

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'SMC': AGRA**

**BEFORE
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.146/AGR/2025
(ASSESSMENT YEAR: 2018-19)

ABC Paper Products 44, Mahaveer Market, Chhipitola, Uttar Pradesh-282001 PAN-ABEFA5459J	Vs.	Income Tax Officer, Ward-1(1)(3), Agra.
(Appellant)		(Respondent)

Assessee by	Shri Rajendra Sharma, Adv. and Manuj Sharma, Adv.	
Department by	Shri Shailendra Srivastava. Sr. DR	
Date of Hearing	19/05/2025	
Date of Pronouncement	24/06/2025	

ORDER

PER MANISH AGARWAL, AM:

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), [CIT(A) in short] National Faceless Appeal Centre (NFAC) in appeal No. NFAC/2017-18/10084430 dated 22.05.2024 passed u/s 250 of the Income Tax Act, 1961 ('the Act' for short) arising out of the order passed u/s 143(3) of the Act dated 10.03.2021.

2. From the perusal of the record, it is found that the appeal is filed delay by 239 days. With respect to the delay an affidavit is filed by the assessee along with separate application for condonation of delay wherein it is stated that no intimation was received about the uploading of order on the e-filing portal not the same was served upon the assessee or the person authorized therefore, the assessee was not aware of passing of the appellate order. It is further submitted that delay is not intentional as assessee never received any intimation on the email given in Form 35 and when it was enquired in e-filing portal, the fact of passing of order was come to the notice of the assessee. Thereafter immediately assessee rushed up and filed the appeal. Under these circumstances, it is requested that the delay be condoned as the assessee has sufficient cause for such delay.

3. After perusing the facts, we find that the appellate order was passed on 22.05.2024 and the same was uploaded on the very same day through e-portal of the Department, however, as the assessee did not receive any messages or email intimation about the passing of such order, therefore, the same skipped the attention of the assessee. By filing the appeal delayed, the assessee would not gain anything and there is no malafide imputable to the assessee. It must be remembered that in every case of delay there can be some lapse of the litigant concerned. That alone is not enough to turn down the plea and to shut the doors against him. If the explanation does not smack of mala fide or it is not put-forth as a part of dilatory strategy,

the Courts must utmost consideration to such litigant. Considering the overall facts and circumstances of the case and in larger interest of justice, we are of the opinion that appeal deserves to be admitted. Therefore, we condone the delay in filing the appeal and proceed to decide the appeal of the assessee on merits.

4. Brief facts of the case are that assessee is a partnership firm. The return of income for the year under appeal was filed declaring total income at 'Nil' and assessee has declared net agricultural income of Rs.49,50,000/- which was claimed as exempt u/s 10(37) of the Act, being compensation received from NHAI on compulsory acquisition of its land. The case of the assessee was selected for 'limited scrutiny' for reason "Large agricultural income in comparison to total income". The AO treating the compensation as capital receipt and completed the assessment u/s 143(3), vide order dated 10.03.2021 wherein the addition of Rs.49,50,000/- was made as capital gain in the hands of the assessee.

5. Against such order the assessee filed an appeal before the Ld. CIT(A) who vide impugned order dated 22.05.2024 has dismissed the appeal of the assessee, thus, the assessee is in appeal before the Tribunal. The assessee has taken the following grounds of appeal:-

"1. That the order passed by the National Faceless Appeal Centre dated 22.05.2024 is not in accordance with the provisions of section 250(6) of the Income Tax Act, same is liable to be set aside.

2. That while sustaining the addition as made by the AO, the NFAC has not made any enquiry or verification as per power vested with them under Section 250(4) of the Income Tax Act, in absence

of which the appeal dismissed by the NFAC is highly unjustified, no addition is liable to be sustained, same is liable to be deleted.

3. *That no capital gain arises on the compulsory acquisition of land acquired under RFCTLARR Act, the AO without making any enquiry and not having any evidence, has made the addition, addition made by the AO, sustained by the NFAC is liable to be deleted.*

4. *That in any view of the case, the AO while computing the long term capital gain has not allowed the deduction of cost of the asset, which, as per law, is liable to be allowed. The NFAC has not considered the aforesaid facts and law. No addition is liable to be made, addition made by the AO, sustained by the NFAC is liable to be deleted.*

5. *That the order passed by the NFAC dated 22.05.2024 is bad in law, liable to be set aside.”*

6. All the grounds of appeal are in relation to the action of the lower authorities in considering the compensation received from NHAI on compulsory acquisition of land owned by the assessee as capital gain, therefore, they are taken together for consideration.

7. Before us ld. AR of the assessee submitted that the assessee owned a piece of land which was acquired by NHAI and compensation is exempt from tax. Ld. AR further submitted that during the course of assessment proceedings, the assessee has filed a copy of the cutting of newspaper of the official gazette and further filed the copy of order of Addl. District Magistrate awarding the order of compensation after acquisition of land. The assessee claimed that as per section 96 of Land Acquisition Rehabilitation And Re-Settlement Act, 2013 (RFCTLARR Act,) the compensation received on compulsory acquisition by NHAI is exempt from tax as the land is

acquired by NHAI after 01.01.2015. It is further submitted by ld. AR that the exemption was not allowed for the sole reason that the land acquired is not an agricultural land. In this regard, the ld. AR of the assessee has placed reliance on the CBDT Circular No.36/2016 and further placed reliance on the judgment of the Co-ordinate Bench of the ITAT Agra in the case of Ravi Verma vs. ACIT, in ITA No.116/Agr/2019 and prayed that the compensation received by assessee deserves to be hold as exempt under RFCTLARR Act, 2013.

8. On the other hand, the Ld. Sr. DR vehemently supported the orders of the lower authorities and submits that since the land acquired is not an agricultural land, therefore, the case of the assessee is not covered RFCTLARR Act, 2013 and the compensation is taxable as capital gain and the lower authorities has rightly treated the same as capital gain. He prayed accordingly.

9. We have heard both the parties and perused the materials available on record. Undisputedly, the land of the assessee was acquired by NHAI and the compensation was received after 01.01.2015. The CBDT Circular No.36/2016 issued on 25.10.2016 on the subject of Taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLAAR Act') provides as under: -

“Under the existing provisions of the Income-tax Act, 1961 (‘the Act’), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is

not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

2. The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFTLARR Act), is exempted from the levy of income-tax.

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RECTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

4. The above may be brought to the notice of all concerned.

5. Hindi version of the order shall follow.”

10. From the perusal of the above, it is clear that the CBDT has made no distinction between the compensation received on compulsory acquisition of agricultural land and non-agricultural land and the compensation received is exempt from Income Tax in terms of section 96 of RFCTLARR Act, 2013.

11. The Co-ordinate Bench of ITAT in case of Ravi Verma (supra) considering the facts that compensation was received u/s 96 of the RFCTLARR Act, 2013 has held the same as exempt from Income Tax. The identical issue was came up before the Co-ordinate Bench of ITAT, Delhi in the case of Harry Township Limited vs. ACIT in ITA No.1798/Del/2021 wherein the Co-ordinate Bench vide its order dated 19.02.2025 has made following observations:

"16. We have heard the rival submissions and perused the material available on record. Before dwelling upon the issue, the relevant provisions as contained in section 96 and 105 of the RFCTLARR Act, 2013 needs to be considered which reads as under:

96. Exemption from income-tax, stamp duty and fees.

"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 Section."

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

16.1. Sub-section 3 to Section 105 of the RFCTLARR Act, 2013 is substituted by the Ordinance No. 9 of 2014 w.e.f. 01.01.2015 and the relevant amendment in sub-section (3) to Section 105 reads as under:

(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015."

16.2. It is thus clear that after the amendment in sub-section 3 of the RFCTLARR Act, 2013, precondition of issue of notification is withdrawn w.e.f. 01.01.2015. From the perusal of the order of Ld. CIT(A), we find that though the Ld. CIT(A) was in agreement with the claim of the assessee that the provisions of the RFCTLARR Act, 2013 are applicable to the present case and as per Section 96 of the said Act, the compensation so received is exempted from Income Tax. However, the Ld. CIT(A) by relying upon the old provision of sub-section (3) of section 105 of RFCTLARR Act, 2013 has disallowed the claim for reason that no notification was issued by the Central Government in terms of section 105(3) of the Act. Therefore, only issue remained for our consideration is whether any notification as provided in section 105(3) is issued by the Central Government to this effect or not.

16.3. Section 96 of the RFCTLARR Act, 2013 provides exemption from income tax and stamp duty of the compensation received on compulsory acquisition made under this Act for public purposes. Section 105(1) of the RFCTLARR Act, 2013 states that provisions of this act shall not apply to enactments relating to land acquisition specified under Schedule Fourth (which includes NHAI Act also). However, as per amended sub-section 3 of section 105, the provisions of the RFCTLARR Act, 2013 relating to the determination of compensation in accordance with First schedule shall apply to all cases of land acquisition under the enactments specified in Fourth schedule of the said Act. Since NHAI Act is already included in Fourth schedule of the RFCTLARR Act, 2013 thus exemption as provided in section 96 of the said act is available in cases where land is compulsory acquired by under NHAI Act for public purposes and the pre-condition of issue of notification to this effect has already been withdrawn through amendment in sub-section (3) of section 105 of the said Act.

16.4. One more aspect needs to be considered that certain portion of the land acquired was having commercial status and the lower authorities observed that the exemption is only available to the agricultural land. CBDT vide circular No. 36 of 2016 dated 25.10.2016 after considering the exemption provided u/s 96 of the RFCTLARR Act, 2013 towards the compensation award under this Act as tax free under the Income Tax Act, 1961. The relevant para 2 and 3 of the said Circular as under:-

2. "The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income Tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of

land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of RFCTLARR Act shall also not be taxable under provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act,

16.5. Thus vide this Circular, CBDT clarified that award granted under the RFCTLARR Act, 2013 both for agricultural and non-agricultural land is tax free. Therefore, the compensation received by the assessee on compulsory acquisition of its land, both commercial and agricultural land, by NHAI is eligible for exemption from income tax as per the provisions of section 96 of the RFCTLARR Act, 2013 which is a special Act and prevail over the Income Tax Act, 1961. This view gets support from the judgement of co-ordinate bench of ITAT Lucknow in the case of ITO Vs. V.S. Promotors Ltd. in ITA No. 378/LKW/2020 wherein vide order dated 20.02 2023 it is held as under:

4.1. "After considering submissions made by the assessee in respect of Section 96 of RFCTLARR Act, 2013 read with CBDT Circular no. 36/2016 and by placing reliance on decision of the Hon'ble High Court of Kerala in the case of Madaparambil Varkey Varghese us. ACIT in WP(C). No. 1908 of 2019 (Kerala High Court), ld. CIT(A) deleted the addition made by ld. AO. Findings given by ld. CIT(A) in this respect are reproduced as under:-

"The only objection of the AO is that the exemption is not available to the appellant as it is a Company which is not covered in the definition as contained in sec. 10(37) and is only available to assessees having status of Individual or HUF. Further according to the AO exemption is also not available to the appellant Company as the Circular has not stated to extend the exemption to all categories of assessees. On perusal of section 96 of the RFCTLARR Act, 2013 it is seen that as per the same it 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. Further the Circular No. 36 of 2016 issued by the CBDT in para 3 states that the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the exemption provided under the existing provisions of the Income Tax Act, 1961.

It is seen that the RFCTLARR Act, 2013 is a Special Law and that Special Law should prevail over-the General law. Moreover, it is true that under any statute where there is special as well as general provision special provision always prevails. This aspect has been well recognized by the Hon'ble Supreme Court in several cases:

- CIT v. Oriental Fire & General Insurance Co. Ltd. [2007] 161 Taxman 181,291 ITR 370 (SC)
- Britannia Industries Ltd, v. CIT (2005) 148 Taxman 468, 278 ITR 546 (SC),
- UOI v. AzadiBachao Andolan (2003) 132 Taxman 373, 263 ITR 706 (SC).
- General Insurance Corpn. of India v. CIT [1999] 106 Taxman 389, 240 ITR139 (SC).

The AO's objection regarding section 10(37) does not hold good as exemption has not only been claimed under section 10(37) of the IT Act, 1961 but also under the RFCTLARR Act, 2013.

Section 96 of the "RFCTLARR Act, 2013" exempts awards from the levy of Income-tax under the IT Act, 1961. Section 96 was enacted under the 2013 Act for making tax-free award granted to the land losers but there was no specific provision to treat such award as tax-free under the Income-tax Act, 1961.

CBDT vide Circular No: 36 of 2016 Dated 25/10/2016 offers due recognition to the provisions of section 96 enacted under the "RFCTLARR Act, 2013" so as to treat award under the said Act as tax-free under the Income-tax Act, 1961. The operative Para 2 and Para 3 of the Circular No.: 30 of 2016, dated 25/10/2016 reads as under: ITA Nos. 1798/D/2021 & 1369/D/2022

"Para 2. The RFCTLARR Act which came in to effect from 1st January, 2014, in section 96, inter-alia, provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax."

"Para 3. As no distinction has been made between compensation received from compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under section the RFCTLARR Act, the exemption provided under 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or compensation has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961."

CBDT Circular No. 36 of 2016, dated 25/10/2016 clarifies that in absence of specific provision under the Income-tax Act, 1961 award under the "RFCTLARR Act, 2013" in the hands of land losers, both for agricultural and non- agricultural land is tax free.

In the case of Madaparambil Varkey Varghese Vs ACIT (Kerala High Court) WP(C). No. 1908 of 2019 it was held by the Hon'ble court that

"Section 96 mandates that no income-tax shall be levied on any award made under the Act except under Section 46. Section 46 deals with the purchase of land by a person other than a specified person through private negotiations. The benefit of Section 96 is not available when a land is purchased through private negotiations by a person other than a specified person under Section 46(1).

Therefore, in cases other than those covered by Section 46 of the 2013 Land Acquisition Act, the levy of income-tax is barred by Section 96 and as a consequence, the deduction or collection under Section 194LA of the Income Tax Act, 1961, is impermissible".

It is further seen that according to section 96 of the said Act and also as per the Circular No. 36 of 2016 it is clear that exemption from Income-tax provided under section 96 of the "RFCTLARR Act, 2013", being special Act, prevails over the Income-tax Act, 1961. The RFCTLARR Act, 2013 also applies to all land losers, irrespective

of their status. Further any award in any form made under this Act as defined under section 96 (except those covered under section 46) is exempt from income-tax both under normal and MAT provisions under the I.T Act, 1961. Thus the addition so made of Rs.5,10,29,003/- by disallowing the exemption is based on incorrect interpretation of the Act accordingly the same is directed to be deleted."

17. Regarding the judgement of Co-ordinate Bench of ITAT, Agra in the case of Jagdish Arora as relied upon by the Revenue, we find that the said judgement pertained to AY 2010-11 when the RFCTLARR Act, 2013 was not introduced and therefore, the said judgement was not applicable in the facts of the case of the assessee where the compensation is received by the assessee in FY 2015-16 which is fallen after date when the RFCTLARR Act, 2013 come into force.

18. Since the land owned by the assessee were acquired by NHAI as compulsory acquisition u/s 3A of NHAI Act, 1956 and compensation was awarded by the competent authorities. The entire amount compensation so awarded was received by the assessee during the FY 2015-16 relevant to the assessment year under appeal, which is after the amendment made in section 105(3) w.c.f. 01.01.2015. Therefore, for claiming the exemption of the compensation under the RFCTLARR Act, 2013 awarded by NHAI, there is no requirement of issue of any notification. Moreover, we have already expressed the view that exemption from the income tax on the compensation received upon compulsory acquisition of land by NHAI is available as per section 96 of the RFCTLARR Act, 2013, therefore, in view of above discussion, the addition made of INR 31,31,903/- by disallowing the exemptions available to assessee is directed to be deleted. Accordingly, assessee get the relief of INR 31,31,903/-. Ground of appeal Nos. 5 & 6 of the assessee are allowed.

12. In view of the above facts and by further following the judgment of the hon'ble ITAT, Agra Bench and Delhi bench in aforesaid cases, we hold that compensation received by the assessee from NHAI under compulsory acquisition of its land is exempt from Income Tax in terms of section 96 of RFCTLARR Act, 2013 and, accordingly, we delete the addition made by the AO on this score. All the grounds of appeal of the assessee are allowed.

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

Order pronounced in the open court on 24.06.2025.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 24.06.2025
PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR