

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

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

**I.T.A. No. 672/PAT/2024
Assessment Year: 2016-2017**

***Renu Devi,.....Appellant
D/79, P.C. Colony, Lohia Nagar,
Kankarbagh, Patna-800020, Bihar
[PAN:ALGPD4522P]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-6(2), Patna***

Appearances by:

*Shri Sudipta Sannigrahi, C.A., appeared on behalf of the
assessee*

*Shri Ashwani Kr. Singal, JCIT, appeared on behalf of
the Revenue*

Date of concluding the hearing: June 24, 2025

Date of pronouncing the order: August 25, 2025

O R D E R

The present appeal is directed at the instance of assessee against the order of ld. Addl./Joint Commissioner of Income Tax (Appeals)-12, Mumbai dated 25th September 2024 passed for Assessment Year 2016-17.

2. Brief facts of the case are that the assessee is an individual, who purchased a piece of land vide Deed no. 10701 dated 05.12.2015 amounting to Rs. 19,23,575/- and entered into a

development agreement with Aparna Architect and Engicons Pvt. Ltd. (Builder/Developer) vide Development Agreement 10772 on the same day dated 05/12/2015. The assessee had no taxable income during the Assessment year 2016-17 and hence no regular return was filed by the assessee for the Assessment year 2016-17. The ld. Assessing Officer/ ITO Ward 6(2) Patna issued notices under section s147, 148,143(2) and 142 (1) of income tax act 1961 to the appellant-assessee in respect of escaped income for capital gain accrued on account of Joint Development Agreement (hereinafter referred as JDA) entered with Aparna Architect and Engicons Pvt Ltd, Patna. As per the JDA, the appellant-assessee was supposed to hand over possession of vacant land to the developer for the Development of the said land after the approval of Map, which was approved on 31.01.2019. The Developer was supposed to construct multi-storied building on such land as per development agreement, such construction work was required to complete within 4 years and further extended period of 6 month i.e. total period of 4 years 6 Months from approval of map and other approvals. As per the Development Agreement, after construction of multi-storied building, land owner appellant-assessee and developer both was entitled for 45:55 ratio each of the constructed area. The assessee made compliance by filing return u/s 148 on 03.01.2019 vide Ack. No. 404710420030119 declaring gross total income of Rs.105839/-. The Ld. Assessing Officer disregarded the submissions and compliances made by the assessee and passed assessment u/s 144, read with w.r.s 147 of Income Tax Act 1961 vide order dated 06.12.2019 and also initiated the penalty proceedings u/s 271(1)(c) of the Act. The Ld. Assessing Officer

made an addition of Rs.22,96,688/ on account of capital gain and demanded tax of Rs.4,73,118/- and Rs.2,31,828/- as interest. On being aggrieved, the assessee preferred an appeal before the Id. CIT(Appeals).

3. The Ld. Addl./JCIT(A) dismissed the Appeal of the Assessee simply confirming the order of the Id. Assessing Officer without giving reasoning as to why specific clauses of the JDA which expressly lays down the condition precedent for transfer of the property should be ignored while deciding on the issue of transfer of the Land. The Ld. Addl./JCIT(A) mentioned in his order that in the instant case, the date of signing the Joint Development Agreement was 5th December, 2015. The insertion of section 45(5A) vide Finance Act, 2017 w.e.f. 1st April, 2018. As the appellant is not covered by section 45(5A) at the time of execution of JDA, the capital gains as on the date of JDA is to be considered. Besides section 45(5A) being a substantive provision cannot be applied to the Development Agreement entered before the insertion of this section and, therefore, automatically section 2(47)(v) gets attracted. The Id. Addl./JCIT(Appeals) also held that section 45(5A) is a substantive provision, which was manifested by Hon'ble Hyderabad ITAT in the case of Adinarayana Reddy Kummata -vs.- ACIT reported in (2018) 91 taxmann.com 360 and K. Vijaya Lakshmi -vs.- ACIT reported in (2018) 91 taxmann.com 253. Ld. Addl./JCIT(Appeals) inclined to uphold the order passed by the Id. Assessing Officer and considered the Joint Development Agreement as the basis on which the appellant, who is a part of land owner, has to pay capital gains for AY 2016-17 under the

provisions of section 48 of the Act and dismissed the appeal of the assessee.

4. On being aggrieved, the assessee preferred an appeal before the ITAT and raised the following grounds:-

(1) The Ld. Addl/JCIT(A) grossly erred in law and on facts Circumstances of the case in confirming the assessment made by the Ld. A.O made u/s 144 r.w.s 147 is bad in law and facts.

(2) For that, on the fact & circumstances of the case, the learned Addl/JCIT(A) has erred in Law and on facts and to appreciate the factum that registration of JDA is not transaction and hence it cannot be considered as transfer of asset, both JDA and registered sale deed were registered on same day i.e 05.12.2015 having no holding period in hand of appellant. In order for capital gain tax to be charged u/s 45 there must be transfer of asset as well as period of holding to compute tax liability. Hence it is evident that there is no scope of capital gain u/s 45.

(3) For that, on the fact & circumstances of the case, the learned Addl/JCIT(A) has erred in Law and on facts and failed to appreciate that no possession was transferred as clearly stated in JDA that possession will only be transferred after sanction of Planned Layout and statutory permission are obtained and further Partition deed between builder and Landowner is signed. The Ld. CIT(A) misconstrued the provision of invoke section 2(47)(v) and (vi) as part performance as per section 53A of the transfer of property Act and treat mere signing of JDA as date of transfer.

(4) For that, on the fact & circumstances of the case, the learned Addl/JCIT(A) has erred in Law and on facts and completely ignored that no progress was made in the construction of multi storied building complex up to the date of order passed. As the plan of building is not passed that means possession of land is yet to be taken by the developer for specific work to be done for construction. Therefore, whatever capital gain is calculated in assessment is totally hypothetical and/or notional capital gain on the basis of registered JDA. Therefore, in assessment no real income is determined by the learned Assessing Officer. Whatever capital gain as calculated by the learned Assessing Officer is a hypothetical capital gain based on presumption only.

(5) For that, on the fact & circumstances of the case, the learned Addl/JCIT(A) has erred in Law and on facts and completely in

providing a beneficial construction of Section 2(47) and Interpreted in a manner prejudicial to the interest of the Assessee.

(6) For that, on the fact & circumstances of the case, the learned Commissioner of Income Tax (Appeal) has erred in Law in not allowing the benefit of Section 54 of the Income Tax Act even though the proceeds are reinvested in the acquisition of a House property.

(7) For that, on the fact & circumstances of the case, the learned Addl./JCIT(A) has erred in Law and in confirming the order of the A.O who has failed to deduct the cost of Land in the calculation of the Capital gain.

5. I have heard both the sides. It was the submission of the ld. Counsel for the assessee is that the ld. Assessing Officer passed the order under section 144 read with section 147 of the Income Tax Act. The ld. Assessing Officer has not given any opportunity to the assessee and passed the order under section 144. The ld. Addl./JCIT(Appeals) also not properly considered the facts of the case and dismissed the assessee's appeal. The ld. Assessing Officer without examining the agreement for development of the project and wrongly computed the capital gains without Certificate of Completion of the Project. The ld. Assessing Officer also failed to deduct the cost of the land by way of capital gain and has considered the total consideration as calculated by him as capital gain where the cost of the land indexed should have been deducted to arrive at the capital gains relevant to the transaction. He further submitted that execution of the Joint Development Agreement is considered as the assessee transferred the land ownership, the assessee would be entitled to claim benefit under section 54 of the Act as the proceeds have been reinvested in purchase of house property. The ld. Assessing Officer has not at all given opportunity to explain this fact and passed the assessment order. The ld.

Addl./JCIT(Appeals) in a mechanical manner confirmed the addition made by the ld. Assessing Officer. Therefore, he pleaded to set aside the orders passed by the lower authorities.

6. On the other hand, it was the submission of the ld. Departmental Representative that the assessee failed to produce any evidence before the ld. Assessing Officer. Therefore, the ld. Assessing Officer has left with no option except passing the order under section 144 of the Act. Before the ld. Addl./JCIT(Appeals) also, the assessee has not placed any material to establish her case. Therefore, he pleaded to confirm the orders passed by the revenue authorities.

7. I have perused the material available on record. It is an admitted fact that before the ld. Assessing Officer, the assessee has not submitted any documentary evidence to establish her claim. Therefore, the ld. Assessing Officer computed the capital gains and the same was confirmed by the ld. Addl./JCIT(Appeals). Now before me, the assessee has filed additional evidence by way of paper book, which contains the Joint Development Agreement, Registered copy of Sale Deed and other documents, which needs verification by the ld. Assessing Officer. Therefore, considering the facts and circumstances of the case, I am of the view that it is a fit case to remit the matter back to the file of ld. Assessing Officer with a direction to dispose of the case on merit after providing 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 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 25/08/2025.

Sd/-

**(Duvvuru RL Reddy)
Vice-President (KZ)**

Kolkata, the 25th day of August, 2025

- Copies to :* (1) *Renu Devi,*
D/79, P.C. Colony, Lohia Nagar,
Kankarbagh, Patna-800020, Bihar
- (2) *Income Tax Officer,*
Ward-6(2), Patna
- (3) *Addl./JCIT(A)-12, Mumbai;*
- (4) *CIT - ;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

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

Laha/Sr. P.S.