

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

**[Virtual Court]**

**Before**

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

**I.T.A. No.: 630/PAT/2024**

**Assessment Year: 2016-17**

Shardindu Prasad Singh <b>(Appellant)</b>	Vs.	ITO, Ward-6(4), Patna <b>(Respondent)</b>
<b>PAN: AWVPS7865A</b>		

**Appearances:**

**Assessee represented by** : Sudipta Sannigrahi, C.A.

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

Date of concluding the hearing : 21-July-2025

Date of pronouncing the order : 15-October-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 24.06.2024, which has been passed against the assessment order u/s 144 r.w.s. 147 of the Act, dated 12.09.2019.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 68 days. An application seeking condonation of delay has been filed by the assessee stating as under:

*“The appellant filed this appeal before the Hon'ble Income Tax Appellate Tribunal, Patna Bench, Patna on 30/10/24 after delay of 69 days. The main*



*reason of delay in filing of memorandum of appeal is appellant's old age as well as his bad health condition since 2018 onwards continuously. At present appellant is suffering prostate & hernia and presently under treatment of Indraprastha Apollo Hospital, Sarita Vihar, Delhi-Mathura Road, New Delhi 110076. Presently, majority of time he stayed in Delhi for medical treatment. As a result, the delay arises in filing the returns etc. and also filing the appeal etc. As a proof, the appellant submit some hospital visit date with out-patient summary for your kind verification:*

.....

*(Some dates with details are mentioned)*

.....

*Due to distance between Patna to Delhi and also old age and other inconvenience in travelling and also sometime some medical requirement etc., appellant had to over stay at Delhi. As a result, the delay arises in filing documents before Income Tax Authorities.*

*2<sup>nd</sup> reason on delay is that the learned Commissioner of Income Tax (Appeals) decided the first appeal on the basis of assessment order page no. 1 to 3 and page no. 10 & 11 as issued as certified copies on assessee's requested for copy of assessment order dated 12.09.2019. Therefore, for filing second appeal the appellant request were for complete order of assessment against assessee's first letter dated 02.09.2024 which relate to JDA dated 16.06.2015 with the developer Winsome Builders Group on appellant second letter for present order dated 12.09.2019, the department failed to provide the order. Therefore, 2<sup>nd</sup> appeal was filed on that 4 pages order of assessment with my records available.*

*None of the delay is intentional; rather, the delay is for the circumstances over which the appellant has no control.*

*Under these circumstances, the appellant humbly preys for kind consideration of delay for 69 days in filing this 2<sup>nd</sup> appeal and accept the appeal for hearing. For that your undersigned appellant will remain ever grateful.”*

1.2. Considering the application 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, which are argumentative:

*“A. For that, on the fact and circumstances of the case, this 2nd appeal arises against an arbitrary, baseless, hypothetical and presumptive incomplete part assessment order having arbitrary determination of capital gain (LTCG) ₹ 1,24,95,128/- as income in assessment made U/s. 144/147 for the A.Y.: 2016-17 and demanded tax 39,63,956/- (inclusive of interest) and initiate penalty proceeding U/s. 271(1)(c) of the Income Tax Act, 1961 and its confirmation by the learned Commissioner of Income Tax (Appeals) by dismissing the appellant appeal in his order U/s. 250 of the Income Tax Act, 1961. This order is the subject matter of this 2nd appeal.*

**B. APPELLANT SUBMISSION ON GROUNDS OF APPEAL**

*Though numbers of grounds have been taken in this memorandum of appeal but the main important grounds in this 2nd appeal of the appellant is that:*

*a. For that, on the fact and circumstances of the case, the arbitrary, hypothetical and presumptive assessment order passed by the learned Assessing Officer U/s 144 read with section 147 of the Income Tax Act, 1961 and its confirmation by the learned Commissioner of Income Tax (Appeals) in his order U/s 250 by dismissing the appellant 1st appeal is bad in law and also contrary to facts of the case and both the learned authorities below by their order determined the total income of the appellant at 1,24,95,128/- by making unauthorized addition on account of long term capital gains and consequently raising tax demand of 39,63,956/- inclusive of interest U/s. 234B & 234C of the Income Tax Act, 1961.*

*b. The other grounds of appeal here under are urged without prejudice to one another:*

*1. On the facts & circumstances of the case, the order of the learned Assessing Officer is without jurisdiction and is void ab-initio as he has erred in initiating proceedings u/s 147 148 without existence of the condition precedent for such invocation. The learned Assessing Officer has failed to acquire proper jurisdiction in the re-assessment proceeding and such jurisdiction less order is fit to be annulled ab-initio.*

*2. The Ld. AO has erred in invoking section 147 in the case of the appellant on mere change of opinion.*

*3. The approval/sanction for reopening assessment by the competent authority is stated mechanically and without application of mind in the assessment order.*



4. The Ld. AO has erred in proceeding for assessment without serving copy of reasons recorded and also notice U/s 148 & 142(1).

5. The Ld. AO has erred in not following the verdict of the Hon'ble Supreme Court in the case of GKN Driveshaft reported in 259 ITR 19 and hence the whole order is fit to be quashed for want of compliance to the direction of the Hon'ble Supreme Court. The learned Assessing Officer has acted in clear deviation from the directions issued by the Supreme Court in G.K.N. Driveshafts (India) Ltd. as these requirements are an integral part of the safeguards which have been inbuilt for ensuring that the assessments are reopened only for lawful reasons and in a transparent manner. If the said safeguards are flouted, it would invalidate the exercise of jurisdiction under Section 147 and 148 of the Act.

6. The Ld. AO has failed to appreciate that the appellant has not handed over the proprietary possession to the developer nor the developer has taken over the possession, except as permission to agent or workman to perform construction activity pursuant to the Development Agreement, at the time of Development Agreement or at any time thereafter during the assessment year in question.

7. Ld. AO has failed to appreciate that the appellant has not transferred any right in favour of the developer even as on the date of execution of JDA except permitting the developer to undertake construction on the land in question in terms of JDA that too after complying to the JDA terms itself and mandate of law i.e. passing of map and all necessary compliances and hence question of capital gain as on the date of execution of development agreement does not arise.

8. Ld. AO has erred in invoking section 2(47)(v), 45 and 48 of the I.T. Act, 1961 and section 53A of The Transfer of Property Act, 1882. On the facts and in the circumstances of the case, the learned Assessing Officer has erred in holding that the transfer of 55% of the Land in favour of the Developer was a deemed transfer u/s 53A of the Transfer of Property Act, 1882 r.w.s. 2(47)(v) of the Income Tax Act, 1961 and the same was eligible to levy of Capital Gains Tax in the year in which the Joint Development Agreement (JDA) was entered in to.

9. On the facts and in the circumstances of the case, the learned Assessing Officer failed to appreciate the basic object & purpose of joint development agreement (in between the land owner & developer) for recording of terms of the agreement and safety and security of both the parties. As such, the learned Assessing Officer has totally gone astray in realising and understanding the meaning and purpose of registered development agreement as a whole, what is part performance U/s. 53A of Transfer of



*Property Act, 1882 and the meaning of transfer. As a result, the initiation of reassessment proceeding and reassessment done thereafter are totally based on presumptions / assumptions of the learned Assessing Officer and the assessment made on the assumptions and presumption of fact and on conjectural estimates and hypothetical basis having no relation with the monetary transaction entries in such pattern in the accounts of both the parties i.e. the land owner & the developer for capital gain to be earned on completion of the construction of building as per agreement and after allotment of share on completion of the project as per registered agreement in between owners of land and developer.*

*10. On the facts and circumstances of this case, the learned Assessing Officer failed to appreciate the real meaning & purpose as explained by the Hon'ble Apex Court about the development agreement and also the decision that the development agreement itself has not passed on any possession to the developer except limited right to enter onto the land of the owners only for the very limited purpose of construction and that too for a maximum period of in the instant case. That limited right to construct the approved building at his own cost can never be akin to or equal to possession as envisaged in section 2(47)(v) of the Income Tax Act, 1961.*

*11. On the facts and in the circumstances of the case, the learned Assessing Officer also failed to appreciate the basic accounting principle that no gain or loss arises without a transaction in between the receiver & payer by making entries in the books of account of the receiver for the amount received or receivable and payer making entry in its books of account for any paid or payable. Also no profit/gain can accrue or arises only on entering into an agreement for doing certain project on exchange basis. The learned Assessing Officer has not brought any details of transaction between the owners and the developer except the registered joint land development agreement. Those details, in no stretch of imagination, bring any profit or capital gain for taxation purpose until the project completed as per detailed term of registered agreement. As such the hypothetical capital gain as determined in assessment 1,24,95,128/- is baseless wrong and illegal without any transaction entered in the account of both the parties as received/receivable by the owners and paid/payable by the developer. As such this addition is fit to be deleted.*

*12. The terms of the JDA mean that only on completion of construction will any right to property accrue to the developer i.e. a right in future contingent upon the completion of construction and fulfilment of other terms of JDA by developer cannot be treated as right to possession on the date of execution of agreement of joint development agreement.*



13. On the facts and circumstances of this case, even assuming for arguments sake, though not conceding the stand of the Assessing Officer to be correct, the learned Assessing Officer has erred in not granting relief u/s 54F of the Income Tax Act to the Appellant as the entire deemed consideration was being simultaneously applied for acquisition of House property as per provisions of the joint Land Development agreement.

14. Without prejudice to the above, even if for argument sake, the date of execution and/or registration of the agreement is treated as the date of transfer even then the learned Assessing Officer erred in the manner of computing of the capital gains which is not in the mode of computation laid down in Section 48 of the Act; Such an addition is bad in fact and law and also for the effect of S.54F.

15. Ld. AO has erred in invoking section 50C of the I.T. Act and determining the LTCG of ₹ 1,24,95,128/-. The learned Assessing Officer has erred in invoking the provisions of section 50C of the Income Tax Act for the quantification of the deemed consideration of the land to the extent of 45% which was the subject matter of the joint JDA. The learned Assessing Officer has not complied with the requirement of Provisions of section 50C of the Act. The learned Assessing Officer, on record was not in possession of any material information as to the value adopted or assessed by the Stamp valuation authorities to invoke the provisions of Section 50C of the income Tax Act, 1961 nor they are otherwise attracted in the present case.

16. Ld. AO has erred in determining LTCG at 1,24,95,128/- as against value of land of 54,40,000/- as on date of agreement.

17. Ld. AO has failed to consider that the capital gain pursuant to development agreement will arise in the year in which the construction is completed and is handed over in habitable condition by the developer to land owner after obtaining Completion / Occupancy Certificate from appropriate authority and not in the year of execution of development agreement when construction has not even commenced on mere misinterpretation of legal provisions.

18. On the facts and in the circumstances of this case, the learned Assessing Officer has erred in treating a deemed value as capital gains U/s. 45 of the Act without giving effect to the opening words of Sec 45 "Capital Gains- (1) Any profit or gains arising from transfer of a capital assets....." There can be no tax payable unless there is any profit or gains. The learned Assessing Officer has failed to record any monetary profit or gain that has accrued to the assessee at the time of execution of the JDA & its registration.

19. Ld. AO has erred treating an amount of 1,24,95,128/- as income under Long Term Capital Gain without considering the fact that the appellant has

not received the constructed portion as stipulated in the JDA and as a matter of fact, no construction has started in the year under consideration and even as of now construction as per JDA viz. Completion / Occupancy Certificate in habitable condition not handed over to Appellant and this could have been confirmed from the developer and/or by conducting on spot enquiry subsequent to the filing of the return by the appellant.

20. Ld. AO has failed to consider that there will be no capital gain in the hands of the appellant on the date of entering upon the Development Agreement as neither consideration nor ownership passed from one to another.

21. Ld. AO failed to consider that the liability of capital gain in case of Development Agreement will arise in the year of exchange of the constructed portion falling to the share of the landlord and not as on the date of entering into the Development Agreement.

22. Ld. AO has erred in relying on judicial precedence that too without confronting the appellant with the same and also without considering that the facts of the decision relied upon were starkly distinguishable from the facts of the appellant's case.

23. On the facts and circumstances of this case, the learned Assessing Officer ought not to have relied on the judgement of Hon'ble ITAT Bangalore Bench in ITO, Ward 7(2), Bangalore Vs N.S. Nagraj (2014) 52 taxman.com 511 (Bangalore-Tribunal) and that too only to the prejudice of Appellant but ignoring the fact that cost of acquisition of land had been reduced from Capital Gain calculated in that case which the A.O. has failed to do in present case and further that the A.O. has ignored the principal ratio of Judgment of Hon'ble Apex Court in the case of CIT v. Balbir Singh Maini (2017) 86 taxmann.com 94/251 Taxman 202 (SC).

24. The adverse finding of the Ld. A.O. are contrary to the facts of the appellant's case and the evidences already on record and thus the addition of ₹1,24,95,128/- is wrong, illegal and unjustified.

C. For that, on the facts & circumstances of the case, the learned assessing officer has failed to record any valid reasons to believe for escapement of income chargeable to tax before issuing notice U/s 148 of the Income tax Act, 1961 for the AY-2016-17. Therefore, the appellant assessee submit before your good-self that the assessing officer has not supplied 'or' served the only reasons recorded to believe on the escapement of income to the appellant before issuing any notice under Section 148 of Income Tax Act 1961. Although, the Assessing Officer has to record reasons in writing, stating why the assessee in question, is believed to have escaped income assessment. Mere, suspicion is not a sufficient ground of issuing notice. But



*the fact of the case, is that neither the reason recorded has been served to the appellant by the Assessing Officer nor the appellant has received such reason recorded in writing. As it is also envisaged from ITBA portal of Income Tax Department, screen shot of which has been attached for your ready reference. There must be supporting material to allege that income has escaped assessment. A simple assertion of 'reason to believe' in writing in assessment order is not enough to validate the issuance of a notice under Section 148. Your good-self may examine the fact stated above from the records of learned assessing officer about reasons recorded and the same is approved by higher authority in writing before issue of notice u/s 148. Hence, the initiation of reassessment proceedings u/s 148 is totally arbitrary, illegal and totally based on suspicion after information collected u/s 133(6) from Registry Office, Danapur, Patna about signature of joint development agreement (JDA) having no information of escapement of income. As such, the assessee's submission of return in response to invalid notice u/s 148 is not the valid return for re-assessment. The notice U/s. 148 never be valid without any valid recording in writing the reasons to believe for escapement of income. As such, the appellant's any submission of return on invalid notice U/s. 148 is also an invalid return."*

3. Brief facts of the case are that the assessee had entered into a joint development agreement with Winsome Builders Group vide development agreement dated 16.06.2015. The assessee filed the return of income for the AY 2016-17. The notices u/s 148 and 142(1) of the Act were stated to be not received by the assessee in respect of the alleged escaped income for capital gains accrued on account of development agreement entered with M/s. Winsome Builders Group, Patna. As per the development agreement, the assessee was supposed to hand over possession of vacant land for the development and the developer was supposed to construct multi-storey building on such land and such construction work was required to be completed within 3 years and further extended period of 6 months from the date of approval of map and other approvals but the flats were not constructed nor handed over. As per the development agreement, after construction of multi-storey building, land owner assessee and developer both were entitled for

45:55 of the construction area. The Ld. AO had made addition of a sum of ₹39,63,956/- on account of capital gains, without considering the facts of the case and relevant clauses of the Development Agreement. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who considered the delay and considering the assessee's age of about 78+ years condoned the delay. The Ld. CIT(A) also went through the definition of transfer as per section 2(47) of the Act and considered the submission of the assessee but dismissed the appeal by his finding as under:

*“7.1 I have perused the appellant's submissions and Form 35. It is seen that the appellant has not been able to furnish the sufficient reasons for inordinate delay of 157 days. It is not just and proper at this stage to raise the issue after a gap of more than 157 days. As per the letter of the appellant dated 17.12.2022, the appellant's Chartered Accountant died on 13.05.2021 due to Covid-19; but in the same letter the appellant says this CA filed the appeal before his death because the date of filing of appeal was 17/03/2020. This means the death of the CA has not prevented the appellant from filing the appeal, in which case late filing of appeal cannot be attributed to the death of the CA. Further, the appellant submits in this letter that he had been suffering from prostate and hernia pain since May 2019. However, the doctor's prescriptions show the dates of 19th Oct 2021, 17th Nov 2021 and 24th Aug 2022 which are later to the date of filing of appeal (17/03/2020) and hence the appellant's submission that he was prevented from filing appeal within the stipulated time due to health issues does not appear to be correct. However, considering the appellant's age of 78+ years the delay in filing of appeal is condoned.*

*7.2. As per definition of 'transfer in relation to a capital asset, not only sale or exchange or relinquishment of asset or extinguishment of rights etc, but allowing of possession of any immovable property as referred to in Sec.53A of Transfer of Property Act, 1882 is also included in the definition of transfer.*

*Sec.2(47)(v) relevant to the issue on hand is reproduced hereunder...*

*2(47) "transfer", in relation to a capital asset, includes,-*

*[(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract*

of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882)

The appellant stated in his grounds of appeal that he did not receive the consideration with respect to the transaction. However, the receipt of consideration is irrelevant to arising of capital gains. What is material for Capital Gains is whether the possession of the asset in question has been transferred or not to the Developer, as per Sec.53A of Transfer of Property Act. Without transfer of the possession of the property the developer/builder cannot take permission from civil authorities for construction of buildings. Hence, it cannot be disputed that the possession of the property was transferred. After introduction of Sec.45(5A), an exception from the general provisions has been introduced w.e.f. 1-4-2018 wherein it is mentioned that the capital gains arises in the year in which completion certificate has been received. However, the year under consideration is FY 2015-16 which is prior to the AY 2018-19. Therefore, the provisions of law prior to the introduction of Sec.45(5A) are applicable to the appellant's case. There are a number of case laws confirming the position of law on treating the transfer of possession of property as per Sec.2(47)(v) as transfer for the purposes of capital gains.

7.3. The appellant relied on the case law, *CIT vs Balbir Singh* [2017] 86 taxmann.com 94 (SC) stating that income accrues to the assessee only if right to receive the income exists. In this case law, the JDA was not registered and therefore the Hon'ble HC and the Hon'ble SC held that in the absence of registration of JDA, contract cannot be enforced and hence it cannot be held that possession of property has been transferred u/s.53A of ToPA, 1882 in view of the amendment to Indian Registration Act in the year 2001. Whereas in the instant case of the appellant-assessee the appellant did not demonstrate that the JDA was not registered so as to apply this case law. The appellant-assessee also relied on the case law, *CIT vs Shoorji Vallabhdas & Co.* [1962] 46 ITR 144 (SC). This case law is not applicable to the facts of the case on hand, at all because this case law is not about JDA of immovable property. The appellant also quoted some case laws (*Shrimat Shanrao Suryavanshi & Anr v Prahlad Bhairoba Suryavanshi* and *CIT vs Vandana Devi, Patna*) without any case law quotation so that the undersigned would be in a position to comment on the applicability of such case laws or otherwise.

Law has evolved to this day in respect of JDAs entered prior to 01-04-2018 that capital gain arises in the hands of the landowner in the year in which JDA was signed by all the stakeholders. In view of the discussion in paragraph 7.2 above I hold that the capital gains arose in the hands of the appellant-assessee and accordingly grounds of appeal are rejected.



8. As a result, appeal filed by the appellant against the order passed u/s. 147 r.w.s.144 of the I.T. Act for A.Y. 2016-17 is treated as **DISMISSED.**”

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. Before us it was submitted that the assessment order was incomplete and the copy of the same was enclosed at page 126 of the paper book wherein after page 2, page 10 starts and pages 3 to 9 are missing. The assessee had written to the Ld. AO for the rest of the document. The Sr. Ld. DR also submitted that he had also written to the Ld. AO for the rest of the document. The assessee relied upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax vs. Balbir Singh Maini [2017] 86 taxmann.com 94 (SC)/[2017] 251 Taxman 202 (SC)/[2017] 398 ITR 531 (SC)/[2017] 298 CTR 209 (SC)[04-10-2017]** stating that the income accrues to the assessee only if the right to receive the income exists and as the JDA was not registered, the contract cannot be enforced. But the Ld. CIT(A) did not agree with the submission of the assessee and confirmed the addition. It was also stated that a second set of order was received against which the appeal is still pending and it was requested that both the appeals may be heard together by the Ld. CIT(A). The Ld. AR was requested to file a copy of the Form No. 35 and the appeal number of the second appeal before the Ld. CIT(A) and after considering the request the Bench was of the view that since both the appeals are pending, the same can be adjudicated together by the Ld. CIT(A) if the same issues have been raised in both the appeals in order to avoid multiplicity of the proceedings. Therefore, in the interest of justice, the order of the Ld. CIT(A) is hereby set aside to be done afresh after



considering the submissions of the assessee and the assessment order, as an incomplete copy of which has been filed before us. The assessee shall file the details of both the appeals before the Ld. CIT(A) who may decide both the appeals together after granting adequate opportunity of being heard to the assessee as well as to AO and considering the documents filed. The assessee shall be at liberty to raise all legal issues as well before the Ld. CIT(A) which are raised in this appeal and on which we have not expressed any opinion in the absence of complete copy of the assessment order.

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

**Order pronounced in the open Court on 15<sup>th</sup> October, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 15.10.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Shardindu Prasad Singh, S/o Late Kripanand Singh, Rameshwar, Daya Singh Path, North S K Puri, Patna, Bihar, 800013.**
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