

आयकर अपीलीय अधिकरण  
पटना पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य  
एवं  
श्री रakesh मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 147/PAT/2025  
Assessment Year: 2015-16**

Kamlesh Kumar <i>(Appellant)</i>	Vs.	ITO, Ward-6(4), Patna <i>(Respondent)</i>
<b>PAN: DWSPK7654F</b>		

**Appearances:**

**Assessee represented by** : Aalok Swaroop, Adv.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 17-July-2025

Date of pronouncing the order : 07-August-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2015-16 dated 27.01.2025, which has been passed against the assessment order u/s 144 r.w.s. 147 of the Act, dated 26.02.2019.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*"1. For that the order of the A.O. passed in the above case without giving proper opportunity of being heard to the appellant is bad in law and against the principals of natural justice.*

*2. For that the order of learned C.I.T.-(A), NFAC passed in the above case without verifying authenticity of the information based on which assessment has been made by learned AO is bad and not based on the merits of the case.*

*3. The fact of the case is that The Appellant is an individual having PAN No.- DWSPK7654F and not filed return of income for the above captioned assessment year as the total income of the assessee was below the amount which is chargeable to tax. The Appellant's Father Sri Nand Kishor Prasad S/o Late Ram Narayan Sao (alias) Pati Lal Sao had acquired and possessed some piece of vacant plot comprising the total area of 47 decimal Approx, situated at Mauza-Mainpura, P.S.- Danapur Cantt. District - Patna, through the family arrangement and partition deed dated 28/10/1986 executed amongst the other members of the family. (THE COPIES OF PARTITION DEED DATED 28-10-1986 IS ANNEXED HEREWITH).*

*4. That, the said landed property had been mutated by the appellant's father only in his own name I.E., "NAND KISHOR PRASAD" (hereinafter referred as Land Owner) through the office of the circle officer, Danapur and a "LAND OWNER CERTIFICATE" dated 04/05/2015 was issued by the mutation office Mainpura - Danapur of the said plot bearing Jamabandi No.- 1112. Since, then the appellant's father is paying the Malguzari Tax regularly and year to year of the said plot and enjoying the physical and peaceful possession of the landed property with an absolute title of ownership and interests over the same as a sole owner and have never transferred or partitioned any part or portion of it to any of his family members by any means till date. (THE COPIES OF LAND OWNER CERTIFICATE AS WELL AS COPIES OF SOME PAYMENT RECEIPTS OF MALGUZARI TAXES OF VARIOUS DATES, ARE ATTACHED HEREWITH).*

*5. It is hereby humbly submitted that, due to lack of proper knowledge and awareness of laws and provisions as well as also in order to meet some financial needs of the family, the appellant on 24/03/2015 along with his two brothers namely MR. MITHILESH KUMAR; MR. AKHELESH KUMAR and his father all together signed and executed the "LAND DEVELOPMENT AGREEMENT" with a developer "M/S. GHARONDA RESIDENCY PVT. LTD." of PATNA through its MANAGING DIRECTOR MR. PANKAJ KUMAR SINGH, who agreed to construct the multistoried building on total 9540 SQ. FT. OF*



*THE VACANT PLOT of the land owner, whereas the appellant was neither the party/owner or even co-owners in the said land nor having any valid title or interests over the same at any point of time, but this facts and truth has been suppressed and misrepresented by the developer in the said LDA itself, ultimately get the sign of all the parties thereto by influence and pressure. Moreover, The appellant's name as a co-sharer's in the said LDA had been forcefully and maliciously indulged by the developer only to protect himself for avoiding any future disputes which are suspicious to him at the legal heir's end I.E. three sons of the land owner, and this defects at the developer's end were pointed out several times by the appellant and his father and also requested him to modify or cancel the said deed of agreement and execute a fresh one after the necessary correction in it i.e. omission of all son's name but the said request had been always ignored and denied. Thus, the nature of said LDA itself seems to be IMPUGNED OR DEFECTIVE. (THE COPIES OF SAID LDA DATED 24-03-2015 IS ENCLOSED HEREWITH).*

*6. That, the ownership and title of land in question itself, once again came in litigation by a third party within a shorter period of less than 3 months since the inception of said development agreement, due to a Petition filed on 09/06/2015 by one Mr, Sanju Kumar before The Court of Additional D.M., Patna against the LAND OWNER NAND KISHOR PRASAD, along with three other outside parties also, FOR THE CANCELLATION OF JAMABANDI NO.-1112 CHALLENGING THE MUTATION OF HIS NAME, as appeared in the corporation records of the said plot, U/Sec. 9 of the Bihar Land Mutation Act, 2011. (THE COPIES OF PETITIONS FILED, REPLIES SUBMITTED BY THE LAND OWNER ARE ALSO ENCLOSED HEREWITH).*

*7. It is also pertinent to mention here that on 03/09/2019, a compromise petition between the land owner and the petitioner Mr. Sanju Kumar has been filed before the court of Additional Collector, Patna for out of court settlement in the Jamabandi Cancellation Case No.- 41/2015, and the hon'ble court has been pleased to pronounce the Decree on 07-01-2020 disposing of the said case and later on dated 18-12-2020, After this settlement of the case, the developer had applied to the Municipal Authorities and also to RERA for Extension of date for approval of building Plan No.-171/2016-2017 for start of the said project, which was lying infructuous due to the said delay. (THE COPIES OF SAID COMPROMISE PETITION DATED 03/09/2019 IS ALSO ENCLOSED).*

*8. That, in sequence of the aforesaid events, Further, It is most relevant facts to mention here that on 02nd of May,2021, the developer and the managing Director of the said Co. "GHARONDA RESIDENCY (P) LTD." namely "PANKAJ KUMAR SINGH" left to the heavenly abode and after his demise, the newly appointed board of Directors/Chairman of the said company comprising of*



Mr. Piyush Kumar Singh (son & M.D.) & others had decided to cancel the "REGISTERED DEVELOPMENT AGREEMENT" - bearing Deed No.- 2908 dt. 24-03-2015 executed with Mr. Nand Kishore Prasad (THE LAND OWNER) and agreed to drop the project in the name of "SUNANDA PALACE" at Mainpura Shankar, Danapur, Patna, which was to be built/constructed on the said Plot of Land under question. Pursuant to the said decision amongst the board members, a resolution to this effect taken by the company and its board of directors' have been passed on 06-12-2021 and Subsequently, the "REGISTERED CANCELLATION DEED OF DEVELOPMENT AGREEMENT" vide Reg. No.- 10626 Dated 15-06-2022 executed amongst the Appellant, his two brother's namely Mr. Mithilesh Kumar & Mr. Akhelesh Kumar along with their Father & THE ACTUAL LAND OWNER SRI NAND KISHOR PRASAD All R/o Patna as all were parties to the said "LDA" bearing Reg. No.- 2908 dated 24-03-2015 and between the Developer M/S. Gharounda Residency Pvt. Ltd., through its present director namely Sri Piyush Kumar Singh of Patna for dropping/termination of the said project. (THE COPY OF CANCELLATION DEED IS HEREBY ENCLOSED HEREIN AND THE COPY OF DEATH CERTIFICATE OF THE PAST M.D. OF THE CO.- PANKAJ KUMAR SINGH AND THE COPY OF AN EXTRACT OF THE MINUTES OF THE PROCEEDINGS OF THE BOARD OF DIRECTORS MEETING HELD ON 06-12-2021 AT REGD. OFFICE- PATNA ARE ENCLOSED HEREWITH).

9. Thus, Summarizing the all above facts, Specifically in the light of the aforesaid "CANCELLATION DEED" of the said project to be constructed on the vacant plot of land subject to the "LDA", and which is herein under question to the present Appeal, it is very strongly established facts that the said plot of land of the land owner is still lying ideal and vacant without any activities perform on it by either of the parties of the said Registered LDA, either for the year under question or even till date. Thus, on the basis of enumerated facts & situations discussed above, it is Crystal clear that for the year under question as well as till, no act has come in existence in furtherance of the Contract on the said plot by either of the parties and in view of the cancellation of said "DEVELOPMENT AGREEMENT", there is beyond an iota of doubt that the income from "Capital Gain" did not result at all for the aforesaid reasons, as the said deal never materialized. And, in the facts of the present case, there is no profit or gain which arises from the transfer of a capital assets, as there is no valid transfer will construe in such circumstances as per the provisions of Sec. 2 (47) (v) r.w.s. 53A of "The Transfer of Property Act, 1882". Hence in absence of fulfilment of other essential ingredients of different sections as implied by the Ld. A.O., no question of valid transfer will construe in such a circumstances as per the provisions of Sec. 2(47)(v) r.w.s. 53A of the Transfer of Property Act, 1882, thus the capital Gain as assumed, ascertained and computed/calculated hypothetically by the Ld. A.O. only on the basis of so called development



*agreement and possibility of fulfilment of terms and conditions thereof has caused miscarriage of justice which cannot be sustainable under the provisions of law.*

*And, in support of the above facts and law of the present case the Appellant places strong reliance on the judgement of the Hon'ble Supreme Court in the case of CIT VS. Balbir Singh Maini [4th OCT. 2017] [398 ITR 531 (SC)] (Copy of Judgement Enclosed)*

*10. The Appellant most humbly submits here and your honour would also appreciate this fact that since the execution of the said "DEVELOPMENT AGREEMENT" on 24-03-2015, there were always certain glitches and mess in the said project in terms of its existence itself either there was a court litigation or whether it was a matter of approval of map-plan and approval from RERA for the said project to be started and most importantly, after the recent development in sequence of all above events i.e., the resolution passed by the company on 06-12-2021 in terms of decision taken by its board of directors to terminate/cancel the said "LDA" in question and to drop the project of constructing the building on the said plot of Land and Consequently, the present situation and availability of "THE REGISTERED CANCELLATION DEED EXECUTED ON 15-06-2022" amongst the Appellant himself, his two brothers and the Actual Land owner i.e. his father SRI NAND KISHOR PRASAD and between the Developer M/S. Gharonda Residency Pvt. Ltd., through its present director namely Sri Piyush Kumar Singh of Patna for dropping/termination of the said project to be continued and constructed on the said vacant plot subject to "LDA" and under question to this Captioned Appeal. Thus, the Capital Gain as assumed, ascertained and computed hypothetically by the Ld. A.O. could not be brought to tax U/Sec. 45 r.w.s. 48 of the Income - tax Act, 1961.*

*11. It is further submitted that all these detailed submissions were made before the learned CIT(A), however, the learned CIT(A) has failed to appreciate the facts of the case and just to pass the order in haste dismissed the appeal without considering and verifying the factual matrix of the Appellant's case. The learned CIT(A) has taken the wrong shelter of the provisions of section 249(4)(b) of The Income Tax Act 1961, which states that where no return has been filed by the assessee, the assessee has to pay an amount equal to the amount of advance tax, which is payable by him otherwise appeal shall not be admitted. The learned CIT(A) has concluded his order that since the appellant has not filed return in response to notice u/s 148 of The Income Tax Act as well as not paid an amount equal to advance tax which is payable by him, present appeal is not liable to be admitted. The appeal is infructuous and is therefore dismissed. The main ingredient of the section 249(4) (b) is to pay an amount equal to advance tax payable by the assessee, however, in the present case, the assessee has*



*already submitted that the income of the assessee is not chargeable to tax, accordingly no liability of advance tax arises (Copy of Submissions made before the CIT (A), NFAC along with the Index and Acknowledgement is enclosed herewith).*

*Here we rely on the judgement of ITAT Surat Bench (SRT-Trib.) :(2024) 136 TLC 584 :(2025) 172 taxmann.com 124 VALSAD JILLA SAHAKARI BANK LTD. vs. INCOME-TAX OFFICER IN THE INCOME TAX APPELATE TRIBUNAL SURAT BENCH, IT Appeal Nos. 533 & 534 (SRT) of 2024 Assessment Year 2018-19, Dated - 30-12-2024, (Copy of Judgement Enclosed) where the assessee challenged the orders passed by the CIT(A) on multiple grounds related to the denial of exemptions and the imposition of penalties. The assessee had not filed a return of income for the year, and upon re-assessment by the AO, large amounts of unexplained deposits and interest income were added to the total income. The case was reopened u/s 147 of the ITA, and the AO completed the assessment u/s 144 due to the assessee's non-compliance with notices. The CIT(A) dismissed the appeal for non-payment of advance tax, citing Section 249(4)(b) of the Act. The assessee argued that since the income was exempt u/s 10(25)(ii), no return was required and no advance tax was payable. The Tribunal, after reviewing the case, found the CIT(A)'s decision to be incorrect, as similar cases have held that the appeal should be admitted even if no advance tax was paid. The Tribunal set aside the CIT(A)'s order and remanded the case to the AO for fresh assessment.*

*Hence in view of the aforesaid facts and circumstances of the case, it is humbly prayed that the addition of Rs. 41,73,756/- as alleged "CAPITAL GAIN" is untenable and against the provisions of law and facts both, as the appellant's case is squarely covered on the facts of the case and thus the said addition may kindly be deleted or set aside.*

*Further grounds, submissions papers and arguments shall be urged at the time of the hearing of the case."*

3. The grounds of appeal are argumentative and the facts of the case can be summarised as that the assessee was never assessed to tax. Notice u/s 133(6) of the Act was issued and information was called for. There was a land development agreement which was registered but the assessee is not a party and the plot of land is still vacant. The Ld. CIT(A) did not verify the contentions made by the assessee and the Ld. AR requested that since proper representation could not be made, the

matter may be remanded to the Assessing Officer (hereinafter referred to as Ld. 'AO'). In similar other two cases, fresh assessment is to be done by the Ld. AO who were also co-sharer. The documents were filed before the Ld. CIT(A) but he decided the appeal quoting wrong section of 249(4) of the Act.

4. Rival contentions were heard and the record and the submissions made were examined. The Ld. CIT(A) has not adjudicated the appeal on merit but has decided the same by quoting section 249(4) of the Act. Before adjudicating the appeal, it is important to refer to the provisions of Section 249(4)(b) of the Act, which is relied upon by the Ld. CIT(A) while dismissing the appeal and which is as under:

*“249(4)(b): where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:*

*Provided that, in a case falling under clause (b) and on an application made by the appellant in this behalf, the [Joint Commissioner (Appeals) or the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.”*

4.1. As per the proviso thereof, there is an option available to the assessee to file an application before the Ld. CIT(A) who may dispense with the requirement of payment of advance tax on the basis of facts. Apparently, no such application was filed by the assessee and, therefore, the appeal was dismissed.

4.2. However, the liability to pay the advance tax is determined by the provisions of Chapter XVII-C relating to advance payment of tax and is governed by the provisions of section 208 as per which advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions in this regard is Rs. 10,000/- or more.

Further, Section 209 of the Act r.w.s. 210 specifies the manner of computation of advance tax; section 209(1) of which is reproduced as under:

*“209. (1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows, namely :—*

*(a) where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(b) where the calculation is made by the Assessing Officer for the purpose of making an order under sub-section (3) of section 210, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income furnished by him for any subsequent previous year, whichever is higher, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(c) where the calculation is made by the Assessing Officer for the purpose of making an amended order under sub-section (4) of section 210, the total income declared in the return furnished by the assessee for the later previous year, or, as the case may be, the total income in respect of which the regular assessment, referred to in that sub-section has been made, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(d) the income-tax calculated under clause (a) or clause (b) or clause (c) shall, in each case, be reduced by the amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act) which has been taken into account in computing the current income or, as the case may be, the total income aforesaid; and the amount of income-tax as so reduced shall be the advance tax payable:*

*Provided that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not, in each case, be reduced by the aforesaid amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has*



*paid or credited such income without deduction of tax or it has been received or debited by the person responsible for collecting tax without collection of such tax.”*

4.3. The Ld. CIT(A) has not specified as to how much advance tax was payable or even whether the provisions of Section 208 of the Act were applicable to the assessee or not. On the contrary, the assessee contends that since the income was not chargeable to tax, therefore, there was no question of payment of any advance tax. Further, the Ld. CIT(A) has not decided the appeal on the merits of the case. Hence, in view of the facts, since the Ld. CIT(A) has not mentioned as to how much advance tax was payable by the assessee which has not been paid, and the assessee had the option of filing an application before the Ld. CIT(A), which however, was not filed and consequently the discretion available to the Ld. CIT(A) to exempt the assessee from the applicability of the rigours of section 249(4) could not be exercised by him and the appeal has also not been decided on merit, therefore, in the interest of justice, the order of the Ld. CIT(A) is set aside. The assessee has filed copy of the appeal order in the case of Mithlesh Kumar and Nand Kishor Prasad and in both the cases, the Ld. CIT(A) has set aside the case to the Ld. AO for fresh assessment. Since the assessee is also a co-owner, therefore, in view of the request made by the assessee, this case is also remanded to the Ld. AO so that the matter can be considered and decided by considering the totality of facts. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) as well as the order of the Ld. AO and remit the matter back to the Ld. AO for making the reassessment *de novo*. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, the



grounds taken by the assessee in his appeal are allowed for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 7<sup>th</sup> August, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 07.08.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Kamlesh Kumar, House No-99, Mainpura, Danapur, Danapur Cantt., Patna, Bihar, 801503.**
2. **ITO, Ward-6(4), Patna.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata