

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

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)**

**I.T.A. No. 7/PAT/2022  
Assessment Year: 2015-2016**

***Pushpa Kumari,.....Appellant  
Rashtiriya Ganj, Station Road,  
Phulwari Sharif, Patna-801505,  
Bihar  
[PAN:AGMPK8844Q]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-6(2), Patna***

**Appearances by:**

*Shri Prasoon Kumar, Advocate, appeared on behalf of the  
assessee*

*Shri Ashwani Kr. Singal, JCIT, appeared on behalf of  
the Revenue*

**Date of concluding the hearing: November 28, 2024  
Date of pronouncing the order: December 31, 2024**

**O R D E R**

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 22<sup>nd</sup> December, 2021 passed for Assessment Year 2015-16.

2. Brief facts of the case are that the assessee is an individual, who entered into a Joint Development Agreement on 15<sup>th</sup> July, 2014 with one M/s. Aparna Architect & Engicons Pvt. Limited for

the development of a piece of land admeasuring 1 katha 3 dhoor 4 dhoorki possessed through purchase on the same day, i.e. on 15<sup>th</sup> July, 2014. Apart from the said piece of land, there is no other property possessed by the appellant. The assessee filed his return of income for the assessment year 2015-16, but not declared any capital gains in the financial year 2014-15 because the development work/process was not initiated by the developer. The assessee had not declared capital gains on such agreement as the builder had not acted upon as there was no development activities carried out according to the agreement. However, the ld. Assessing Officer has computed capital gains by invoking the provisions of section 45 read with section 2(47) of the Income Tax Act.

3. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals). After considering the submission of the assessee, the ld. CIT(Appeals) dismissed the appeal filed by the assessee.

4. On being aggrieved, the assessee preferred an appeal before the Tribunal and raised the following issues:-

*(1) That the learned C.I.T Appeal has erred in law and in facts in dismissing the appeal of the assessee due to making belief of non-compliance by the appellant without taking into the consideration that :-*

*(i)The appellant was passing though unnatural and very adverse conditions and her suffered a lot in her mental, physical, financial and professional level and therefore was not in a position to gather all information's and submit the same in appellate proceeding due to covid pandemic. The appellate is a home maker/ house wife not having taxable income and apart from the said transaction the*

*appellant had not entered into any financial and professional transaction.*

*(ii) She has not received any notice/ letter of the learned C.I.T appeal before completion of appellant orders.*

*(2) Previous grounds of appeal that your kind honors attention is invited mainly for consideration of-*

*(i) That capital gain is not raised under natural justice.*

*(ii) The appellant did not receive any capital gain during the financial year 14-15 relevant to assessment year 15-16*

*(iii) As per recent case law of C.I.T verses chemosyn limited (TS -73 HC- 2015 Bombay) and*

*(iv) I challenging the amount of tax demand and interest on there upon deemed income which is not a capital gain as there was no real income through the said agreement.*

*That the appellant craves right to add, amend, delete, substitute and - or incorporate any of the grounds of appeal before or at the time of having of the appeal.*

5. I have heard both the sides. It was the submission of the assessee that the developer M/s. Aparna Architect & Engicons Pvt. Limited after entering into the development agreement, they have not acted upon and the said land remains in the possession of the appellant. Therefore, the appellant has not transferred his right, title and interest over the land. Hence, there is no transfer of right, title and interest within the meaning of section 2(47) read with section 45 and 48 of the Income Tax Act. He further submitted that the ld. Assessing Officer has recorded incorrect reason and reopened the case and also made an addition under capital gains. He further submitted that the Joint Development Agreement was cancelled on 27.07.2023 and he filed the Cancellation Deed for perusal. He further submitted that copy of letter of intimation,

which was given by the developer regarding the cancellation of Development Agreement dated 15.07.2014 also enclosed. Therefore, these two documents clearly establish that the developer has not acted upon with the terms and conditions of the Joint Development Agreement dated 15<sup>th</sup> July, 2014. Therefore, he pleaded to set aside the orders passed by both the revenue authorities.

6. On the other hand, ld. Departmental Representative submitted that the assessment order was passed on 28.12.2019 and the ld. CIT(Appeals) passed the order on 22.12.2021, therefore, cancellation document was not before the revenue authorities. The ld. Assessing Officer by following the provisions of section 2(47) read with section 45 & 48 of the Income Tax Act passed the assessment order making an addition of capital gains tax to the return of income filed by the assessee. He pleaded to uphold the orders passed by the revenue authorities.

7. I have perused the material available on record. The main contention of the assessee is that though he entered into a Joint Development Agreement but the developer has not acted upon and the developer and the assessee had entered into an agreement of cancellation of the Joint Development Agreement dated 15.07.2014, therefore, the land remains in the possession of the assessee. Hence, the question of right, title and interest over the property does not arise. However, the ld. D.R. has rightly pointed out that the cancellation deed and cancellation letter issued by the developer were very much subsequent to the orders passed by the

revenue authorities. Therefore, the subsequent cancellation of Joint Development Agreement dated 15.07.2014 was not before the Id. Assessing Officer and Id. CIT(Appeals). Thus, considering the facts and circumstances of the case, I remit the matter back to the file of Id. Assessing Officer to examine this issue afresh by taking into consideration of the cancellation deed and after physical verification of property. The Id. Assessing Officer is also directed to pass assessment order by considering the physical possession of the subject matter of the land after opportunity of being heard to the assessee. Hence, the grounds raised by the assessee are allowed for statistical purposes.

**8. In the result, the appeal filed by the assessee is allowed for statistical purposes.**

Order pronounced in the open Court on 31/12/2024.

Sd/-  
**(Duvvuru RL Reddy)**  
**Vice-President (KZ)**

***Kolkata, the 31<sup>st</sup> day of December, 2024***

- Copies to :*(1) *Pushpa Kumari,*  
*Rashtiriya Ganj, Station Road,*  
*Phulwari Sharif, Patna-801505, Bihar*
- (2) *Income Tax Officer,*  
*Ward-6(2), Patna*
- (3) *Commissioner of Income Tax (Appeals),*  
*NFAC, Delhi;*

- (4) CIT - , Patna;  
(5) The Departmental Representative;  
(6) Guard File  
TRUE COPY

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

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