IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA
[Virtual Court]

Before

SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 242/PAT/2025
Assessment Year: 2016-17

Saroj Devi	Vs.	ITO, Ward-6(4), Patna
(Appellant)		***(Respondent)***
PAN: CRGPD0577E		

Appearances:

Assessee represented by **:** Vishal Kr., Adv.

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

Date of concluding the hearing : 10-September-2025
Date of pronouncing the order : 29-September-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 2016-17 dated 21.07.2023, which has been passed against the assessment order u/s 143(3) r.w.s. 147 of the Act, dated 16.12.2019.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 591 days. An application along with an affidavit seeking condonation of delay has been filed by the assessee stating as under:

> *"1. That this application is filed for condonation of delay in the filing of the present appeal.*

2. That at the very outset the appellant offers unconditional apology for the delay caused in the filing of present appeal.

3. That the petitioner states that the order in appeal was passed by the learned Commissioner of Income Tax (Appeals), Patna on 21.07.2023. The appellant in view of the provisions as contained in the act was required to file the present appeal within a period of 60 days from the date of service of the order. Thus, there is a delay of approximately 600 days in the filing of the present appeal.

4. That the assessment in this case was completed at a total income of ₹83,26,750/-. Aggrieved with the order of assessment the appellant had filed an appeal before the National Faceless Appeal Centre, Delhi through an advocate. The appellant may mention here that he is barely computer conversant and depends on advocate for income tax matters.

5. That the appellant states that after filing the appeal he was assured that he would receive a notice. The appellant for the purpose of this also made necessary enquiries from his previous counsel. The said counsel assured that a notice would be sent to him from the office of the learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre. The appellant on that assurance rest assured that he would receive a notice.

6. That the finding that no notice was received from the office of the learned Commissioner of Income Tax (Appeal) for quite some time, he approached counsel Sri K. N. Prasad (Adv). The said counsel thereafter, at the instance of the appellant obtained the password and on verification from the portal informed the appellant that the order was passed by the learned Commissioner of Income Tax (Appeal) on 21.07.2023. The said counsel also informed that the appeal was dismissed ex parte for non-appearance.

7. That the appellant states that he was not aware of the order in appeal passed by the Commissioner of Income Tax (Appeal) until 04.05.2025 when he approach the counsel Sri K. N. Prasad (Adv) to find out the actual status of the appeal filed by the previous counsel. The petitioner submits that as it appears, the previous counsel did not verify the fact of status of appeal and also did not inform him about the dismissal of the appeal.

8. That the appellant submits that he also did not receive any notice from the Income Tax Department after the passing of the order in appeal by the learned Commissioner of Income Tax (Appeal). The appellant states that this contributed to the belief that no order was passed by the learned Commissioner of Income Tax (Appeal) until 04.05.2025 when he made an enquiries from the counsel. The appellant submits that as stated, he was dependent on the previous counsel for appearance in the appellate proceeding after entrustment to him. The appellant submits that as it

appears that the previous counsel did not take any step for pursuing the appeal or informing the appellant within time.

9. That the appellant states that after the knowledge of dismissal of the appeal the appellant ask Sri K. N. Prasad (Advocate) to suggest necessary remedies as available under law. The said counsel suggested filing of an appeal before the Hon'ble Tribunal along with a petition for condonation of delay.

10. That the appellant submits that admittedly the delay in the filing of the appeal occurred due to want of information as regards the status of the appeal and its dismissal on 21.07.2023. The appellant submits that being barely computer conversant she did not know the manner in which to check the status of the appeal or even pursue the same and therefore, had no option than to depend on his counsel for necessary advice and representation.

11. That the appellant submits that the delay in filing of the is due to a reasonable cause. The appellant submits that the delay in filing of the present appeal be condoned and the appeal be heard on merits.

Under the facts and circumstances, it is, therefore, prayed that the delay in filing appeal before this Hon'ble Court may kindly be condoned. In case any clarification is considered necessary, the assessee may kindly be allowed an opportunity for the same."

1.2. Considering the application as well as the affidavit for condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

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

"1. For that the grounds of appeal hereto are without prejudice to each other.
2. For that the Learned CIT(A) has erred in confirming the Assessment Order dated 16.12.2019 as passed u/s 143(3) read with Section 147 of the Income Tax Act, 1961. The action of authorities below is bad in law and on facts. Notice u/s 148 and Assessment Order as passed by ITO, Ward-6(4), Patna is without jurisdiction. Assessment Order as passed is arbitrary, unjustified, bad in law and void ab-initio.

3. For that the learned JCIT, Range-6, Patna has not applied his judicial mind before according sanction u/s 151. The approval has been granted for reopening of the assessment in a mechanical manner and without due application of judicial mind. The reassessment proceedings initiated by the AO on basis of mechanical approval is arbitrary, unjustified, bad in law and fit to be quashed.

4. For that in the facts and circumstances of the case, the learned Assessing Officer has erred in initiating the proceeding u/s 147 also erred in assuming the jurisdiction u/s 147. The impugned reassessment order as passed is fit to be declared annulled.

5. For that the learned CIT(A) has erred in rejecting the ground of the appellant that the assessment in this case has been completed without service of notice u/s 143(2). The Assessment Order as passed and confirmed by learned CIT(A) is ab-initio void and fit to be annulled/cancelled.

6. For that in the facts and circumstances of the case, as per the Instruction No.1 of 2018 dt 12.02.2018 issued by the CBDT, the notice u/s 143(2) of the Act and other statutory notices is required to be issued electronically and there is no provision of issuing notice manually. The notice u/s 143(2) and other statutory notices issued manually and consequential Assessment Order as passed is arbitrary, unjust, void ab-initio and bad in law and fit to be annulled/quashed.

7. For that the learned CIT(A) is not justified in rejecting ground of the appellant that the assessment proceeding is not valid as reasons recorded has not furnished to assessee and Assessing Officer had not complied with direction of Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. Vs. CIT reported as 259 ITR 19 (SC). The assessment as completed by the Assessing Officer and confirmed by CIT(A) cannot be sustained in eyes of law and fit to be quashed.

8. For that the CIT(A) has erred in rejecting the ground of the appellant that development agreement is not an agreement for sale or a deed of absolute sale, but an executory contract (a contract that has not yet been fully performed or fully executed and is a contract in which both sides still have important performance remaining) and no right is transferred on execution of such development agreement.

9. For that in the facts and circumstances of the case, the Long Term Capital Gain determined by the Assessing Officer and confirmed by CIT(A) for tax purpose is arbitrary and unjust on grounds that there is no transfer within the meaning of section 53A of the T. P. Act or u/s 2(47)(v) of the I. T. Act, 1961 before actual possession is received from the developer. The Assessing Officer wrongly estimated the cost of construction of super built-up area including parking space at the rate of 1500/- per sft. In view of the above, the Long Term Capital Gain determined by the Assessing Officer for tax

purpose at Rs. 81,66,750/- is arbitrary, unjustified, void ab-initio and bad in law.

10. For that in the facts and circumstances of the case, the learned Assessing Officer has erred in not allowing the cost of land and its Cost Inflation Index. It is submitted that non allowance of the cost of land and its Cost Inflation Index is arbitrary, unjustified, void ab-initio and bad in law.

11. For that the charge of interest u/s 234A at Rs. 5,21,529/- and u/s 234B at Rs. 7,57,058/- is arbitrary and unjustified. The interest as charged and included in the Demand Notice is fit to be deleted.

12. For that the appellant reserves his right to file detailed submission at the time of hearing.

13. For that the appellant craves leave to urge, add or alter any other ground or grounds at the time of hearing."

3. Brief facts of the case as mentioned in the assessment order are that the assessee (land owner) had entered into a land development agreement between the owners of the land and the developers to construct immovable property in terms of buildings and land appurtenant thereto. On receipt of information u/s 133(6) of the Act in terms of copies of land development agreement, it was found that the assessee Smt. Saroj Devi had entered into and had registered a land development agreement with Rudra Construction in the FY 2015-16 relevant to the AY 2016-17. On perusal of the land development agreement entered into by the assessee on 18.05.2015, it was noted by the Ld. AO that the assessee and the developer had agreed to the development arrangement whereby full share of 50% of the total land area of 4355.6 sq. ft. owned by the assessee would be constructed upon by the land developer. In terms of the land development agreement, the share of constructed building to be owned by the assessee is 5,444.50 sq. ft. encompassing total floor area of 10,889 square feet. As per land development agreement registered, the total value of land is ₹44,00,000/- and the value of the share owned by the assessee at 50% of land owned stands at ₹22,00,000/-. As a bundle of ownership rights over the share of land were relinquished by the assessee in terms of the

land development agreement and as the terms of the land development agreement as well as the facts of the case attracted provisions of section 53A of the Transfer of Property Act, the capital gains arising out of such transfer attracted provisions of sections 2(47)(v), 45 and 48 of the Act in the opinion of the Ld. AO. Since the assessee had not filed any return of income, a notice u/s 142(1) of the Act was sent considering the facts of the case and the relevant clauses of JDA. The total land area being 4,355.6 sq. ft. and the ratio of the land owner and the developer being 50:50, the Ld. AO estimated the super built up area under the ownership of the land owner at 5,444.50 sq. ft., applied the provisions of section 53A of the T.P. Act, the provisions of Income Tax Act, the legal literature available in this regard and the judicial pronouncements and estimated the long-term capital gains at ₹81,66,750/-, which was added to the total income as per the return shown at ₹1,60,000/- and the total income was assessed at ₹83,26,750/-.

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued several notices of hearing to the assessee and since there was no compliance nor any other evidence was filed before the Ld. CIT(A), he dismissed the appeal of the assessee.

5. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal. Rival contentions were heard and the submissions made have been examined. The Ld. AR submitted that the order of the Ld. CIT(A) is *ex parte* as the assessee was mentally disturbed and the appeal could not be pursued on account of lack of communication from the tax consultant and he requested that the matter may be remanded to the Ld. CIT(A) so that adequate opportunity can be availed by the assessee.

6. The Ld. DR, though supported the order of the Ld. CIT(A), but did not raise serious objection to the request made by the Ld. AR.

7. We have considered the submissions made. A perusal of the appellate order shows that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. We note that section 250(6) casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision.

8. A perusal of the appellate order shows that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. The Ld. CIT(A) upheld the view of the AO but has not passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

> *"6. … The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.*

7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard."

9. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** after discussing the provisions of sections 250(1) and 251(1) that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment

by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

10. After examining the facts of the case and the law in this regard, we deem it appropriate to set aside the order of the Ld. CIT(A) and restore the appeal back to the Ld. CIT(A) for disposal of the grounds of appeal taken by the assessee on merit by passing a speaking order. 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 and rule 46A of the I.T. Rules, 1962 shall also be followed and an opportunity of being heard may be provided to the Ld. AO, if required. Accordingly, the grounds taken by the assessee in her appeal are partly allowed for statistical purposes.

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

Order pronounced in the open Court on 29th September, 2025.

Sd/-	*Sd/-*
[**George Mathan**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 29.09.2025

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Saroj Devi, W/o Sharma Nand Singh, Chak Musallahpur, Chai Tola Gali, Near Cooperative Bank, Mahendru, Patna, Bihar, 800006.***
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