

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

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)
&
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 366/PAT/2024
Assessment Year: 2016-2017**

***Yadunandan Prasad (Legal Heir of Shashi
Devi),.....Appellant
91, Jamaluddin Chak, Khagaul Danapur,
Patna-801105, Bihar
[PAN:DUQPD1165Q]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-6(4A), Patna***

Appearances by:

*Shri Sadashiv Tiwari, Advocate, appeared on behalf of the
assessee*

*Shri Ajay Kr. Shukla, JCIT, Sr. D.R., appeared on behalf
of the Revenue*

Date of concluding the hearing: November 20, 2024

Date of pronouncing the order: December 10, 2024

O R D E R

Per Duvvuru RL Reddy, Vice-President(KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 28th February, 2024 passed for Assessment Year 2016-17.

2. Brief facts of the case are that the assessee is an individual and has prevalent practice in the real estate business to obtain development rights from land owners by entering into a land development agreement between owners of the land and its developers to construct immovable property in terms of buildings and land appurtenant thereto. The rights of ownership of the land are exchanged by the land owner against receipt of ownership of a portion of property constructed while the remaining portion of constructed property is apportioned by the builder against the cost of development incurred by the developer. Such arrangements attract incidence of capital gains tax. In order to ascertain the compliance to the provisions of Income Tax Statute by the parties engaging in land development agreement in Patna Revenue District, information regarding such land development agreement was requisitioned after due prior approval under section 133(6) of the Income Tax Act, 1961 from the Offices of the Registrar for Properties in Patna District. On receipt of the information under section 133(6) in terms of copies of land development agreement, it was found that the assessee Smt. Shashi Devi, has entered into and registered a Land Development Agreement with PHHPL Heritage Greens J.V. in the financial year 2015-16 relevant to the assessment year 2016-17. On perusal of the records, it was found that the assessee has not filed any return of income nor made any compliance after making several references. In view of the facts and circumstances, a notice under section 148 was issued in the

case of the assessee after recording the reasons to believe on the escapement of income. After considering the submissions made by the assessee, the ld. Assessing Officer has adopted the consideration of the land @ Rs.800/- per sq.ft. because this was the expenditure, which the builder incurred for construction of the area. Based on the above discussions and for the purpose of ascertaining the full value of consideration to be taxed as the long-term capital gain in the hands of the assessee for the assessment year 2016-17 under the provisions of section 148 of the Income Tax Act as worked out at Rs.2,25,47,902/-.

3. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals)-NFAC. The ld. CIT(Appeals)-NFAC in his order in para 6.8 has mentioned that *“it is seen that appellant is not interested in pursuing the appeal and not having any documents, explanation and evidence in support of grounds of appeal raised and thus has not discharged onus to prove the genuineness of the fact raised in grounds of appeal”*. He further mentioned that *“it is seen that the appellant has filed statement of facts/grounds of appeal along with Form 35, but no written submission has been filed till date. In view of the lack of prosecution by the appellant, appeal of appellant should be dismissed in limine without considering appeal on merit”*.

4. Based on the above finding, one thing is clear that the assessee did not utilize the opportunities given by the ld. CIT(Appeals)-NFAC.

5. We have heard both the sides and perused the relevant material available on record. At the outset, Id. Counsel for the assessee has submitted that the assessee was not given any opportunity of being heard. Therefore, he pleaded one more opportunity to substantiate the claim of assessee. On examining the facts of the case, we find that the Id. CIT(Appeals)-NFAC had posted the case on several occasions, but there was no response on behalf of the assessee before the Id. CIT (Appeals)-NFAC on the dates of hearing with regard to the details as called for by the Id. CIT(Appeals). Therefore, the Id. CIT(Appeals) was left with no other option except adjudicate the appeal *ex-parte* and dismissed the appeal by confirming the addition made by the Id. Assessing Officer. Therefore, we are of the considered view that the Id. CIT(Appeals) instead of disposing the appeal on merits, dismissed the appeal *ex-parte*. Therefore, considering the facts and circumstances of the case and considering the issues involved in the appeal as well as considering the plea of the Id. A.R., by following the principles of natural justice, we hereby remit the matter back to the file of Ld. CIT (Appeals)-NFAC in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (Appeals)-NFAC in the proceedings failing which the Ld. CIT (Appeals)-NFAC shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on the record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 10/12/2024.

Sd/-

Sd/-

(Sanjay Awasthi)
Accountant Member

(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 10th day of December, 2024

*Copies to :(1) Yadunandan Prasad
(Legal Heir of Shashi Devi),
91, Jamaluddin Chak, Khagaul Danapur,
Patna-801105, Bihar*

*(2) Income Tax Officer,
Ward-6(4A), Patna;*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

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

Laha/Sr. P.S.