ground of appeal No.9	The addendum SCN, dated 13.09.2021, is bad in law, as it did not afford the assessee society a reasonable time to respond to the same.	Dismissed
Ground of appeal No. 10	The assessment order is bad in law as the revised assessment order is barred by limitation in terms of Para S. 3 of the SOP for AU contained in Circular F. No.	Dismissed

	PR.CCIT/NeAC/SOP/2020-21 dated 19.11.2020.	
Grounds of appeal Nos. 11 & 12.	The assessment order is bad in law being passed by the "Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer". Alternatively, the assessment order signed by one Mr. Vishesh Prakash having e-mail id delhi.dcit2.1.neac@incometax.gov.in is invalid being contrary to Section 144B(7)(i)(a) as it stood prior to its substitution vide Finance Act, 2022.	Dismissed
Grounds of appeal Nos. 14.1 to 14.3 & 14.5	The capital gain on transfer of the subject property is chargeable to tax in the hands of the individual members and not in the hands of the assessee society.	Dismissed
Ground of appeal No. 14.4	That no income accrued or arose in the hands of the assessee society by reason of the doctrine of mutuality.	Dismissed
Grounds of appeal Nos. 15.1 to 15.4	That the lower authorities, based on misconceived facts, had erred in making the impugned addition under the head capital gains u/s 45 when the conditions of section 2(47(v)/(vi) did not exist in the impugned assessment year. Alternatively, the lower authorities erred by failing to appreciate that if any income accrued or arose, howsoever remotely or superficially, the same got diverted to the members of the assessee society by operation of the doctrine of diversion of income by overriding title.	Dismissed
Ground of appeal No. 15.6	The lower authorities erred in excluding application of Section 50D of the Act.	Dismissed
Ground of appeal No. 15.7	The lower authorities erred in determining FVC with reference to the owner's share of super built-up area, thereby indirectly invoking Section 45(5A) of the Act, which did not apply to the assessee society.	Dismissed

Grounds of appeal Nos. 15.8 to 15.11	The lower authorities have erred in determining FVC of owner's share of built-up area by applying the irrelevant factor of the developer's estimated cost of construction, i.e., on the basis of the data which related to FY 2019-20. Further, the lower authorities have erred in determining FVC for the impugned assessment year on the basis of the GST Invoice dated 30.08.2021 raised by the developer.	Allowed for statistical purposes: The issue regarding the quantification of the sale consideration receivable by the assessee Society to the file of the AO, who is directed to determine and compute the same with reference to the date of transfer, i.e., 24.01.2018, in accordance with law and after affording due opportunity of being heard to the assessee society.
Ground of appeal No. 15.12	The lower authorities have erroneously added Rs. 8,40,37,416/- representing the value of 13000 Sq. Ft. of super built-up area to the FVC, by wrongly brushing aside the assessee society's contention that it had to forgo the said area from its share of 8,50,724 Sq. Ft.	Allowed for statistical purposes: The issue restored to the file of the AO for examining the JDA, the supplementary agreement, the relevant allotment documents and other supporting material and thereafter determine whether the 13,000 sq. ft. formed part of the assessee Society's entitlement of 8,50,724 sq. ft. If, on verification, it is found that the said area was required to be forgone out of the Society's own entitlement and that its value has already been considered in determining the full value of

