

**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. 349/PAT/2023
Assessment Year: 2015-2016**

***Xaviers Construction Pvt. Limited,.....Appellant
House No. 239, Lodipur,
Patna-800001, Bihar
[PAN:AAACX0342D]***

-Vs.-

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

Appearances by:

*Shri Anjan Biswas, FCA, appeared on behalf of the
assessee*

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

Date of concluding the hearing: February 13, 2025

Date of pronouncing the order: March 21, 2025

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 ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 26th September, 2023 passed for Assessment Year 2015-16.

2. The appeal is time barred by 19 days in filing the appeal by the assessee. However, the assessee filed a condonation petition saying that after obtaining the copy of the order passed in appeal, it handed over the same to its ld. Counsel for filing the appeal. The said Counsel on account of his health and travel outside the State could not prepare and file the appeal before the Tribunal. The said counsel undertook to prepare the appeal and filed the same on 13.12.2023. Therefore, he pleaded to condone the delay.

3. Considering the facts and circumstances of the case, we are inclined to condone the delay since the delay is not due to negligence on the part of assessee and the assessee has established sufficient cause to condone the delay. Hence the delay is condoned.

4. Brief facts of the case are that the appellant-assessee is a Private Limited Company, doing its business in developing Real Estate and engaged in civil contract work. The assessee has filed its return of income for the assessment year 2015-16 declaring total income of Rs.5,47,040/-. The case was selected for scrutiny. Accordingly, notices under section 143(2) and 142(1) of the Income Tax Act were issued and served upon the assessee. During the scrutiny proceedings, the ld. Assessing Officer has observed that the appellant has earned income on account of sale of three flats. The ld. Assessing Officer further observed that during the financial year 2014-15, the assessee had recognized income for the sale consideration of Rs.55,86,000/-, whereas the stamp duty value was Rs.1,10,32,924/-. The ld. Assessing Officer confronted with

the assessee for the difference between stamp duty value and sale consideration, to know the market value of the property, the matter was referred to the Valuation Officer for determining the fair market value of the property on the date of sale. As per the report of DVO, the fair market values of the flats have been determined, which read as under:-

| Sl. No. | Flat No. | F.M.V. | Sale Consideration | Difference |
|---------|------------------------------|-------------|--------------------|-------------|
| 1. | 203, Xavier Prem Kunj, Patna | 25,00,000/- | 25,00,000/- | ---- |
| 2. | 402, Xavier Prem Kunj, Patna | 31,52,276/- | 17,38,000/- | 14,19,276/- |
| 3. | 403, Xavier Prem Kunj, Patna | 25,00,000/- | 13,48,000/- | 11,52,000/- |
| | | | TOTAL | 25,71,276/- |

5. So far as Serial No. 3 is concerned (Flat No. 403), the flat was allotted to Shri Ranjan Kumar, Director of the Company at a price of Rs.13,48,000/- on 12.02.2010. The ld. Assessing Officer further mentioned that as per the information available on record, the appellant has sold the flat bearing Flat No. 204 at Ram Shyam Apartment for a consideration of Rs.25,79,477/-, which has not been included in the sale consideration. The appellant had entered into sale agreement with Smt. Awadh Kumari on 11.10.2003 for sale of Flat No. 204 in Ram Shyam Apartment, Ashok Nagar, Patna for a consideration of Rs.3,60,000/-. The sale consideration of Rs.3,60,000/- was realized in 2006-07 and recognized as income in the profit & loss account of the same financial year. The appellant has considered as revenue in his audited profit & loss account in the financial year 2006-07 after receiving full sale consideration from Smt. Awadh Kumari. The appellant had issued a letter of possession to Smt. Awadh Kumari as on 1st August, 2005 and on that basis of letter of possession, Smt. Awadh Kumari got

electric connection in the said flat as absolute owner from 6th February, 2006. The appellant had several times requested to get the flat registered but she did not come forward for registration of property and saying that she cannot bear the registration charges. Finally, Smt. Awadh Kumari insisted to the appellant to register the said flats in the name of Shri Gautam Krishna on the basis of old agreement made in 2003. Therefore, the assessee-company considered Smt. Awadh Kumari as absolute owner of the flat since 2003. The appellant was compelled to register the flat bearing No. 204 in favour of Shri Gautam Krishna as insisted by Smt. Awadh Kumari on the sale consideration already realized and recognized in the year 2006-07, but the ld. Assessing Officer has not considered the same and made an addition of Rs.25,71,276/- as undisclosed income on the sale of flats.

6. Aggrieved with the order of ld. Assessing Officer, the assessee preferred an appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) considered the submissions made by the assessee but upheld the order passed by the ld. Assessing Officer.

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

(1) The assessment made by ld. CIT(Appeals) is bad in the eyes of law and contrary to actual facts.

(2) The Ld. CIT (Appeal) had totally ignored actual facts of the transaction related to sale of flats and actual scenario of Flat.

(3) Flat No 204 of RAM SHYAM APARTMENT at Ashok Nagar, Patna was already sold to Smt. Awadh Kumari in 2003 at Rs. 400 per Sq. Ft. having total area of 900 Sq. Ft. the

total sale consideration was Rs 3,60,000/- (Rupees Three Lakhs Sixty Thousand Only).

- (4) The sale agreement was made on 11/10/2003 between appellant and Smt. Awadh Kumari.*
- (5) The appellant had given possession on 01/08/2005 and allotment letter on 17/09/2003 To Smt. Awadh Kumari.*
- (6) Smt. Awadh Kumari was enjoying Electric Connection in her name on the basis of Sale Agreement and Letter of Possession.*
- (7) Moreover, she paid the full sale consideration value to the appellant during financial year 2003-2004.*
- (8) The appellant had recognized the sale proceed of Rs. 3,60,000/- (Rupees Three Lakhs Sixty Thousand Only) as revenue in his Audited Account for the financial year 2003-2004.*
- (9) Hence since 2003 the appellant has lost his right on the flat as current assets and Smt. Awadh Kumari was the owner.*
- (10) Since 2003 Smt. Awadh Kumari should be treated as owner of Flat No 204 of RAM SHYAM APARTMENT, Ashok Nagar, and Patna as her Capital Assets.*

8. We have heard both the sides. It was the submission of the assessee that the assessee-company had already sold the flat bearing Flat No. 204 of Ram Shyam Apartment at Ashok Nagar, Patna to one Smt. Awadh Kumari on 11.10.2003 for a total consideration of Rs.3,60,000/-. The assessee-company had recognized the sale proceeds of Rs.3,60,000/- as its revenue in his audited account for the financial year 2003-04. Therefore, the appellant has no right or title on the flat bearing no. 204 and after getting several requests from Smt. Awadh Kumari, the assessee-company executed the registered sale deed in favour of Shri Gautam Krishna on 08.01.2015. The ld. Counsel further

submitted that the assessee-company has not received any sale consideration from Shri Gautam Krishna but the sale deed was executed in favour of Shri Gautam Krishna as per the stamp duty value as on 01.02.2015 mentioning the value of the sale deed as Rs.25,79,477/-. Therefore, he pleaded to delete the addition made by the ld. Assessing Officer.

9. On the other hand, it was the submission of the ld. Departmental Representative that there was no recital on the sale deed establishing the fact that the flat bearing no. 204 was sold to Smt. Awadh Kumari on 11.10.2003 for a consideration of Rs.3,60,000/- and as per her request, the registration was done in the name of Shri Gautam Krishna. He further submitted that the alleged date of agreement of sale between the assessee-company and Smt. Awadh Kumari is unregistered, on unstamped white paper. The alleged possession letter given by the assessee-company in favour of Smt. Awadh Kumari is also unregistered, unstamped white paper. Therefore, the assessee-company has to establish that they have not received any consideration from Shri Gautam Krishna as mentioned in the registered sale deed. He further argued that the only contention of the assessee-company is that the assessee-company recognized the income on the sale consideration of Rs.3,60,000/- in the financial year 2003-04. However, even assuming moment that the property was sold in the year 2003 for an amount of Rs.3,60,000/- but the value of the property in the year 2015 should not have been the value at the same of Rs.3,60,000/-. Moreover, there is no legal valid agreement as well as transfer of possession of the property. Merely because of

appearing the electricity connection could not confer any right or title of the property. Since there is no recital in the sale deed executed by the assessee-company in favour of Shri Gautam Krishna, therefore, he pleaded that the ld. Assessing Officer as well as the ld. CIT(Appeals) have rightly considered the facts and circumstances of the case. Ld. Assessing Officer made the addition of Rs.25,79,477/- and ld. CIT(Appeals) confirmed the same. Therefore, he pleaded to uphold the orders passed by the revenue authorities.

10. We have perused the relevant material available on record. It is an admitted fact that there was no recital in the sale deed, which was executed by the assessee-company in favour of Shri Gautam Krishna about the previous transaction/agreement of sale deed/handing over the possession of the flat bearing no.204 to Smt. Awadh Kumari from the assessee-company. It is also an admitted fact that the alleged agreement of sale between the assessee-company and Smt. Awadh Kumari neither registered nor it was executed on the stamp paper. Admittedly, it is a simple black and white paper. It is also an admitted fact that the assessee-company offered the capital gains for sale of flat bearing no. 204 in the financial year 2003-04. We have gone through the recitals of the sale deed, wherein it was categorically mentioned that-

“Now this deed of absolute sale witnesseth as follows:-

(1) That the total consideration amount against the premises for a sum of Rs.3,60,000/- has already been paid by the vendee to the vendors attorney before the execution of the deed and granted receipt thereof the vendee in full and

acknowledge the same and there is no any single furthering is due in this deal.

(2) That the said vendors attorney hereby grant, conveyed, transfer and assign, assure into the said vendee free from all sorts of encumbrances the premises on the ground floor of the building being the property described in column no. 05 of this Deed.

(12) That the vendor Attorney has further declares and assures that the vended property of column no. 5 of the deed is free from all encumbrances, changes and not affected by any land acquisition proceeding of any authority and the vendee and the vendors have further agreed that in the event of defect of title the vendor will compensate of such loss or damages.

(13) That the vendors have put the vendee into peaceful, physical and exclusive possession of the premises and the vendee is entitled to get their names mutated in the Patna Municipal Corporation and in other offices as required and shall pay the taxes.

11. Therefore, after considering the recitals mentioned in the sale deed, it is crystal clear that as on the date of execution of the sale deed, the assesese-company/ Attorney has received the entire sale consideration and the possession of the flat was handed over to Shri Gautam Krishna on the date of execution of sale deed i.e. on 08.01.2015.

12. So far as the contention of the assessee regarding offer of capital gains for sale consideration of flat bearing no. 204 is concerned, no doubt, he has offered the capital gains for the year 2003-04, but at the same time, the property was registered in the name of third person, i.e. Shri Gautam Krishna on 08.01.2015. Therefore, the burden heavily lies on the assessee company to establish that there was a valid sale of immovable property between the assessee and Smt. Awadh Kumari, the assessee-company in order to prove the said transaction, unregistered agreement of sale and one unregistered and unstamped papers are filed, to establish that property was sold on 11.10.2003 and the delivery of possession was also taken place on 1st August, 2005, but these documents are not legally valid documents to say that the property was already transferred in the name of Smt. Awadh Kumari and at the request of Smt. Awadh Kumari, the assessee-Company registered the sale deed in the name of one Shri Gautam Krishna on 08.01.2015. Moreover, as per provision of Section 91 of the Indian Evidence Act, “the terms of documents must be proved by way of documentary evidence only, oral evidence cannot be allowed to disprove the contents of the documents. In the present case on hand, the registered sale deed clearly establishes that the sale transaction was made on 08.01.2015 between the assessee-company and Shri Gautam Krishna, and assessee company received the sale consideration and delivery of possession was also handed over to Shri Gautam Krishna by assessee-company. The valuation of property was shown on the sale deed is Rs.25,79,477/-. Thus no oral evidence shall be allowed to disprove the contents mentioned in the sale deed by saying that the sale

was made on 11.10.2003 and delivery of possession was also completed on 1st August 2005 by executing on while paper in presence of one Smt. Awadh Kumari. Therefore, in the absence of satisfactory legal evidence, the contention of the assessee should not be acceptable that the assessee-company has already sold the flat to Smt. Awadh Kumari by registered sale deed dated 11.10.2003. Therefore, the grounds raised by the assessee-company are liable to be dismissed.

13. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 21/03/2025.

Sd/-
(Sanjay Awasthi)
Accountant Member

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

Kolkata, the 21st day of March, 2025

*Copies to :(1) Xaviers Construction Pvt. Limited,
House No. 239, Lodipur,
Patna-800001, Bihar*

- (2) Income Tax Officer,
Ward-2(2), Patna*
- (3) CIT(Appeals), NFAC, Delhi;*
- (4) CIT - ;*
- (5) The Departmental Representative;*
- (6) Guard File*

TRUE COPY

By order

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

Laha/Sr. P.S.