

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 61/PAT/2021  
Assessment Year: 2014-2015**

***Assistant Commissioner of Income Tax,.....Appellant  
Central Circle-2, Patna,  
C.R. Building (Annexe), 6<sup>th</sup> Floor,  
Birchand Patel Marg, Patna-800001, Bihar***

**-Vs.-**

***M/s. Patliputra Builders Pvt. Limited,..... Respondent  
301, Maharaja Kameshwar Complex,  
Fraser Road, Patna-800001, Bihar  
[PAN: AACCP0629B]***

**Appearances by:**

*Smt. Rinku Singh, CIT, D.R., appeared on behalf of the  
Revenue*

*Shri Shrawan Kr. Jha, Advocate, appeared on behalf of the  
assessee*

Date of concluding the hearing : August 21, 2024

Date of pronouncing the order : August 23, 2024

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals),

Patna-3 dated 15<sup>th</sup> March, 2021 passed for assessment year 2014-15.

2. The Revenue has taken four grounds of appeal, out of which Grounds no. 3 & 4 are general grounds, which do not call for recording of any specific finding.

3. In Grounds No. 1 & 2, the Revenue has pleaded that Id. CIT(Appeals) has erred in deleting the addition of Rs.1,86,64,000/-, which was added by the Id. Assessing Officer.

4. Brief facts of the case are that a search and seizure operation was carried out upon the assessee on 29<sup>th</sup> July, 2011. The assessee filed an application for A.Y. 2014-15 before the Hon'ble Settlement Commission, Kolkata, who has passed an order under section 245D(4) on 31.12.2015. The Id. Assessing Officer sought to reopen assessment year 2014-15. He was of the view that assessee has sold the flat for a consideration of Rs.1,02,40,000/-, whereas stamp duty valuation of the flat was Rs.2,89,04,000/-. He was of the view that under section 43CA, the difference between the sale consideration disclosed by the assessee, vis-à-vis determined by the stamp duty valuer deserves to be added in the hands of the assessee. He accordingly reopened the assessment. In a very brief summary assessment order, he made the addition.

5. On appeal, ld. CIT(Appeals) deleted the addition by observing as under:-

*“3.1 Finding and decision:*

*In the instant case a search and seizure operation was conducted on 29.07.201 in the case of the assessee and its related entities and other group companies, the assessee filed settlement application before the Hon’ble ITSC, Kolkata on 05.06.2014 which was not allowed to be proceeded with due to short payment of tax and interest. Subsequently the assessee filed fresh application on 26.06.2014 for the A.Ys. which include A.Y. 2014-15. Subsequently the Hon’ble ITSC, Kolkata passed order u/s 245D(4) on 31.12.2015. However, the assessee did not pay the entire demand as determined by the Hon’ble ITSC and accordingly the same was intimated to the Hon’ble ITSC and the Hon’ble ITSC had withdrawn the immunity granted to the assessee on 17<sup>th</sup> January 2018. The income determined by the Hon’ble ITSC for the AY under consideration had been Rs.4,11,78,751/-. There was no returned income as the assessee did not file any return.*

*Hence, ITSC Kolkata Bench, Kolkata passed order u/s 245D(4) of the Act on 31.12.2015 for the A. Yrs. 2006-07 to 2014-15 and in the case of the Appellant computed the total income after determination of income as Annexure “A-1”. Assessing Officer passed order u/s 147 of the IT Act on 24.12.2018 for the A.Y. 2014-15 which was already included in the settlement period of the Hon’ble ITSC.*

*In view of the above, it is clear that Hon’ble Settlement Commission has settled the I case of the Appellant for the A.Y. 2014-15. Assessing Officer in this case was not Authorized to interfere since the A.Y. 2014-15 comes under settled period by the Hon’ble ITSC. Assessing Officer in the assessment order mentioned about the withdrawal of immunity granted to the Appellant by the Hon’ble ITSC. Hon’ble ITSC withdrew the immunity granted against the imposition of penalty and prosecution due to non-payment of taxes, not for the re-assessment or assessment for the settled period.*

*Considering the discussion made above I am of the opinion that the Assessing Officer had no Authority to interfere in the assessment/ re-assessment for the settled period by the Hon'ble ITSC. Hence, the assessment order passed by the Assessing Officer in the case of the Appellant is not sustainable in the eyes of law.*

*In the result Ground No. 1 & 2 are allowed”.*

6. The ld. CIT(DR) contended that the order of the Hon'ble Settlement Commission is *qua* the issues taken up therein. Section does not talk of assessment year, if on a particular item no opinion was expressed by the Settlement Commission, then ld. Assessing Officer will be in his rights to reopen the assessment.

7. On the other hand, ld. Counsel for the assessee relied upon the order of ld. CIT(Appeals). He also made relied upon the judgment of Hon'ble Gujrat High Court in the case of Komalkant Fakirchand Sharma -vs.- DCIT (2022), copy of this judgment has been placed on the record. It is passed in Civil Application No. 14883 of 2018.

8. On due consideration of the above facts and circumstances, we are of the view that once determination of tax liability is being settled before the Hon'ble Settlement Commission, then ld. Assessing Officer has no jurisdiction to disturb that determination. The Department has participated the proceeding before the Hon'ble Settlement Commission and if any grievance was

there to the ld. Assessing Officer, he should have brought it to the notice of the Hon'ble Settlement Commission during the proceeding. To our mind, if an Assessing Officer is being given an opportunity to reopen the assessment, where settlement proceeding attained finality, then there will not be any end to the litigation. The ld. CIT(Appeals) has taken a plausible view and we do not find any merit to disturb the order of ld. CIT(Appeals).

**9. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on 23.08.2024.

Sd/-

Sd/-

**(Manish Borad)**  
**Accountant Member**

**(Rajpal Yadav)**  
**Vice-President**

**Kolkata, the 23<sup>rd</sup> day of August, 2024**

*Copies to :(1) Assistant Commissioner of Income Tax,  
Central Circle-2, Patna,  
C.R. Building (Annexe), 6<sup>th</sup> Floor,  
Birchand Patel Marg, Patna-800001, Bihar*

*(2) M/s. Patliputra Builders Pvt. Limited,  
301, Maharaja Kameshwar Complex,  
Fraser Road, Patna-800001, Bihar*

*(3) Commissioner of Income Tax (Appeals),  
Patna-3;*

*(4) Commissioner of Income Tax- ;*

*(5) The Departmental Representative*

*(6) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**