

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH, KOLKATA**

Before

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

**ITA No.: 268/PAT/2023
Assessment Year: 2017-18**

Harihar Prasad (Appellant)	Vs.	ITO, Ward-4(4), Patna (Respondent)
PAN: AFTPP7421C		

Appearances:

Assessee represented by : K.M. Mishra, Adv.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 08-September-2025

Date of pronouncing the order : 20-November-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 2017-18 dated 08.08.2023.

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

"1. For that the order passed by the appellate commissioner dated 08.08.2023 under section 250 of the IT Act is wholly unreasonable and arbitrary because the appellate commissioner has not provided opportunity to the appellant, this fact is evident from the order of appellate commissioner wherein it has been stated that the appeal has been disposed of by relying upon the submission made by appellant on 13.09.2019 before the assessing officer.

2. For that the order passed by the ld. Commissioner is bad and illegal because as per the provision of section 250 of the Act, appeal cannot be disposed of without providing opportunity of hearing to the appellant, as



such, the order passed by appellate commissioner is against the provision of sub section (1) and (2) of section 250 of the Income Tax Act.

3. For that the computation of capital gain and levy of tax against the appellant of Rs.2,41,50,000/- is bad and illegal in view of the fact that as per the notification/press release issued by the executive engineer, PWD, Hilsa, Nalanda, the land in question was of agriculture i.e., Dhanhar (Fit for cultivation of paddy) but the authority below has taken the category of land as commercial.

4. For that the finding recorded by the assessing officer and the Id. Commissioner to the effect that the land in question was coming under the area of municipality is also factually incorrect because the land was situated in village Panchayat and at the date of acquisition agriculture crops were harvesting therein.

5. For that the computation of capital gain and levy of income tax is bad and illegal because the land was acquired by the State of Bihar for public purpose for construction of road, as such, the provision of Right to Fair compensation and transparency in land acquisition rehabilitation and resettlement Act is apply and the appellant was entitle to get exemption under section 96 of the Act.

6. For that the computation of capital gain on account of compensation received by appellant and levy of tax thereon is otherwise bad and illegal because the petitioner in one hand received compensation and on other hand invested such compensation to the land for the purpose of residential accommodation.

7. For that the assessing officer as well as CIT appeal failed to appreciate the fact that no deduction of tax was made nor capital gain was computed and tax was assessed in case of other persons whose land were acquired by the state government under the same notification dated 12.08.2016, as such, the assessment in this case is discriminatory in nature.

8. For that the grounds taken herein above is not prejudicial to each other.

9. For that any other grounds may be taken at the time of hearing.”

3. Brief facts of the case are that the assessee is an individual and had filed the return of income showing total income of ₹5,88,940/- which was selected for scrutiny under Computer Assisted Scrutiny Selection (in short 'CASS') as the assessee had claimed large exemption u/s 54B of the Act. The assessee had a piece of land in village Saidanpur (Mau), Hilsa which was acquired by the State of Bihar for construction of road and a sum of ₹2,41,50,000/- had been paid as compensation to the assessee after deducting TDS. The Assessing Officer (hereinafter



referred to as the Ld. 'AO') issued notices under section 143(2) and 142(1) of the Act. Statutory notices issued to the assessee were complied with. The assessee was asked to furnish various details which were submitted online through his Ld. AR on 13.09.2019 in which it was claimed that the compensation was exempt from tax. The assessee had purchased several blocks and a residential house but the deduction claimed under section 54F of the Act was not allowed. The entire amount of sale consideration of ₹2,41,50,000/- was added as capital gains on transfer of land without allowing any cost of acquisition and the total income of the assessee was assessed at ₹2,47,38,940/- u/s 143(3) of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who perused the assessment order, has reproduced the provisions of sections 54, 54B and 54F of the Act and as stated in the appeal order that the assessee's case does not fall under Capital Gains and hence the claim u/s 54F of the Act was not allowed as the land in question is based to the Government of Bihar and the money received by the assessee falls under the lease income u/s 56 of the Act. However, a perusal of the assessment order shows that the sum of ₹2,41,50,000/- has been added under the head 'capital gains' by the Ld. AO but the cost of acquisition has not been allowed and the deduction u/s 54F of the Act has also not been allowed. The Ld. CIT(A) upheld the addition made by the Ld. AO and dismissed the appeal of the assessee.

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. The Ld. AR submitted that proper representation was



not made before the Ld. CIT(A) and he has filed the documents relating to the cost of acquisition which were not filed before the lower authorities and has requested that the matter may be remanded to the Ld. CIT(A) so that proper submission can be made. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld. The assessee has filed the following documents:

1. Photocopy of the notification published in daily newspaper dated 12.08.2016.
2. Lease deed dated 16.11.2016 executed between Executive Engineer RWD and the assessee.
3. Photocopy of deed vide no. 3901 dated 09.05.2018 and 4286 dated 21.05.2018 executed in favour of wife of the appellant namely Kanti Devi.
4. Photocopy of deed of purchase vide no. 4807 dated 06.06.2018 and deed no. 6817 dated 03.08.2018 in favour of appellant.
5. Photocopy of Bank Statement.

6. We have considered the rival submissions made and the facts of the case. The Statement of Facts filed before the Tribunal have also been produced which are as under:

- “1. The assessee has filed return of income showing income of Rs.5,88,940/- The case was selected for scrutiny under CASS.
2. The fact of the case may be stated inter alia that the assessee has a piece of land in village Saidanpur (Panchayat Mai), Block and P.S- Hilsa, District Nalanda. The said land was acquired by state of Bihar vide public notification/press release vide Patrank No. 884 dated 12.08.2016 for construction of road. In the said notification, the category of land was noted as Dhanhar (fit for harvesting of paddy). The government has paid Rs.2,41,50,000/- as compensation to the appellant after deducting TDS. The case was selected for scrutiny assessment. The Assessing Office has issued notices under section 143 (2), 143 (2) and 142 (1).
3. The Authorized Representative of the assessee appeared time to time before Assessing Officer and filed written submission also. It was explained before A.O that the compensation received by assessee is exempted from tax as per section 96 of RFCTLARR Act. It was further explained that the assessee has purchased four landed properties and also constructed residential house out of the compensation received. The assessee has also submitted purchase deed. Therefore, assessee is entitled to get exemption under section 54B and 54F of the Income Tax Act. The Assessing Officer simply overlooked the submission of the appellant and add Rs.2,41,50,000/- as capital gain and assessed income



under section 143(3) of Rs.2,47,38,940/-. The assessing officer thereafter passed order under section 143(3) of the Income Tax Act on 01.10.2019 wherein income was assessed to Rs.2,47,38,940/- including income from capital gain of Rs.2,41,50,000/-. The appellant filed appeal before the Commissioner of Income Tax, Patna wherein whole of the order was challenged. The Commissioner appeal however, without providing opportunity to the assessee dismissed the appeal and confirm the order of assessing officer virtually be ex-party order by order dated 08.08.2023.

It is evident from the order of CIT that the CIT had not allowed opportunity of hearing rather had decided the issue simply recording the ground taken by appellant and also on the basis of submission made by assessee before the assessing officer.

4. That, the fact of this case may be stated inter-alia that the appellant has a agricultural land at Village Saidanpur, Panchayat- Mai, Block and P.S-Hilsa, District Nalanda. The nature of land as per the press release/ notification issued by state of Bihar dated 12.09.2016 was agriculture. The payment of compensation was also made to the appellant taking into account the category of land as Agriculture. The assessing officer however has treated the land commercial without having any basis. Further, the assessing officer has also rejected the claim of the appellant regarding exemption of income tax under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Appellant commissioner however has confirmed the order of assessing officer without issuing notice and also without providing opportunity to the assessee. This fact find support from para 6, page 4 of the order of Commissioner wherein the appellate commissioner has noted that the appeal was disposed of on the basis of submission made by appellant on 13.09.2019. Apparently, the order of assessment was passed on 01.10.2019 however the commissioner has disposed of the appeal on the submission made by the appellant on 13.09.2019. This itself is proved that the order has been passed without providing opportunity of hearing.”

7. Since the document filed being the sale deed of the land purchased by the assessee shows that the same has been subsequently acquired by the State Government for perpetual lease for Raiyati land vide indenture dated 16.11.2016 to hold the same in perpetuity unto the lessee from the date of road construction as infrastructure development for public purpose, and the compensation has been paid for the perpetual lease; therefore, the same amounts to transfer as per the provisions of section 2(47) of the Act and has been rightly assessed under the head ‘capital gains’ by the Ld. Assessing Officer as the



assessee's usufructuary rights were extinguished on account of perpetual lease and construction of the road. Therefore, the same also amounts to transfer as per clauses (2) and (3) of sub-section (47) of section 2 being compulsory acquisition under the law and was rightly charged as capital gains. The assessee contends that adequate opportunity of being heard was not provided by the Ld. CIT(Appeals) nor the cost of acquisition has been allowed while computing capital gains and the deduction claimed under section 54B/54F of the Act were also not allowed. Thus, the order of the Ld. CIT(A) is set aside and appeal is remanded to him to adjudicate the issues afresh after considering the evidence to be filed by the assessee and after granting an opportunity of being heard to the Ld. AO under rule 46A of the I.T. Rules, 1962, if required as these documents were not filed before the Ld. AO and are in the nature of additional evidences. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes and the assessee shall be at liberty to raise all legal issues before the Ld. CIT(A).

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

Order pronounced in the open Court on 20th November, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 20.11.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Harihar Prasad, House No. 379, Sector-S, Lohiya Nagar, Kankarbagh, Patna, Bihar, 800020.**
2. **ITO, Ward-4(4), Patna.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata