

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.315/RPR/2025
निर्धारण वर्ष / Assessment Year : 2016-17

Vidya Bhushan Shukla
Near Gandhi Chowk, Baloda Bazar,
Bhatapara (C.G.)-493 332
PAN: AJGPS4391F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praveen Khandelwal &
Shri Praveen Goyal, CAs

Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 05.08.2025

घोषणा की तारीख / Date of Pronouncement : 05.08.2025

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

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 30.03.2025 for the assessment year 2016-17 as per the grounds of appeal on record.

2. Though the present appeal is preferred by the assessee, however, there stand no grievance for the assessee for the fact that no addition has been retained by the Ld. CIT(Appeals)/NFAC and the addition that was made by the A.O u/s. 68 of the Income Tax Act, 1961 (for short 'the Act') has been deleted.

3. Qua this observation, the Ld. CIT(Appeals)/NFAC had observed regarding sale of land by the assessee and directing verification by the A.O to tax the same as capital gain as there appears a mismatch with regard to aerial distance and road distance as observed by the Ld. CIT(Appeals)/NFAC. For the sake of clarity observation of the Ld. CIT(Appeals)/NFAC are culled out as follows:

“From the reply of the AR of the appellant, it is clear that he has failed to submit measurement of aerial distance of the sold land from the municipality with evidence. Since, the distance of 9.6 km claimed by the appellant is only road distance as per google map and not aerial distance). Since the Aerial distance (also known as straight line or "as the crow flies" distance) is the shortest distance between two points, ignoring any obstacles or terrain, while road distance measures the actual path travelled along roads or pathways

and therefore, aerial distance is always shorter than road distance, which may be longer due to curves, detours and obstacles. Since, the relationship between road distance and aerial distance is not constant but it is often approximated and ratio between road distance and aerial distance, measured scientifically, is about 1.3 means the road distance is about 1.3 times the aerial distance or in other terms, the aerial distance is around 0.77 times of road distance. Thus, the aerial distance of said land in question comes around 7.39 Km (9.6×0.77) which is well within the municipality jurisdiction as specified under the Act. Therefore, the said land is not a rural agricultural land and is a capital asset, as it comes within 8 Km and the population of said municipality i.e. Baloda Bazar is 26,632 which is more than 10,000 as specified in sec 2(14)(iii)(a) of the Act and accordingly, the claim of the appellant that the said land is not a capital asset, is not as per law and accordingly, the sale proceeds from the sale of said land is taxable under the head Capital gain as the said land was clearly a capital asset as per law and has to be taxed in the hands of the appellant .

However, the AO has made addition of whole sale proceeds u/s 68 which is not correct. Accordingly, the same is modified as per discussion held in preceding paras and the AO is directed to tax the sale proceeds of the land under the head Capital Gain after giving benefit of indexed cost of acquisition as per the provisions of the Act. Ground No.2 and 7 of the appeal are partly allowed.”

4. In this backdrop, it is contended by the Ld. Counsel for the assessee that though relief has been provided in so far as quantum is concerned and the addition u/s. 68 of the Act has been deleted by the Ld. CIT(Appeals)/NFAC, however, since the Ld. CIT(Appeals)/NFAC had directed the A.O to tax sale transaction of the land under the head capital gain, therefore, the same is a wrong findings on facts. Accordingly, the Ld. Counsel submitted that the matter needs to be addressed by this Bench of the Tribunal.

5. In this regard, it was enquired from the Bench whether appeal effect order has been passed by the A.O and to that, the Ld. Counsel submitted that such appeal effect has already been given where again there is no addition made u/s. 68 of the Act. However, addition has been made by the A.O under the head capital gain. For the sake of completeness, the appeal effect order is culled out as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE: DEPARTMENT OF REVENUE,
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX, 1(1)
C. R. BUILDING, CIVIL LINES, RAIPUR (C.G.) – 492001

1.	Name and Address of the Assessee	Vidya Bhushan Shukla Near Gandhi Chowk Near Gandhi Chowk Baloda Bazar
2.	PAN	AJGPS4391F
3.	A. Y.	2016-17
4.	District / Ward / Circle	DCIT-1(1), Raipur
5.	Status	Individual
6.	Date of Order	11/06/2025
7.	DIN	ITBA/GEA/M/250/2025-26/1077297110(1)

Appeal Effect to the Order of NFAC u/s 250 of the Income Tax Act, 1961

Consequent upon the order of the CIT(A), NFAC vide order No. ITBA/NFAC/S/250/2024-25/1075288188(1) dated 30.03.2025, the Ld CIT(A) has partly allowed the appeal of the assessee.

2. The assessment is thus revised accordingly as under:

Return Income	Rs. 30,82,800/-
Total income assessed as per order 143(3) r.w.s 144B	Rs. 5,00,34,300/-
Less: Relief granted by CIT(A), NFAC	Rs.3,49,73,770/-
Revised Income	Rs.1,50,60,530/-

Notice of Demand and challan issued accordingly.

(Rahul Mishra)
Deputy Commissioner of Income Tax-1(1)
Raipur

6. We are of the considered view that the findings of the Ld. CIT(Appeals)/NFAC remanding the matter back to the file of the A.O for

proper verification and taxing it as per capital gain is consequential. That giving an appeal effect to such consequential direction already addition has been made by the A.O. That if on such addition made by the A.O on capital gain if the assessee is further aggrieved then the proper legal recourse is filing appeal before the Ld. CIT(Appeals)/NFAC. But at this stage, before the Tribunal it is only a direction given to the A.O by the Ld. CIT(Appeals)/NFAC remanding the matter back to the file of the A.O for necessary addition against which there is no substantive finding or adjudication given in the present impugned order by the Ld. CIT(Appeals)/NFAC.

7. Considering the aforesaid facts, the present appeal filed by the assessee sans any grievance becomes infructuous and hence dismissed.

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

Order pronounced in the open court on 05th day of August, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 05th August, 2025.
SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / 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 फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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