

**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. 689/PAT/2024
Assessment Year: 2011-2012**

***Shivendu Shekhar Singh,.....Appellant
Sujan House, Anandpuri,
West Boring Canal Road,
Patna-800001, Bihar
[PAN:AMMPS7739J]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-6(5), Patna,
Lok Nayak Jay Prakash Bhawan,
Dak Bunglow Chauraha, Patna-800001, Bihar***

Appearances by:

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

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

Date of concluding the hearing: May 6, 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 25th January, 2024 passed for Assessment Year 2011-12.

2. The appeal is time barred by 256 days in filing the appeal by the assessee. However, the assessee filed a condonation petition saying that the assessee was not aware of the order passed by the ld. CIT(Appeals) as the appellant was never served with the NFAC, Delhi order u/s 250 of the Act dated 25.01.2024 on his e-mail ID or phone where the imposition of penalty u/s 271(1)(c) of the Act by the ld. Assessing Officer was confirmed, despite of the fact that all the communication details like email ID and contact no. was correctly mentioned on the appellant's portal for the communication of notices/letter/orders and in consequence, the assessee was not able to file appeal against the said order within the prescribed limit as stipulated u/s 253(3) of the Income tax Act, 1961. When the assessee came to know about the order passed by the ld. CIT(Appeals) without considering the merit of the case, the assessee approached the ld. A.R. to prefer appeals, due to that there was a delay of 256 days in filing the appeal before the Tribunal. Therefore, he pleaded to condone the delay.

3. Considering the facts and circumstances of the case, we are of the view that the assessee was prevented in filing the appeal within the stipulated time. Therefore, we are inclined to condone the delay of 256 days. Hence the delay is condoned.

4. Brief facts of the case are that the assessee filed his return of income for A.Y. 2011-12 on 31.12.2017 showing an income of

Rs.3,54,480/-. The case of the assessee was selected for scrutiny assessment and notices under section 143(2) and 142(1) were issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer that the assessee along with his brother were the owner and in possession of 2 acres and 14 guntas of land comprised at Hobli, Bangalore. They entered into a joint development agreement on 09.08.2006 with developer. As per the agreement, the assessee and his brother jointly received refundable deposit of Rs. One crore for allowing the development on their land. The developer would construct a saleable area of 3 lakhs square feet at his own case, the assessee and his brother were entitled for 50% of the built-up area i.e. 1.50 lakh sq.ft. The assessee and his brother had given irrevocable license to the developer to enter and develop the property. The developer was authorized to avail the loans and financial facilities from the financial institutions. The ld. Assessing Officer was of the view that the assessee surrendered their rights to the extent of 50% in the land in lieu of 50% constructed area, i.e. 1.5 lakh sq.ft. whose cost was to be borne by the developer. The ld. Assessing Officer had adopted the consideration of the land at Rs.800/- per sq. ft. because this was the expenditure which the builder will incur for construction the area and computed the long-term capital gain in the case of assessee at Rs.5,95,23,974/-. The ld. Assessing Officer treated the amount of Rs.22,40,000/- as income of the assessee under long-term capital gain since the assessee concealed his income and treated the balance tax at Rs.9,32,109/- payable by the assessee. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals).

5. The ld. CIT(Appeals) has given several opportunities to the assessee to substantiate his 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 25th January, 2024.

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

7. 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.

8. 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.22,40,000/- as income of the assessee under long-term capital gain since the assessee concealed his income and treated the balance tax payable at Rs.9,32,109/- 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 his claim. Therefore, he pleaded to uphold the order passed by the ld. CIT(Appeals).

9. 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 Id. CIT(Appeals) in order to meet the principle of natural justice, and remit the matter back to the file of Id. 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.

10. 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 4th day of June, 2025

*Copies to :(1) Shivendu Shekhar Singh, Sujan
House, Anandpuri,
West Boring Canal Road,
Patna-800001, Bihar*

*(2) Income Tax Officer,
Ward-6(5), Patna,
Lok Nayak Jay Prakash Bhawan,
Dak Bunglow Chauraha, 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.