

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 1441/KOL/2024
Assessment Year: 2017-2018**

***Kalipada Naskar,.....Appellant
43/7A, Raja Rammohan Roy Road, Purba,
Behala, P.O. Barisha, Kolkata-700008
[PAN:AMNPNO205H]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-61(1), Kolkata,
Bamboo Villa, 169, A.J.C. Bose Road,
Kolkata-700014***

Appearances by:

Sk. Kamaluddin, FCA, appeared on behalf of the assessee

*Shri L.N. Dash, Addl. CIT (D.R.), appeared on behalf of
the Revenue*

Date of concluding the hearing: May 08, 2025

Date of pronouncing the order: July 22, 2025

O R D E R

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 17.05.2024 passed for Assessment Year 2017-2018.

2. Facts in brief are that the assessee is a resident individual and has no taxable income during the financial year. Total income of the assessee was below the minimum exemption limit. The

assessee has not filed his return of income for the assessment year 2017-18. The assessee entered into a development agreement to develop his inherited land along with another six co-owners on 14.03.2017. Such development agreement was registered before the Addl. District Sub-Registrar, Behala, South 24-Parganas. Such development of building on land not yet completed by the developer till date. By virtue of the provision of section 45(5A) of the Income Tax Act, 1961, from the transfer of a capital assets, being land or building or both under the specified agreement, the capital gains shall be chargeable to income tax as income of the previous year in which the Certificate of Completion for the whole or part of the project is issued by the Competent Authority. Hence, during the AY 2017-18, no come under the head "capital gains" would arise in the hands of assessee. Ld. Assessing Officer passed the order under section 147 read with section 144 of the Act on 23.03.2023 without considering the fact that there was no sale of immovable property during the financial year 2016-17 relevant to assessment year 2017-18 determining the assessable income of the assessee at Rs.39,53,931/-.

3. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals) against the order passed under section 147 read with section 144 dated 23.03.2023 by the ld. Assessing Officer.

4. The ld. CIT(Appeals) dismissed the appeal of the assessee after examining the details filed by the assessee and by upholding

the order of ld. Assessing Officer. On being aggrieved, the assessee preferred an appeal before the ITAT.

5. It was the submission of the ld. Counsel for the assessee that the ld. Assessing Officer has not given proper opportunity to the assessee to explain his claim. Therefore, he pleaded to set aside the order passed by the ld. CIT(Appeals) and prayed for one more opportunity.

6. On the other hand, it was the submission of the ld. Departmental Representative that the ld. Assessing Officer has given opportunities to the assessee but the assessee failed to furnish the details before the ld. Assessing Officer. However, he has filed the details before the ld. CIT(Appeals), but ld. CIT(Appeals) dismissed the appeal after examining the details furnished by the assessee. Therefore, ld. D.R. pleaded to uphold the orders passed by the revenue authorities.

7. I have perused the material available on record. It is an admitted fact that the assessee has not appeared before the ld. Assessing Officer. However, he has furnished some details before the ld. CIT(Appeals) but he has not asked for any remand report. He simply dismissed the appeal filed by the assessee. Therefore, considering the facts and circumstances of the case, I am of the view that it is a fit case to provide one more opportunity of being heard to the assessee. Therefore, I set aside the orders passed by the revenue authorities and remit the matter back to the file of ld. Assessing Officer to examine the issue afresh after providing one

more opportunity of being heard to the assessee. At the same breath, I also hereby caution the assessee to promptly co-operate with the proceedings before the Ld. Assessing Officer failing which the Ld. Assessing Officer shall be at liberty to pass appropriate order in accordance with law and merits of the case, based on the materials available on the record. Thus, the grounds raised by the assessee in the appeal 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 22/07/2025.

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

Kolkata, the 22nd day of July, 2025

*Copies to :(1) Kalipada Naskar,
43/7A, Raja Rammohan Roy Road, Purba,
Behala, P.O. Barisha, Kolkata-700008*

*(2) Income Tax Officer,
Ward-61(1), Kolkata,
Bamboo Villa, 169, A.J.C. Bose Road,
Kolkata-700014*

(3) CIT(A), NFAC, Delhi;

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

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

Laha/Sr. P.S.