

आयकर अपीलीय अधिकरण  
पटना पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 392/PAT/2024  
Assessment Year: 2014-15**

Ajay Kumar (Appellant)	Vs.	CIT(A)-NFAC, Delhi (Respondent)
<b>PAN: ADNPK2685D</b>		

**Appearances:**

**Assessee represented by** : None.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : January 28<sup>th</sup>, 2025

Date of pronouncing the order : February 21<sup>st</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2014-15 dated 17.10.2022, which has been passed against the assessment order u/s 144 of the



Act, dated 24.10.2019. None appeared on behalf of the assessee and the case was heard with the assistance of the Ld. DR.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 497 days. An application along with affidavit seeking condonation of delay has been filed by the assessee for condoning the delay stating as follows:

*“Appellant case was assessed u/s 144/147 for the assessment year 2014-15 on 24/10/2019.*

*Aggrieved with the order dated 24/10/2019 passed by the ITO Ward 6(3) Patna appellant has been filed an appeal before the Commissioner of Income Tax (Appeal), Patna & instituted on 27/11/2019.*

*Appeal dismissal order passed on 17/10/2022 by the National Faceless Appeal Centre (NFAC), Delhi vide No. ITBA/NFAC/S/250/2022-23/1046336698(1), it happened due to appearing Advocate has not response nor communicated to appellant as thus appellant has been lost hearing opportunity for the case. Appellant is lay man also is not computer friendly hence failed to participate their part in the aforesaid case. Appellant comes to knowledge for dismissal of appeal order by the National Faceless Appeal Centre (NFAC), Delhi on after service of penalty order dated 30/03/2024 under section 271(1)(C) passed by the ITO Ward 4(1), Patna through speed post on 06.04.2024, than appellant immediate consult to another Advocate for filing appeal before the Hon'ble ITAT, Appellant further pray that appellant having great interest in the case.*

*Therefore on the ground of natural justice kindly condone the delay for filing of appeal before the Income Tax Appellate Tribunal so, that appellant case may be admit for hearing.”*

1.2. Considering the affidavit and condonation application and the reasons stated therein, we are satisfied that the assessee had reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit and should not suffer for the lapses committed by the Counsel. We, therefore, condone the delay and admit the appeal for adjudication on merits.



2. No grounds of appeal have been filed. However, in Form No. 35, the assessee filed appeal raising the following grounds of appeal before the Ld. CIT(A):

*“1. For that on the facts and circumstances of the case the assessment made u/s 144/147 of the IT Act, 1961 by the Assessing Officer, Ward 6(3), Patna is without jurisdiction and hence the same is illegal therefore liable to be quashed.*

*2. For that on the facts and circumstances of the case the Demand Notice issued u/s 156 of the IT Act, 1961 dated 24.10.2019 without mentioning PAN of the assessee is bad in law since the appellant will not be able to pay the tax relating to such Demand Notice.*

*3. For that on the facts and circumstances of the case the Assessment Order dated 24.10.2019 without mentioning PAN of the assessee is also bad in law and hence liable to be quashed.*

*4. For that on the facts and circumstances of the case the initiation of proceedings u/s 147 of the IT Act, 1961 is bad in law hence the Assessment Order dated 24.10.2019 is liable to be quashed.*

*5. For that on the facts and circumstances of the case the Assessing Officer has erred in assessing the Deemed Long Term Capital Gain in the hands of the assessee in his Individual Capacity since the Land Development Agreement for the land to be development belongs to assessee's Joint Hindu Mitakshra Family.*

*6. For that on the facts and circumstances of the case the Assessing Officer has erred in making the assessment relating to assessment year under appeal without considering the return of income filed on 31.03.72015 Vide Acknowledgment No.387310315070787.*

*7. For that on the facts and circumstances of the case the Assessing Officer has erred in considering the Land Development Agreement between the land Page 2 of 6 ADNPK2685D- AJAY KUMAR A.Y. 2014-15 ITBA/NFAC/S/250/2022-23/1046336698(1) owner and the Developer and ignoring the agreement also incorporated in the same Agreement between the Developer and the land owner.*

*8. For that on the facts and circumstances of the case the Assessing Officer has failed to appreciate that the Developer was to give residential flats as per the Agreement which qualifies for deduction u/s 54F of the IT Act, 1961 from deemed Long Term Capital Gains.*

9. For that on the facts and circumstances of the case the Assessing Officer has failed to consider that the said Deemed Long Term Capital Gains and also the provisions of section 54F of the IT Act, 1961 then no Capital Gain Tax would have been payable.

10. For that on the facts and circumstances of the case the Assessing Officer has erred in holding that the cost of the land under question at NIL.

11. For that on the facts and circumstances of the case the Assessing Officer has erred in holding that the assessee has not filed return and hence the period of default for the purpose of holding interest payable u/s 234A of the IT Act, 1961 has been held to be from August 2014 to October 2019 whereas the return of income relating to assessment year was filed on 31.03.2015 vide acknowledgement no. 387310315070787.

12. For that on the facts and circumstances of the case the Assessing Officer has erred in holding that the assessee has not filed return and hence the period of default for the purpose of holding interest payable u/s 234B of the IT Act, 1961 has been held to be from April 2014 to October 2019 whereas the return of income relating to assessment year was filed on 31.03.2015 vide acknowledgement no. 387310315070787

13. For that on the facts and circumstances of the case the Assessing Officer has erred in computing the Super Built Area as per FAR provision and not as per the actual Super Built Area to be constructed by the Developer or the construction plan approved/ sanctioned by competent authority, if any

14. For that the appellant craves leave to add, alter, modify, vary, and delete any ground of appeal before or at the time of hearing, if necessary."

## 2.1 The assessee further continues as under:

*The National Faceless Appeals Centre without considering aforesaid appeal dismissed appeal on the ground stated below:-*

5. In Form 35, the Appellant has submitted a brief statement of facts which gives an overview of the circumstances of the case. The same has been reproduced as under:

"The assessee along with 11 other persons entered into a Development Agreement with M/s Sinha Engicon Pvt. Ltd., Patna for the development of their land. The assessee owned 1428 sq.ft. and the developer as per the Agreement was to handover to the assessee 1782 sq.ft. out of the total construction after Page 3 of 6 ADNPK2685D- AJAY KUMAR A.Y. 2014-15 ITBA/NFAC/S/250/2022-23/1046336698(1) completion of the construction as per the agreement. The Assessing Officer in the assessment order has stated that there is prevalent practice in the real estate business



to obtain development rights from land owners by entering into a Land Development Agreement (LDA). The Assessing Officer has further stated that by such agreement the right of ownership of the land is transferred by the land owner against receipt of ownership of a portion of property constructed. The assessee submits that till date there has been no receipt of ownership of any portion of property constructed since till date the Plan submitted by the developer has not been approved by the Competent Authority The Assessing Officer has not stated in the assessment order how he got the information that the assessee has entered into such agreement since such information came to his knowledge of such agreement only after obtaining information u/s 133(6) of the Income Tax Act, 1961 from the Offices of the Registrar for properties in Patna District as mentioned in the Assessment Order by the Assessing Officer. The assessee best of its effort has not been able to find the office of Registrar for Properties in Patna District. The assessee has been filing the return of income and had also filed the return of income for the assessment year 2014-2015. The assessee was not aware of the law as stated by the Assessing Officer that such Agreement attracts Capital Gain hence the same was not included in the total income. The Assessing Officer has assumed the value of the land under question upon which the Agreement was made for development at NIL which is not only against the provisions of IT Act, 1961 but also against natural justice The Assessing Officer after having obtained the Land Development Agreement has noted only the agreement between the land owners and the Developer but has failed to take note of the Agreement between the Developer and the land owners that 50% of the total construction (residential flats) is to be given to the land owners which is incorporated in the same Land Development Agreement. It is noted that very strangely neither in the assessment order nor in the Demand Notice the PAN of the assessee is mentioned therefore the assessee presumes that the Assessing Officer has without jurisdiction issued the Notice u/s 148 of the I T Act, 1961 and has assessed the assessee u/s 144 r.w.s. 147 of the IT Act, 1961 on 24.10.2019 The Assessing Officer has computed the Super Built Area as per FAR provision and not as per the actual Super Built Area to be constructed by the developer or the construction plan approved/ sanctioned by competent authority, if any The Land Developer till date has neither got the plan sanctioned nor has started any construction upon land under question The assessee has been assessed by the Assessing Officer ignoring the return of income filed earlier for the assessment year 2014-2015, vide acknowledgement no. 387310315070787 dated 31.03.2015 which is part of the assessment record, at an income (Long Term Capital Gain) of Rs.23,16,600 and has charged interest u/s 234A of the IT Act, 1961 for the period from August 2014 to October, 2019 amounting to Rs.3,00,649 and has also charged interest u/s 234B of the IT Act, 1961 for the period from



April 2014 to October 2019 amounting to Rs.3,19,737 The Demand Page 4 of 6 ADNPK2685D- AJAY KUMAR A.Y. 2014-15 ITBA/NFAC/S/250/2022-23/1046336698(1) raised for the assessment year 2014-2015 on 24.10.2019 and the assessment order dated 24.10.2019 is without PAN of the assessee. The assessee being aggrieved by such assessment Order is filing this appeal."

6. The appellant was provided opportunity of being heard by way of issue hearing notice dated 22-01-2021 requesting the appellant to file written submissions and documents electronically through incometaxindia.efiling website on or before 25-01-2021 for necessary consideration while disposing this appeal. As there was no reply. another hearing notice dated 15-12-2021 asking the appellant to make the submissions on or before 23-12-2021. The appellant again failed to respond to this notice and to another hearing notice issued on 10-03-2022 fixing the hearing on 21-03-2022 as well. Thereafter, a final notice was issued on 07-10-2022 calling for submissions on or before 14-10-2022. However, the appellant has not submitted any written submission till date. In these circumstances, the appeal is decided on the basis of material available on record.

7.1 The facts and grounds of the appeal have been carefully considered.

7.2 Though the appellant claims that the AO was not justified in making such assessment, he never put forth any reasons for claiming so. Even during current appellant proceedings, the appellant never came forward with his explanation to the grounds mentioned by the appellant despite being offered number of opportunities through hearing notices issued by this office. The onus lies on the appellant to prove his case before seeking relief in the appellate proceedings. On this front, appellant miserably failed. In these circumstances, it is deemed fit not to interfere with the assessment made by the AO. Accordingly, the addition made by the AO is upheld and grounds are dismissed.

It happened due to appearing Advocate has not response nor communicated to appellant as thus appellant has been lost hearing opportunity for the case. Appellant is lay man also is not computer friendly hence failed to participate their part in the aforesaid case

2.2 Although the grounds of appeal were not specifically mentioned, yet the assessee has raised the following additional ground in the appeal before the Tribunal:

Further appellant at this stage adding additional ground before your honour as below:-



*Appellant along with 11 other persons entered into a Development Agreement with M/s Sinha Engicon Pvt. Ltd., Patna for the development of their land. On 23.10.2013. The assessee owned 1428 sq.ft. and the developer as per the Agreement was to handover to the assessee 1782 sq.ft. out of the total construction (Copy of Development Agreement dated 23.10.20213 is enclosed herewith).*

*Appellant beg to submit that competent authority Real Estate Regulatory Authority, Bihar also provided certificate in Form-'C' on 28.03.2022 that promoter registration shall be valid for a period of 3 years 10 moths commencing from 28.03.2022 and ending with 10.02.2026 for the project held with the promoter under development agreement dated 23.10.2013.(Copy of Form-"C" issued by the RERA, Bihar is enclosed), as thus as on the date developer has not been handed over the part of the appellant.*

*It is further prayed that aforesaid appeal dismissal order passed on 17/10/2022 by the National Faceless Appeal Centre (NFAC), Delhi vide No. ITBA/NFAC/S/250/2022-23/1046336698(1), it happened due to appearing Advocate has not response nor communicated to appellant as thus appellant has been lost hearing opportunity for the case. Appellant is lay man also is not computer friendly hence failed to participate their part in the aforesaid case. Appellant comes to knowledge for dismissal of appeal order by the National Faceless Appeal Centre (NFAC), Delhi on after service of penalty order dated 30/03/2024 under section 271(1)(C) passed by the ITO Ward 4(1), Patna through speed post on 06.04.2024, than appellant immediate consult to another Advocate for filing appeal before the Hon'ble ITAT, further pray that appellant having great interest in the case.*

*Therefore on the ground of natural justice kindly condone the delay for filing of appeal before the Income Tax Appellate Tribunal so, that appellant case may be admit for hearing.*

*Appellant is ready to pay full of co-operation”*

2.3 The grounds are not concise nor any specific relief has been claimed, however, it is inferred that the assessee is agitated against the order of the Ld. CIT(A) and has sought relief against the dismissal of the appeal.

3. Brief facts of the case are that the assessee had entered into a land development agreement with Sinha Engicon Pvt. Ltd., Patna in the



FY 2013-14 and the assessee and the developer had agreed with the development arrangement wherein 1426 sqft. of land owned by the assessee was to be constructed by the land developer and the share of the constructed building to be owned by the assessee was 1782 sqft. encompassing total floor area of 57025 sqft. The developer was entitled to ownership of 50% of total constructed area of 57025 sqft. and as per the registered land development agreement the total value of the land was Rs. 5,23,75,000/- and the value of the shares owned by the assessee stood at Rs. 16,34,100/-. As a bundle of ownership rights over the share of land of the assessee was relinquished therefore, the same has attracted the provisions of section 53A of the Transfer of Property Act, 1882 and assessment was made at total income of Rs. 10,97,606/- by treating a sum of Rs. 23,16,600/- as long-term capital gain and the assessment was made u/s 147 read with Section 144 of the Act. Aggrieved with the assessment order the assessee filed appeal before the Ld. CIT(A) who has gone through the statement of facts filed by the assessee and dismissed the appeal holding as under:

*“6. The appellant was provided opportunity of being heard by way of issue hearing notice dated 22-01-2021 requesting the appellant to file written submissions and documents electronically through incometaxindia.efiling website on or before 25-01-2021 for necessary consideration while disposing this appeal. As there was no reply, another hearing notice dated was issued on 15-12-2021 asking the appellant to make the submissions on or before 23-12-2021. The appellant again failed to respond to this notice and to another hearing notice issued on 10-03-2022 fixing the hearing on 21-03-2022 as well. Thereafter, a final notice was issued on 07-10-2022 calling for submissions on or before 14-10-2022. However, the appellant has not submitted any. written submission till date. In these circumstances, the appeal is decided on the basis of material available on record.*

*7.1 The facts and grounds of the appeal have been carefully considered.*

*7.2 Though the appellant claims that the AO was not justified in making such assessment, he never put forth any reasons for claiming so. Even*



*during current appellant proceedings, the appellant never came forward with his explanation to the grounds mentioned by the appellant despite being offered number of opportunities through hearing notices issued by this office. The onus lies on the appellant to prove his case before seeking relief in the appellate proceedings. On this front, appellant miserably failed. In these circumstances, it is deemed fit not to interfere with the assessment made by the AO. Accordingly, the addition made by the AO is upheld and grounds are dismissed.”*

4. In the grounds of appeal, the assessee has mentioned that the Advocate had not responded nor communicated to the assessee and the assessee had lost the opportunity of being heard. The assessee is a lay man and also not computer friendly hence, he failed to participate in the appeal. We have gone through the facts of the case. Both before the Ld. AO as well as the Ld. CIT(A) no representation was made and therefore, the assessee lost the opportunity of being heard which was granted to him. On perusal of the appellate order, it is noticed that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. In this respect, it is relevant to examine the provisions of section 250(6) which are reproduced as under:

*“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”*

5. Thus, section 250(6) of the Act casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and the decision as well as the reason for arriving at such decision. In the present case before us, the Ld. CIT(A) has not mentioned the reasons after examining the records while disposing of the appeal. The Ld. CIT(A) has neither adjudicated upon various grounds of appeal nor has passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111**

**taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

*“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.*

*7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”*

5.1. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

*“7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—*

*Procedure in appeal*



250 (1) . . . . .

(2) . . . . .

(3) . . . . .

(4) *The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).*

(5) . . . . .

(6) *The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

(6A) . . . . .

(7) . . . . .

*Powers of the Commissioner (Appeals)*

*"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers —*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.*

*(aa) . . . . .*

*(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."*

*(c) . . . . .*

*(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Explanation. - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'*

*8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration*

*with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”*

6. After examining the facts of the case and in the interest of justice and fair play, we are of the view that the *ex parte* assessment and *ex parte* appeal were decided on account of non-prosecution by the counsel of the assessee and the assessee needs to be given another opportunity to represent his case and make the required submission. Therefore, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter back to the Ld. CIT(A) for disposal of the grounds taken by the assessee on merit, by passing a speaking order. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments and rule 46A



of the I.T. Rules, 1962 shall also be followed, if required. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

**Order pronounced in the open Court on 21<sup>st</sup> February, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 21.02.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Ajay Kumar, Kumhrar, Naya Tola, Talabpar, B H colony, Patna, Bihar, 800026.**
2. **CIT(A)-NFAC, Delhi.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata