

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB" BENCH, PATNA**

**(Through virtual hearing at Kolkata)**

**BEFORE SHRI RAJPAL YADAV, VP  
AND  
DR. MANISH BORAD, AM**

**ITA No.108/PAT/2023**

**(Assessment Year: 2015-16)**

**Sanju Sinha,**  
Khajpura, B. V College,  
Khajpura, Patna-800014,  
Bihar

**Vs.**

**ITO, Ward 6(1)**  
Patna-800 001  
Bihar

**(Appellant)**

**(Respondent)**

**PAN No. APKPS0784A**

**Assessee by** : Shri Prasoon Kr., AR  
**Revenue by** : Shri Ashwani Kr. Singal, DR

**Date of hearing:** 10.09.2024

**Date of pronouncement :** 24.09.2024

**ORDER**

**PER DR. MANISH BORAD, AM:**

This appeal at the instance of the assessee is directed against the order of National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 27<sup>th</sup> March, 2023, which is arising out of the assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 26<sup>th</sup> December, 2019.

02. Assessee has raised following grounds of appeal: -

*"1. For that the order passed under section 250 of Income Tax Act by the Id. CIT- A is bad and illegal because the proper opportunity has not been provided to the appellant*

*at least effective opportunity of hearing, hence order passed by the CIT-A violate the principal of natural justice.*

*2. For that the assessing officer has computed capital gain on hypothetical sell consideration without looking to the fact available on record and also without looking to the provision of section 45 read with section 2 (47) of the Income Tax Act, as such, the Id. Assessing officer and the Id. Commissioner had levied tax on hypothetical income which is impermissible under the Act.*

*3. For that the Assessing Officer erred in computing capital gain in the assessment year 2015-16 as the assessee neither transferred nor relinquish the right and title in the land nor has received sell consideration, as such, addition made on the basis of capital gain is bad and against the provision of law.*

*4. For that the appellant has taken specific ground regarding illegality in initiating proceeding under section 147 of the Income Tax Act but this issue has not been considered nor adjudicated in the ex-party appellate order as such, the impugned order is bad and illegal.*

*5. For that the proceeding initiated under section 147 of the income tax act for re-assessment is illegal and without jurisdiction because the assessing officer has no reason to believe within the meaning of section 147 that the appellant had actually transferred assets within the meaning of section 2(47) of the IT Act and had either earned income or income were accrued in the assessment year in question under capital gain.*



6. For that the assessing office neither recorded valid reason nor the JCIT and Commissioner accorded valid sanction as prescribed under section 151 of the Act, as such, whole of the re-assessment proceeding and levy of tax is bad in law.

7. For that the assessing officer had not deducted index cost while making assessment therefore, the computation made by the assessing officer is incorrect.

8. For that the order of assessment as well as appellate order is bad and unreasonable in view of the fact that the impugned order and order of assessment is self-contradictory as the authority below has himself accepted that the value of land was 13,50,589/ and the value of construction as per deed of agreement was 20,91,600/ but they had levied tax taking the income of Rs.20,91,600/- without considering the index cost.

9. For that the appellant had already entered into a partition agreement with her family members, as such, the proceeding initiated against appellant is bad and illegal.

10. For that no notice under section 143 (2) had been issued and served by the assessing officer.

11. For that the grounds taken herein above are not prejudicial to each other.

12. For that any other grounds may be submitted at the time of hearing.”



03. At the outset, the learned Counsel for the assessee submitted that for unavoidable circumstances the assessee could not appear before the learned CIT (A), who has finally passed an *ex-parte* order placing reliance on the decision of Delhi Bench of ITAT in *CIT VS. Multiplan India Pvt. Ltd. (1991) 38 ITD 120*. He therefore prayed that the matter may be restored to the file of the learned CIT (A) for fresh adjudication. The assessee submitted that the assessee failed to appear before the learned CIT (A) on account of the reason that the most of the notices of hearing issued by the learned CIT (A) were falling during the Covid-19 pandemic restriction and therefore, the assessee could not get fair opportunity to plead before learned CIT (A) and thus, prayed that one more opportunity should be granted by restoring the issue to the file of the learned CIT (A) for necessary adjudication.
04. The learned Departmental Representative vehemently argued supporting the orders of the lower authorities.
05. We have heard the rival contentions and perused the record available on record. We observed that the assessee is an individual and assessed for A.Y. 2015-16 u/s 147 read with section 143(3) of the Act on 26<sup>th</sup> December, 2019, wherein certain additions have been made in the hands of the assessee for the alleged suppressed capital gain. Aggrieved assessee preferred an appeal before the learned CIT (A) and after filing of the appeal the same was migrated to the NFAC in terms of notification no. 76 of

2020 dated 25<sup>th</sup> September, 2020. The assessee has filed the appeal raising grounds that the Assessing Officer has not applied his mind in order to consider the documents available before him. The notice of hearing were issued by learned CIT (A), fixing the dates on 14<sup>th</sup> January, 2021, 27<sup>th</sup> September, 2021, 15<sup>th</sup> December, 2021, 28<sup>th</sup> September, 2022 and 9<sup>th</sup> March, 2023. The first three notice of hearing falling during Covid 19 restrictions. Due to which assessee could not appear. Further, issue notice fixing the hearing on 28<sup>th</sup> September, 2022, assessee filed the request for adjournment. But, then, on one more failure to appear on 9<sup>th</sup> Mach, 2023. Learned CIT (A) dismissed the appeal mainly on the ground that the appellant has not filed any written submission and evidences therefore, it remains to be unexplained as to how the learned Assessing Officer's order is erroneous. Before us, the Id. Counsel for the assessee prayed for restoring the issue before the Id. CIT (A).

06. We therefore, considering the facts and circumstances of the case and observing that there was reasonable cause on part of the assessee for not appearing before the Id. CIT (A) on few dates of hearing on account of Covid-19 restrictions and also in the larger interest of justice and being fair to both the parties, deem it appropriate to restore the issues raised on merits to the file of the Id. CIT (A) for necessary adjudication for which reasonable opportunity should be provided to the assessee to furnish the reply and file relevant details and evidences if needed



and assessee should also not seek any adjournments unless otherwise required for reasonable cause. Grounds of appeal raised by the assessee are allowed for statistical purposes.

07. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24.09.2024.

Sd/-  
(RAJPAL YADAV)  
(VICE PRESIDENT)

Sd/-  
(DR. MANISH BORAD)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 24.09.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata