

**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. 425/PAT/2024  
Assessment Year: 2015-2016**

***Kaushalya Devi,.....Appellant  
Swaroop Bhawan, M.P. Sinha Road,  
Kadamkuan, Patna-800003, Bihar  
[PAN:ASZPD8395C]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-6(1), Patna,  
Lok Nayak Bhawan,  
Dak Banglow Chowk, Patna-800001, Bihar***

**Appearances by:**

*Shri Shikesh Jha, Advocate, appeared on behalf of the  
assessee*

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

**Date of concluding the hearing: April 23, 2025**

**Date of pronouncing the order: June 04, 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 Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 3<sup>rd</sup> April, 2024 passed for Assessment Year 2015-16.

2. Brief facts of the case are that the assessee's case was reopened on the basis of information available from the Office of the Registrar for properties in Patna District as requisitioned after obtaining prior approval from the competent authority u/s 133(6) of the Income Tax Act, 1961, wherein it was noticed that the assessee has entered into a registered land development agreement with M/s Azalfa Building Construction Pvt. Ltd., Patna (The Developer), in the Financial Year 2014-15 relevant to the Assessment Year : 2015-16 under the terms and conditions laid down that the rights of ownership of the land is transferred by the Land Owner against receipt of ownership of a portion of property constructed while the remaining portion of the constructed property is apportioned by the builder against the cost of development incurred by the developer such arrangement attract incidence of capital gain and capital gain tax thereon. Further, on perusal of Land Development Agreement entered into by the Land Owner on 15.04.2014, it was noticed that the assessee and the Developer have agreed to the development arrangement for certain land area owned by her which will be constructed upon by the Developer. In terms of the Land Development Agreement, the share of constructed area to be owned by the assessee as certain percentage encompassing constructed in the shape of Super Built Area and the Developer will also be entitled for ownership of the remaining area of constructed Super Built Area. As per Registered Land Development Agreement, the total value of land has already been mentioned in development agreement and the assessee is entitled to get the value of land share owned which has also been

mentioned in such Development Agreement. As a bundle of ownership right over the share of land was relinquished by her in terms of the land development agreement as well as the facts of the case has attracted the provisions of section 53A of the Transfer of Property Act and the capital gains arising out of such transfer has attracted the provisions of sections 2(47)(v), 45 3. and 48 of the Income Tax Act, 1961. As per registered land development agreement, the total value of land is Rs. 4,52,00,000/- and the consideration amount in part of assessee, as per registered land development agreement is Rs.86,44,500/- and no capital gain is paid on account of this development agreement. Therefore, the capital gain arising out of this agreement of development valued at Rs. 86,44,500/- has escaped assessment. Keeping in view of the transaction amount for the A.Y. 2015-16, notice u/s 148 issued on 10.01.2019 to the assessee. In view of the above facts and circumstances as well as position in law, looking into escapement of income from capital gain, the case of Smt. Kaushalya Devi was reopened u/s 147 of the Income Tax Act, 1961 for the A.Y. 2016-17 with the prior approval of the Joint Commissioner of Income Tax, Range-6, Patna. Subsequently, a notice u/s 148 was issued to the assessee on 10.01.2019. In response to the notice u/s 148, no compliance was made by the assessee. Subsequently, a notice u/s 142(1) dated 11.02.2019 along with questionnaire was issued for compliance on or before 18.02.2019. This time also the assessee was requested to file the ITR in response to the notice u/s 148 of the I.T. Act, 1961. Again, there was no compliance. Further two opportunity letters were issued to the assessee on 08.05.2019 and 06.11.2019 for compliance, but the assessee has not made

any compliance. Since no compliance was made by the assessee, a final show-cause letter dated 15.11.2019 was issued to the assessee for proposed addition. He was requested to make compliance on or before 22.11.2019. Then the assessee has filed the ITR on 28.11.2016 (the ITR manually submitted to the ASK Centre, Patna) for A.Y. 2015-16 in compliance of notice u/s 148 of I.T. Act, 1961. Subsequently a notice u/s 143(2) of I.T. Act, 1961 was issued on 02.12.2019 for compliance. But no any compliance or written submission submitted by the assessee till date. It is, thus evident that the assessee has been provided several opportunities and ample time to submit the Return in response to the statutory notice u/s 148 of the Income Tax Act, 1961. The assessee also failed to submit reply in response to queries raised in questionnaire which was sent along with notice u/s 142(1) of the Income Tax Act, 1961. In above circumstances, the ld. Assessing Officer left with no option but to pass the order u/s 144 of the Income Tax Act, 1961 based on information/material available on record and also considering the merits of the case. Finally, ld. Assessing Officer assessed the Total Income of the assessee at Rs. 96,44,500/- u/s 144 r.w.s. 147 of the I.T. Act, 1961. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals).

3. The ld. CIT(Appeals) has given several opportunities to the assessee to substantiate her claim, but the appellant neither filed the written submission nor represented the case before the ld. CIT(Appeals). Thereafter the ld. CIT(Appeals) dismissed the appeal *ex-parte* on 3<sup>rd</sup> April, 2024.

4. On being aggrieved, the assessee preferred an appeal before the ITAT.

5. At the time of hearing, ld. Counsel for the assessee prayed before the Bench that the impugned order be set aside and remitted back to the file of ld. CIT(Appeals) for deciding it afresh.

6. At the outset, ld. D.R. brought to my notice that the assessee did not produce the relevant documents as asked by the ld. Assessing Officer during the assessment proceedings. Therefore, the ld. Assessing Officer passed the assessment order treating the amount of Rs.96,44,500/- as income of the assessee under long-term capital gain since the assessee concealed his income and treated the balance tax payable at Rs.33,17,900/- by the assessee. Thereafter the assessee preferred an appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) has given many opportunities to the assessee and the assessee neither filed written submission nor any evidence before the ld. CIT(Appeals). He further submitted that before the ITAT, the assessee did not substantiate her claim. Therefore, he pleaded to uphold the order passed by the ld. CIT(Appeals).

7. We have heard the rival contentions and perused the material available on record. Considering the facts and circumstances of the case, we are inclined to set aside the order passed by the ld. CIT(Appeals) in order to meet the principle of natural justice, and remit the matter back to the file of ld. CIT(Appeals) with a direction

to provide one more opportunity of being heard to the assessee. At the same breath, we also hereby caution the assessee to promptly co-operate with the proceedings before the Ld. CIT(Appeals) failing which the Ld. CIT(Appeals) 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.

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

Order pronounced in the Open Court on 04/06/2025.

Sd/-  
**(Sanjay Awasthi)**  
**Accountant Member**

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

***Kolkata, the 4<sup>th</sup> day of June, 2025***

*Copies to :(1) Kaushalya Devi,  
Swaroop Bhawan, M.P. Sinha Road,  
Kadamkuan, Patna-800003, Bihar*

*(2) Income Tax Officer,  
Ward-6(1), Patna,  
Lok Nayak Bhawan,  
Dak Banglow Chowk, Patna-800001, Bihar*

*(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.***