

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 रकेश मिश्रा, लेखा सदस्य
के समक्ष

Before

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

**ITA No. 467/Pat/2024
(Assessment Year 2012-13)**

Alok Kumar, S/o Sri Dasrath Mehata, Village- Ganeshpur, M.S. Yogiraj, Purani Madhepura, Dist- Madhepura - 852116 (Bihar) (PAN: BPKPK1186D)	Vs	ITO Ward-3(5), Saharsha
(Appellant)		(Respondent)

Present for:

Appellant by : K.P. Jalan, AR
Respondent by : Ashwani Kr. Singal, JCIT

Date of Hearing : 16.10.2025
Date of Pronouncement : 19.11.2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "the Ld. CIT(A) dated 14.05.2024.

2. The grounds of appeal raised by the Assessee are reproduced as under:

01. For that the Ld. CIT (A) has erred in dismissing appeal without merit and affirming the order of the AO (ITO Ward-3(5) Saharsha) passed u/s 147 wherein the AO has assessed the appellant on a total income of Rs.1,67,12,410.00 as against return income of Rs.1,36,810.00.

02. For that the Ld. CIT(A) has erred in passing order dismissing the appeal without merit and without affording proper opportunity of being heard to the appellant and had violated the principles of equity, natural justice and fair play which requires proper and adequate opportunity of being heard.

03. For that the appellant is working as govt. contract primary school teacher and is residing at village-Ganeshpur, which is situated in the vicinity of KOSHI River Dhar (Flown) and is disconnected and remains Tapu 4 to 5 months in a year from other parts of land. The Appeal was preferred & filed on 26.02.2020 and was taken up for hearing in the month of March 2024 (After 4Yrs) and was disposed by granting 3 dates on week intervals only through ITD e-portal and dismissing it by passing ex-parte order for noncompliance without proper consideration of the facts.

04. For that the Ld. CIT (A) has erred in holding the appellant has not been able to furnish any reply nor has given any factual or legal details to take view other than that of AO and onus cannot be cast upon to this office be an adjudicator and also be the lawyer for the assessee, when himself assessee is not interested to pursue his own appeal and Ld. CIT(A) proceeds further by held appeal is without merit and accordingly dismissed.

05. For that Ld CIT (A) upholds assessment and was completed without quoting and complying all conditions precedent for invoking deeming provisions of S-50C and addition without quoting relevant section, is a mistake which could not be curable u/s 292BB, therefore prayed only on this deficiency in the order, it can be annulled & set aside. Ld CIT (A) upholds assessment order by putting the assessment year A/Y: 2017-18 on the face of assessment order in place of correctly it was A/Y: 2012-13, followed by reminder notice with A/YT:2017-18, for collection of assessed tax dt.22.01.2020, these could not be curable u/s 292BB of the Act.

06. For that Ld CIT (A) upholds assessment by considering sold lands are having the nature of commercial or residential, therefore treated capital assets u/s 2(45/47) but in fact it was Agricultural Land (Refer to 1 top of Para of Page -3 of Deed No.4459 dt.06.05.2011 and Para 2 bottom last of Page -3 of Deed No.4458 dt.06.05.2011) inherited from late father, therefore cost of acquisition was taken Nil and transfer cost was taken to Rs. 31400.00. Further a certificate of Circle Officer dt.25.06.2024 on Revenue Karamchhari report 14.06.2024 to substantiate stated facts is in the possession of the appellants.

07. For that appellant has claimed exemption u/s 54F entire sale proceeds of Agricultural Land Rs.501000.00 and Rs.1501000.00 (Total Rs.2002000.00) by deploying the proceeds on construction of new house at Village-Ganeshpur, PS-Puraini, PS No.142 Khata No.213, Survey Plot No.1772/1775, Dist-Araria (Bihar)

08. For that the whole order is bad in fact and law of the case and is fit to be annulled and may be set aside and restored back to AO for deciding the order on merit afresh after allowing proper and adequate opportunity of being heard.

09. For that the other grounds, if any, shall be urged at the time of hearing of appeal.”

3. Brief facts of the case as culled out from the record are the assessee is an individual and has been assessed to tax since long and is deriving income from Salary & Interest etc. The assessment was reopened for verification of taxability of capital gains arising on sale of land worth ₹1,66,07,000/- as the assessee was found to have sold 2 pieces of land and a notice under section 148 of the Act was issued. In pursuance to the notice u/s 148 dt. 25.03.2019, the assessee had filed ITR-2 on 25.05.2019, however, it has been alleged in the assessment order that there had been non-compliance to the notices issued u/s 148, 143(2) 142(1) & SCN issued from time to time. The assessment was made at the total income of ₹1,67,12,410/-. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who, vide the impugned order, dismissed the appeal. The assessee had submitted before the Ld. CIT(A) that there had been no service of the notice to the appellant manually and no such notice had been served electronically and hence the allegation of non-compliance is wholly incorrect. It is further stated that it would be evident from the order itself that the questionnaires (SCN) were issued at the fag end and proper opportunity of being heard was not granted by service of the notices manually. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the record and the submissions made have been examined.

5. The Ld. AR submitted before us that the Ld. AO had invoked the provision of section 50C of the Act and the land sold was agricultural land. But nowhere in the assessment order any reference to section 50C has been made as is alleged by the assessee. The assessment was made under section 144 of the Act on the basis of the report of the Circle Officer. It is stated that no submission could be made before the Ld. CIT(A) and the

assessee had raised the issue that the sanction required under section 151 of the Act was not obtained from the concerned authority before issuance of the notice. As the assessee did not furnish any reply, the Ld. CIT(A) held that it was for the assessee to furnish cogent evidence in support of the grounds of appeal which had not been done. The onus could not be cast on the office of the Ld. CIT(A) to be an adjudicator and also a lawyer for the assessee when the assessee was himself lax and uninterested in pursuing the appeal and the appeal was held to be without merits and the same was dismissed. It was also submitted before the Ld. CIT(A) that the assessee had met with a major accident in the month of July 2019 and was advised by the doctors complete bed rest for at least 4 to 5 months while the assessment order was passed on 04/12/2019. It appears that during the course of the assessment proceedings, the notices were served by email and speed post and the same also appear to have been delivered, however, there was no compliance. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal without discussing the merits of the case as proper representation was not made either before the Ld. AO or even before the Ld. CIT(Appeals). 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. We find that at both the stages of assessment order before the Ld. AO as well as before the Ld. CIT(A) in the appeal, proper representation was not made on behalf of the assessee. We note that in **Aji 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 the

Assessing Officer's order is a self-speaking order which requires no interference. 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. Since there was no proper compliance before both the Ld. AO as well as the Ld. CIT(A), in the interest of justice and fair play it was considered that the request of the assessee to set aside the case before the Ld. AO may be allowed so that a proper opportunity of being heard may be provided. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter 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 the relief claimed and shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

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

Order pronounced in the open Court on 19th November, 2025.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rakesh Mishra]
Accountant Member

Dated: 19.11.2025

Copy to:

1. **Alok Kumar, S/o Sri Dasrath Mehata, Village- Ganeshpur, M.S. Yogiraj, Purani Madhepura, District - Madhepura - 852116**
2. **ITO Ward-3(5), Saharsha**
3. Pr. CIT
4. CIT(A)
5. The CIT,
6. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of Dictation.....
2. Date on which the typed order is placed before the dictating Member and other Member.....
3. Date on which the order came back to Sr. PS.....
4. Date on which the file goes to the Bench Clerk.....
5. Date on which the file goes to the O.S.....
6. Date on dispatch of the order.....