

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.57/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2017-18

Sanjay Kumar Baid  
Arihant Bearing and Mill Stores,  
Opp. Deshbandhu School, Station Road,  
Raipur (C.G.)-492 001  
PAN: ACIPJ2887L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-4(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Adarsh Jain, CA  
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.06.2025

घोषणा की तारीख / Date of Pronouncement : 18.06.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 29.11.2024 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee has filed an adjournment petition and sent his junior namely, Shri Adarsh Jain, CA who submitted that arguing counsel is suffering from fever, severe cold & cough. However, he could not file any medical certificate evidencing the same. It is noted that the matter is going on since February, 2025, therefore, there has been several occasions, in which, the assessee were provided opportunities of hearing. In such scenario, it cannot be said that reasonable opportunities were not provided to the assessee. In other words, prolonged process of litigation and providing adjournment unnecessarily delays the process of justice which hampers the trust of the litigants in the judicial process. The fact of the matter is that the case was going from on 20.02.2025 than on 12.03.2025 and 10.06.2025 and all throughout the hearing dates had been duly communicated to the assessee. The Hon'ble Supreme Court in the case of **Ishwarlal Mali Rathod Vs. Gopal and Ors., passed in Special Leave Petition (Civil) Nos. 14117-14118 of 2021, order dated 20.09.2021**, held and observed

that as on today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the rights of the litigant to access to justice and speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking of repeated adjournments by the advocates and mechanically and in routine manner being granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shake the trust and confidence of the litigants in the justice delivery system. Therefore, the Hon'ble Apex Court has directed specifically that adjournments should not be granted in a routine manner and mechanically and such grant of adjournment by the Courts should not be a cause for delay in dispensing justice. We are of the considered view that sufficient opportunities have been already provided to the assessee and the department in these prolonged litigation. That, any further delay in disposing of the matter would ultimately result in hindrance of justice and would act as defiance to the directions given by the Hon'ble Supreme Court (supra) and we can never be a party to such an act and, therefore, in such factual scenario and observations even though the Ld. Counsel had applied for adjournment, we reject the same and proceed to hear the matter on merits considering the documents on record and the submissions of the Ld. Sr-DR.

3. The brief facts in this case are that the assessee has filed his return of income for A.Y.2017-18 on 07.11.2017 declaring an income of Rs.87,94,860/-. During the year under consideration, the assessee had received compensation of Rs.73,58,113/- from NHAI on account of acquisition of land. As per the assessee, the aforesaid compensation was also shown in return of income under bonafide belief that it is taxable and the same was shown as income under the head of short term capital gain. Accordingly, the assessee filed a rectification application u/s.154 of the Income Tax Act, 1961 (for short 'the Act') wherein it has been stated that the said compensation received under RCTLAAR Act, 2013 is exempted from income as per Section 96 of the RCTLAAR Act, 2013 as well as in view of Circular No.36/2016, dated 25.10.2016 issued by CBDT. It was submitted by the assessee that the exempt income offered for tax due to lack of knowledge which is mistake apparent from record and therefore, the same may be rectified.

4. However, the A.O disposed of the application filed by the assessee u/s.154 of the Act without making any rectification in the income shown in the return of income observing as follows:

“3. The application of the assessee was considered and it is observed that the assessee has filed its return of income on 07.11.2017 showing total income at Rs.87,94,860/-. The issue related to the taxability of compensation claimed by the assessee cannot be considered mistake apparent from record as it involves the reasoning of taxability of compensation received by the assessee. The Hon'ble

Supreme Court in the case of T. S. Balaram, ITO v Volkart Bros (1971) 82 ITR 40 (SC) held that; "a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record". A look at the records must show that there has been an error and that error may be rectified; Reference to documents outside the records and the law is impermissible when applying the provisions of section 154. [CIT v Keshri Metal Pvt. Ltd. (1999) 237 ITR 165 (SC)].

4. Further, section 96 of the RCTLAAR Act, 2013 states that "No income tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same." This clearly states that the income tax is not levied where the award has been received except under section 46 of the RCTLAAR Act, 2013.

5. In the present case, the assessee has claimed that the land has been acquired by the NHAI Act. According to section 105(1) of RFCTLARR Act, 2013, the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. The NHAI Act (The National Highway Act, 1956) is included in the fourth schedule. Therefore, the provision of section 96 Act would not apply in respect of the compensation received on account of land acquired by NHAI.

6. It is pertinent to mention that the CBDT vide OM dated 06.06.2019 in F. No. 225/72/2019-ITA-11 has clarified the taxability of compensation received by the land owners for the land acquired under various central acts in Fourth Schedule in accordance with the provisions of the First, Second and Third Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR Act) 2013. As per para 04 of the said OM, it has been clarified that "for the land acquisition undertaken as per enactments specified in the Fourth Schedule of the RFCTLARR Act, 2013, no other provisions of the RFCTLARR Act, 2013 would be applicable except for the provisions relating to the determination for compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Third

Schedule. Accordingly, the benefit of section 96 of the RFCTLARR Act, 2013 exempting income tax on the award would not be applicable for cases in which land acquisition is undertaken as the per the enactments specified in the Fourth Schedule to the said Act.

7. In view of the above fact, the issue related to the taxability of compensation is not exempted as per the existing CBDT's OM dated 06.06.2019 and the issue also does not constitute mistake apparent from record. Therefore, the application of the assessee is hereby disposed off without making any rectification in the income shown in the ITR.”

5. That being further aggrieved, the assessee carried the matter in appeal before the first appellate authority wherein, Ld. CIT(Appeals)/NAFC relying on the order of the ITAT, Raipur in the case of Heritage Buildcon (P) Ltd. Vs. CIT, 2023 SCC Online ITAT, 1258 had upheld the order of the A.O observing as follows:

**“5. CIT(A)'s Decision:**

5.1 The property of the appellant was acquired by the NHAI and a compensation of Rs.73,58,113/- was paid by NHAI on which TDS of Rs.7,35,811/-was deducted @ 10% u/s 194LA. In the ROI filed for the A.Y. 2017-18 on 07.11.2017, this income was included as part of the total income disclosed in it of Rs.87,94,860/-.

5.2.1 The appellant's states that it was a mistake on its part of having declared this compensation as income, since he was not aware that as per section 96 of RFCTLARR Act, 2013 and Circular no. 36/2016 dated 25.10.2016 of CBDT, the compensation so received was exempt from tax, when the land was compulsorily acquired. According to the appellant the income that was otherwise exempt was offered to tax due to lack of knowledge and improper guidance, inadvertently.

5.2.2. In order to gain relief, the appellant had filed an appeal a rectification petition on 04.09.2023, enclosing a revised computation of income, according to which, the appellant was entitled for a refund of Rs.17,07,340/-. In the revise computation, the gross total income was reduced to

Rs.36,41,079/- and through the rectification petition u/s 154, the appellant sought relief, quoting section 96 of RFCTLARR Act, 2013 and Circular no. 36/2016 dated 25.10.2016 of CBDT.

5.2.3 However, in the order dated 24.01.2024, the ITO W-4(1), Raipur had rejected the claim of relief sought, for the reason that the provision u/s 154, is not the right procedure, since the allowability of the relief is dependent on a long drawn process of reasoning as to whether the transaction squarely falls under section 96 of RFCTLARR Act,2013 or u/s 105(1) of the same Act. Moreover, since there can be conceivably two opinions and the claim can be established only on thorough investigation, it is not an issue that can be deliberated through a rectification petition u/s 154.

5.2.4 Further, the AO has relied on the O.M. dated 06.06.2019 in F.No.225/72/2019-ITA-11 which has stated that land acquired under various Central Act in Fourth Schedule RFCTLARR Act, 2013, no other provision of the said Act would be applicable except for determining the quantum of compensation. Therefore, the issue does not constitute a mistake apparent from the record, both on procedure and merits as well and therefore, the application of the appellant was disposed of without granting the relief sought in it.

5.2.5 Aggrieved by the said order, the appellant preferred an appeal and furnish the Form No. 35 along with SoG and GoA which were carefully considered.

5.3.1 As stated by the AO, whether the transaction falls under section 96 of RFCTLARR Act, 2013 or otherwise is not a case, which can be decided, at a glance and needs a detailed verification. Moreover, when the appellant has stated that the compulsory acquisition falls under section 96 of RFCTLARR Act, 2013, no evidence has been brought to such effect, even at the time of appellate proceedings. The Chhattisgarh Sub-divisional Officer who released the compensation has not certified it to be so.

5.3.2 Therefore, the rectification petition is procedurally infirm, since the same is against the rationale expressed by the Hon'ble Supreme Court in the case of T.S. Balaram, ITO Vs Volkart Bros (1971) 82 ITR 40(SC), relied by the AO and

thus, the action to reject the rectification petition based on its procedural incapacity is upheld.

5.4.1 Coming to the merits of the claim, as stated earlier, the appellant has not established with supporting documentation in the form of a certificate from the NHAI or SDO that the payment on which TDS u/s 194LA was deducted is governed by section 96 of RFCTLARR Act, 2013. In the absence of such clarification, it requires to be presumed that the acquisition was made under the NHAI Act.

5.4.2 In this regard, the Hon'ble Jurisdictional ITAT at Raipur in the case of Heritage Buildcon (P) Ltd. v. CIT, 2023 SCC OnLine ITAT 1285. has taken a clear view, holding that Section 105(1) makes all provisions of the Act inapplicable to the land acquisitions made under the enactments specified in the Fourth Schedule to the Act. While Section 105(3) only makes the First Schedule, Second Schedule and Third Schedule applicable to the land acquisitions made under the enactments specified in the Fourth Schedule to the Act.

5.4.3 By virtue of the said section, the provisions of Section 96 are not made applicable to land acquisitions made under the enactments specified in the Fourth Schedule to the Act. For this, the ITAT, Raipur has relied on Office Memorandum dated 6-6-2019 issued by the CBDT, which is relied by the AO. Thus, it was held that exemption under Section 96 of the RFCTLARR Act is not applicable to land acquisitions under the NHAI Act, which is an enactment specified under Fourth Schedule of the RFCTLARR Act.

5.4.5 The fact situation in the case under consideration is exactly identical to that of Heritage Buildcon (supra) and therefore, when the Jurisdictional ITAT had held in favour of the Revenue, the lower appellate authority has to mandatorily follow the dictum of a higher appellate authority, more particularly when it is a Jurisdictional ITAT and hence the position taken by the A.O in the order of rectification u/s. 154 dated 24.01.2024 is upheld on a second count on the merits of the claim as well.

6. As a result, all the GoA of the appellant are dismissed.”

6. The Ld. Sr. DR relying on the order of the Ld. CIT(Appeals)/NFAC submitted that the Ld. CIT(Appeals)/NFAC while upholding the order of the A.O has rightly relied on the order of the ITAT, Raipur in the case of Heritage Buildcon (P) Ltd. Vs. CIT, 2023 SCC Online ITAT, 1258. It was also submitted by the Ld. Sr.DR that the order of the Ld. CIT(Appeals)/NFAC is well-reasoned and the same does not call for any interference.

7. We have heard the Ld. Sr. DR and perused the material/documents available on record. On perusal of the order of the Ld. CIT(Appeals)/NFAC, it is noted that the Ld. CIT(Appeals) while rejecting the rectification application filed by the assessee u/s.154 of the Act had relied on the order of the **ITAT, Raipur** in the case of **Heritage Buildcon (P) Ltd. Vs. CIT, 2023 SCC Online ITAT, 1258** wherein it has been held that Section 105(1) makes all provisions of the Act inapplicable to the land acquisitions made under the enactments specified in the Fourth Schedule of the Act, while Section 105(3) only makes the First Schedule, Second Schedule and Third Schedule applicable to the land acquisitions made under the enactments specified in the Fourth Schedule to the Act. Also, the Ld. CIT(Appeals)/NFAC observed that the ITAT, Raipur in the aforesaid case (supra) had relied on OM dated 06.06.2019 issued by the CBDT wherein it is held that the provisions of Section 96 of the RCTLAAR Act, 2013 are not

applicable to the land acquisitions made under the enactments specified in the Fourth Schedule of the RCTLAAR Act, 2013. Accordingly, since the issue involved in the present appeal is squarely covered by the decision of the ITAT, Raipur in the case of Heritage Buildcon (P) Ltd. Vs. CIT, 2023 SCC Online ITAT, 1258 in favour of the revenue, on which, the Ld. CIT(Appeals)/NFAC had relied upon, therefore, we find no infirmity in the view taken by the Ld. CIT(Appeals)/NFAC, which is hereby upheld.

8. As per the above terms grounds of appeal raised by the assessee are dismissed.

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

Order pronounced in the open court on 18<sup>th</sup> day of June, 2025.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 18<sup>th</sup> June, 2025.

SB, Sr. PS

**आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :**

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.