		consideration, the same shall not be subjected to a separate addition.
Ground of appeal Nos. 15.13 & 15.14	The Lower Authorities are not justified in adding GST of Rs. 26,35,10,556/- payable by the Appellant to the FVC, instead of reducing the same from the FVC as per the claim of the Appellant that owners have to incur the same as one of the conditions in the JDA, thus resulting in unjust double addition of Rs. 52,70,21,112/-. Also, the lower authorities erred in failing to appreciate that the GST of Rs 26,35,10,556/- incurred in connection with the transfer was required to be deducted from the full value of consideration under Section 48(i) of the Act.	Allowed for statistical purposes: The matter is restored to the file of the AO with a direction to determine in accordance with law, whether the GST component forms part of the full value of consideration and whether the assessee society is entitled to any consequential reduction or deduction in respect thereof. Further, the AO shall, in the course of the set aside proceedings, ensure that the same component is not subjected to taxation twice. Needless to say, the assessee Society shall be afforded adequate opportunity of being heard and shall be at liberty to furnish all relevant particulars and supporting evidence in support of its claim
Grounds of appeal Nos. 15.15 & 15.16	The lower authorities were not justified in adding amenity charges of Rs.3 lakh per flat, payable by the owner, to the full value of consideration (FVC), instead of reducing the same from the FVC, as claimed by the assessee Society	Allowed for statistical purposes: The matter is restored to the file of the AO for fresh examination. The

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		AO shall examine whether the amenity charges of Rs. 3 lakh per flat were an obligation of the assessee Society under the JDA, and as to whether the same were actually incurred wholly and exclusively in connection with the transfer. Also. the AO shall verify that as to whether the said amount has already been included in the value adopted for determining the FVC. If the same component has already formed part of the FVC and has thereafter again been added, the AO shall ensure that such double addition does not survive. If, on the other hand, the amount qualifies as expenditure incurred wholly and exclusively in connection with the transfer of the subject property, the admissibility of deduction under section 48(i) shall be examined in accordance with law. Needless to say, the assessee Society shall, in the course of the set-aside proceedings, be afforded an adequate

		opportunity of being heard.
Ground of appeal No. 16	The lower authorities are not justified in failing to give credit of the taxes paid by the members of the assessee society with respect to transfer of 70% of subject land under JDA while computing the tax liability in the hands of the assessee society.	Allowed for statistical purposes: The AO is directed to verify the claim of the assessee society for credit of the taxes actually paid by the respective members in respect of the same transfer transaction. The AO shall examine the assessment particulars and the taxes actually paid by the respective members, and verify whether such taxes relate to the same income/transfer transaction that has been brought to tax in the hands of the assessee Society. Accordingly, the matter is restored to the file of the AO for examining the claim of the assessee Society and, after verification of the relevant records and the taxes actually paid by the respective members, he shall determine whether and to what extent such credit is legally allowable in the hands of the assessee Society in accordance with law. Needless to say, the assessee Society shall be

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		afforded adequate opportunity of being heard and shall furnish all necessary particulars and supporting evidence in this regard.
Ground of appeal No. 18	AO has erred in not giving effect to the order of the CIT(A) dated 12.12.2025.	Dismissed: The said ground of appeal does not emanate from the impugned order.
Ground of appeal No. 19	The lower authorities were not justified in treating the dividend income earned from the liquid fund, amounting to Rs. 12,36,217/-, as taxable income by assessing the same partly under the head "Profits and Gains of Business or Profession" and partly under the head "Income from Other Sources", instead of allowing its claim of exemption under section 10(35) of the Act.	Allowed for statistical purposes: The matter is restored to the AO's file to examine the nature of the liquid-fund investment and the relevant supporting evidence, and to determine whether the receipt qualifies for exemption under section 10(35) of the Act, as applicable to the year under consideration. The AO shall thereafter determine the correct tax treatment of the said receipt in accordance with law. Needless to say, the assessee society, in the course of the set-aside proceedings, shall be afforded an adequate opportunity of being heard and shall be at liberty to furnish the relevant particulars and supporting evidence.
Ground of appeal No. 20	The assessee society, vide Ground of appeal No. 20, has assailed the levy of	The AO is directed to recompute the

	interest under sections 234B and 234C of the Act	assessee Society's interest liability while giving effect to our order..

42. In the result, the appeal filed by the assessee society is partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 14th October, 2026.

Sd/-	**Sd/-**
(MADHUSUDAN SAWDIA)	**(RAVISH SOOD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad
Dated: 14th October, 2026.
**OKK/SPS

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