

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

[Virtual Court]

Before

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

**ITA No.: 357/PAT/2023
Assessment Year: 2015-16**

Amit Kumar Verma (Appellant)	Vs.	ITO, Ward-6(1), Patna (Respondent)
PAN: AEAPV2963H		

Appearances:

Assessee represented by : Pradeep Kumar, CA.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 08-October-2025

Date of pronouncing the order : 04-December-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 2015-16 dated 18.10.2023.

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

"1. For that the CIT (Appeal), National Faceless Appeal Centre (NFAC), Delhi has erred in passing order confirming the income assessed at Rs.90,82,570/- by Ld. assessing officer against returned income of Rs.5,30,350/- under the facts and circumstances of the case and the law.

2. For that the CIT (Appeal), National Faceless Appeal Centre (NFAC), Delhi erred in applying the date of execution of the development agreement executed on 27.03.2014 for confirming additions of Rs.85,52,221/- on account of capital gain.



3. For that the CIT (Appeal), National Faceless Appeal Centre (NFAC), Delhi erred in confirming un-jurisdictional notice issued by the Id. Assessing officer u/s 148 of the Income Tax Act, 1961

4. For that the CIT (Appeal), National Faceless Appeal Centre (NFAC), Delhi, has erred in confirming the date of registration of the conveyance deed as the date of transfer of the property to the developer.

5. For that the CIT (Appeal), National Faceless Appeal Centre (NFAC), Delhi erred in passing order by not following principle of natural justice.

6. For that the CIT (Appeal), National Faceless Appeal Centre (NFAC), Delhi erred in confirming levy and demand of interest u/s 234A, 234B, 234C of the act.

7. For that CIT (Appeal), National Faceless Appeal Centre (NFAC), Delhi erred in confirming initiation of penalty proceedings u/s 271(1)(c) of the Income tax Act, 1961 for concealment of income.

8. For that the order of the CIT (Appeal) and assessment order passed by the Id. Assessing officer is wrong, arbitrary and unjustified in the facts and circumstances of the case and is bad in law as well as fact and fit to set aside.

9. For that the petitioner craves for additional grounds, if any, be urged at the time of hearing.”

3. Brief facts of the case are that the assessee is an individual and had filed his return of income showing total income of ₹5,30,350/-. The Assessing Officer (hereinafter referred to as Ld. 'AO') noted that the income chargeable to tax had escaped assessment within the meaning of section 147 of the Act and issued notice u/s 148 of the Act to the assessee; in response to which the assessee submitted his reply stating that because of non-activation of online portal for filing of the return, the return of income could not be filed electronically. The Ld. AO further noted that a Joint Development Agreement (JDA) had been executed by the assessee with Ambe Bhagwati Marketing Construction Private Limited. The Ld. AO perused the replies filed by the assessee but was not satisfied with the explanation and added a sum of ₹85,52,221/- on account of long-term capital gains to the total income of the assessee



and assessed the total income of the assessee at ₹90,82,570/- u/s 144/147 of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who issued several notices through ITBA portal to the assessee and the assessee responded to these notices and filed submission on 30.08.2023 in support of the grounds of appeal. The claim made and the submissions by the assessee were sent for further verification and a remand report was requisitioned seeking the comments of the Ld. AO vide letter dated 05.10.2023, which was submitted on 15.01.2024 by the Ld. AO and the same has been reproduced from page 21 to 28 of the appeal order. The copy of remand report was forwarded to the assessee on 05.02.2024 and the assessee submitted his comments on 12.02.2024 and the appeal was accordingly disposed of. The Ld. CIT(A) decided the appeal and the relevant extract from the appeal order is as under:

“6. Through Ground no. 1 and 5, the appellant has contested against the addition of Rs.85,52,221/- made by the AO and subsequent estimation of total income at Rs.85,52,221/-. The fact of the matter is that the appellant had entered into a land development agreement with Ambe Bhagwati Marketing Construction Pvt. Ltd. and the Assessing Officer on receipt of this information, re-opened the appellant's case and accordingly, observed that the circumstances of the case attracted provisions under Section 53A of the Transfer of Property Act and the capital gains emerging out of such transfer attracted provisions of section 2(47)(v), 45 and 48 of the Act. Therefore, the taxable capital gain and taxes to be paid thereon was worked out in details by the AO as per the provisions of the Act, in the absence of any cogent explanation in support of appellant's claim, completed the assessment u/s. 144 r.w.s.147 of the Act.

6.1 The appellant, during the assessment proceedings and appellate proceedings has claimed in this regard that the land development agreement has been executed on 30.04.2014 which is relevant to F.Y 2013-14 and A.Y 2014-15 and hence, transfer in favour of the developer was passed in FY 2013-14 on 28.03.2014 and not on 30.04.2014 when the document got registered and certificate thereof was issued by the registering authority. Therefore, capital gain was accrued in FY 2013-14 pertaining to



AY 2014-15 and not in FY 2014-15 pertaining to Ay 2015-16 as the contemplated by the assessing officer in passing the impugned order. The appellant also placed reliance on judicial precedents on the taxability of capital gain on the date of execution of sale deed.

6.1 Thus the issue is in respect of determining taxability of capital gains arising out of the transfer of immovable property under Land Development Agreement (LDAs) when the date of sale deed execution and registration is different.

In recent times, the most preferred mechanism adopted by the land owners to transfer their immovable property has been under a Land Development Agreement (LDA). This mode is usually preferred by those land owners who want to develop their lands but do not have the requisite expertise to carry out the same. Therefore, they enter into a LDA with a developer for developing and marketing the land parcel to the buyers for a mutual benefit. LDAs are entered into either under the Revenue Sharing Model or the Area Sharing Model. Out of the two methods, the Area Sharing Model is more preferred by the land owners wherein the developer will be given a share in the land and consequently, the land owner will get a share in the built-up area.

6.2 Disputes relating to when a transfer will take place in case of LDA were given a quietus in specific cases by introduction of Section 45(5A) in the Income Tax Act, 1961 (IT Act) with effect from 1 April 2018. But till March 31, 2017 (i.e. before insertion of new provision of section 45(5A) of the Act), the capital gain arising in the hands of the landowner was governed by Section 45(1) of the Act, i.e., it was taxable in the year in which the transfer of capital assets took place. Any gain or loss arising from transfer of Capital Asset shall be considered as a Capital Gain or Loss as the case may be. Section 45(1) of the Act, is charging section and provides that-

"Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EB, 54F, 54G and 54H, be chargeable to income tax under the head 'Capital Gain' and shall be deemed to be the income of the previous year in which the transfer took place."

6.3 Under the LDA, the landowner gives the possession of their land to the Developer to develop the property. The same is considered as 'transfer' under the Act for the purpose of calculation of capital gain. The expression 'transfer' is defined in Section 2(47) of the Act. The provisions of clause (v) and (vi) to Section 2(47) of the Act accord a wide meaning to the expression 'transfer', bringing within its ambit even to include those transactions which

would have otherwise not been considered as 'transfer' under the general law. These clauses cover the following transactions:

1. 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 Transfer of Property Act, 1882 [Section 2(47)(v)];
2. or b. any transaction which has the effect of transferring or enabling enjoyment of any immovable property [Section 2(47)(vi)]

6.4 The definition of 'transfer' under section 2(47)(v) includes any arrangement or transaction whereby any rights are handed over in execution of part performance of contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 ('TOPA') even though the legal right has not been transferred.

Thus, whenever LDA is executed, the definition provided under section 2(47)(v) will come into play and capital gain tax liability arises in the hands of the land owner in the year in which the LDA is entered into, and the possession of immovable property is handed over.

6.5 The Supreme Court in *CIT vs. BALBIR SINGH MAINI* [2017] 398 ITR 531 (SC), held that in order to qualify as a "transfer of a capital asset u/s. 2(47)(v) of the Income-tax Act, 1961 there must be a "contract" which can be enforced in law u/s. 53A of the 1882 Act. It is also observed that in order to attract Section 53A of TOPA, the following conditions need to be fulfilled:

1. There should be a contract for consideration;
2. It should be in writing;
3. It should be signed by the transferor,
4. It should pertain to transfer of immovable property;
5. The transferee should have taken possession of the property;
6. The transferee should be ready and willing to perform his part of the contract.

6.6 Likewise, the Bombay High Court in the case of *Charturbuj Dwarakadas Kapadia v. CIT* (2003) 260 ITR 491 (Bom) held that the 'transfer' as far as the landowner is concerned takes place on the date of entering into the JDA on the ground that possession given to a developer would also fall within the ambit of the 'transfer under Section 53A of the TOPA read with Section 2(47)(v) of the Act.

The Hon'ble Bombay High Court in *Chaturbhuj Dwarakadas Kapadia of Bombay* (supra) dealt with an issue as to whether the transfer of an immovable property took place on the date of execution of the JDA or in the year in which substantial compliances were carried by the developer as per



the JDA. In the present case, the assessee entered into a JDA with a developer on 18 August 1994 and executed a limited power of attorney in favour of the developer on the same day. The developer had made substantial payments and obtained two permissions for the construction in AY 1996-97. Subsequently, the assessee executed an irrevocable license in favour of the developer on 12 March 1999 to enter the property. The assessee contended before the lower authorities that the transfer took place only when he executed the irrevocable licence in favour of the developer to enter upon the property and, therefore, liability to pay capital gain only arose during the AY 1999-2000. However, the Tribunal held that since substantial payments and permissions were obtained in AY 1996-97, the capital gains is taxable in AY 1996-97. The High Court observed that in the instant case, the agreement was a Development Agreement and the test to be applied to decide the year of chargeability was the year in which the transaction had been entered into. This view was taken for the reason that the Development Agreement does not transfer the interest in the property to the developer in general law and, therefore, by application of Section 2(47)(v), even entering into such a contract could amount to transfer from the date of the agreement itself. The Court further observed that substantial compliance would differ from officer to officer and therefore, it cannot be taken as reason to decide the year of taxability. The Court held that once under the agreement a limited power of attorney was intended to be given to the developer to deal with the property, the date of the contract/JDA viz., 18 August 1994 would be the relevant date to decide the date of transfer under Section 2(47)(v) and, in which event, the question of substantial performance of the contract thereafter did not arise.

6.7 The Bangalore ITAT in decision of Jaico Automobile Engineering Company Pvt. Ltd. v. ITO [2] also dealt with a similar issue. The assessee had executed a JDA, General Power of Attorney ('GPA') and sale agreement with a developer on 30 March 2007. All the three documents were registered. As per the JDA, it was agreed between the parties that possession would be given to the developer in pursuance of the agreement on or before 30 November 2007. The reason for fixing the date was on the basis of payment of refundable deposit of INR 35 crores. The developer had paid INR 15 crores while the agreement was executed, and the balance was required to be paid on or before 30 November 2007. The question before the ITAT was to decide whether there was a valid transfer of property on the date of executing the JDA. The assessee contended that since it was specifically agreed between the parties that possession would be handed over only on 30 November 2007 or earlier if the balance of the refundable deposit was made, there was no transfer of possession contemplated on or before 30 March 2007. The assessee further contended that the developer

had not carried out any construction activity during the said period and therefore, there was no performance of the contract by way of development of the property during the relevant year. Therefore, the assessee took a stand that there was no transfer of property to the developer in AY 2007-08 as the conditions stipulated under Section 53A of TOPA were not satisfied. On the other hand, the Department contended that by virtue of the JDA, the assessee granted the developer the right of development of the site and that such right was irrevocable. Since, the assessee had also executed an irrevocable GPA in favour of the developer to develop, alienate, sale, convey and lease the constructed area, there was a valid transfer as per Section 2(47)(v) of the IT Act in AY 2007-08. The ITAT observed that from a perusal of the contents of the JDA and GPA dated 30 March 2007, it can be inferred that the assessee had provided to the developer all facilities to entry, development and even sale of the constructed built-up area. Therefore, such unhindered access provided to the developer is very much in the nature of possession even if the word as such has not been mentioned in the JDA. The ITAT further observed that the GPA also gives irrevocable powers of not only possession but, even to alienate and sell the constructed area. Therefore, the ITAT held that the transactions entered by way of JDA dated 30 March 2007 would constitute a 'transfer' in terms of Section 2(47) of the IT Act r.w. section 53A of TOPA and therefore, the capital gains arising out of the said transfer is taxable in AY 2007-08.

6.8 The Chennai ITAT in *Tamilnadu Brick Industries v. ITO* [3] dealt with an issue as to whether a registered GPA along with a JDA conferring entitlement to the developer to sell, convey or deal with the property amount to transfer of property as per Section 2(47)(v) of the IT Act. The assessee in the present case had executed a JDA along with a GPA in favour of the developer on 17 September 2012. The assessee had contended that it had only permitted the developer to enter and exit the property for the purpose of development and therefore, the same shall not be construed as deliver of possession or part performance contemplated under Section 53A of TOPA. The ITAT observed that execution of a GPA in favour of the developer confers the entire possession of the property to the developer and thereby attracts Section 53A of TOPA and therefore, the date of execution of JDA along with GPA must be considered for purposes of Section 2(47)(v) of the IT Act.

6.9 As mentioned in the cases discussed above, all the conditions stipulated under Section 53A of TOPA have to be satisfied for a transaction to qualify as a transfer for the purposes of Sections 2(47)(v) and 45 of the IT Act. In the instant case, all conditions necessary for holding the transaction as part performance of the contract under section 53A of Transfer of Property Act are duly fulfilled in the case of the assessee. The deed was execution on 28.03.2014 thus transfer took place in AY 2014-15. Thus, capital gain tax

liability arises in the hands of the land owner in the year in which the deed was executed and the possession of immovable property is handed over.

6.10 'Transfer' takes place only when it becomes operational, that is, on executing the sale deed neither before it, that is, when the parties are in the process of negotiations, nor after it, that is, when the registration of the deed actually takes place. Sale deed, even though registered on 30.04.2014, was admittedly executed on 28.03.2014, which date falls in the previous year relevant to the A.Y. 2014-15 and, as such, the amount of capital gain becomes chargeable to tax in such preceding assessment year. Since the 'transfer' of the property took place on execution of sale deed in the preceding year, Thus the amount of capital gain cannot be charged to tax for the A.Y. 2015-16 under consideration.

6.11 This is also clear that no capital gain was offered for taxation by the assessee in her return for the A.Y. 14-15. Thus the AO may reopen the assessment of the appellant for that particular A.Y. (AY 2014-15), after following the due procedure as per law u/s 148 r.w.s 150(1) of the Act, in accordance with the findings given at para 6.10 above. However, the impugned addition of Rs 85,52,221/- cannot be sustained for Ay 2015-16 under consideration in the present appeal.

6.12 Therefore, in view of the foregoing discussion, the addition made by the AO are deleted consequently, Ground No. 1 and 5 are allowed.

7. Through Ground No. 2 and 3, the appellant has contested against issuance of notice u/s 148 of the Act claiming it to be un-jurisdictional and illegal and pleaded that the AO had erred in issuing notice u/s 142(1) of the Act.

7.1 The contention of the appellant in this regard is considered while keeping in mind the argument of the AO and I am of the considered view that the AO has correctly issued statutory notices as and when required as mandated by the law. The AO was in possession of the information that the appellant had accrued capital gain in lieu of transfer of land which had escaped assessment. Therefore, by virtue of the powers vested in the Assessing Officer, as information was available at his disposal, the appellant's case was re-opened u/s 147 of the Act and accordingly, notice u/s 148 of the Act was issued to the appellant which is imperative as per the provisions enshrined in the Act. Therefore, the AO was justified in issuing statutory notice to the appellant based on the information available.

7.2 Further, the appellant failed to file its return of income in compliance with the notice u/s 148 of the Act due to system error as online filing option was not active attributable to the late receipt of the statutory notice as claimed by the appellant. It is apt to point out here that appellant cannot

shift the onus on the Assessing Officer for the late receipt of the notice which led to system error or broken e-filing link. The notice u/s 148 of the Act was issued only after obtaining necessary approval from the Competent Authority on the basis of solid corroborative evidence and not just mere assertions, so the question of it being illegal does not arise at all.

7.3 Moreover, as the appellant could not submit any evidence to justify its claims before the AO in response to the statutory notice u/s 148 of the Act, therefore, the AO had to take to issuing notice u/s 142(1) of the Act seeking explanation for the matter in question which is exactly what the law prescribes in order to provide the appellant/assessee opportunity to be heard. However, the appellant in response to notice u/s 142(1) of the Act also could not furnish documentary evidence to substantiate the grounds taken by it against the findings of the AO. Even during the appellate proceedings, the appellant could prove why the statutory notices are un-jurisdictional or illegal as per its claim

7.4 Thus, in the prevailing circumstances, I find no infirmity in the action of the AO and therefore, Ground No. 2 and 3 are dismissed.

8. The appellant has contested against charging tax of Rs.25,89,780/- on long term capital gain and interest of Rs. 7,92,791/- u/s 234B of the Act through Ground No.6. As charging of tax and levy of interest is consequential and mandatory as per the Act, hence, Ground No.6 is dismissed.

9. Through Ground No.8, the appellant has contested against the AO stating that the AO failed in giving adequate opportunities to be heard to the appellant. On perusal of the assessment order and Remand Report, it is apparent that enough opportunities were given to the appellant to be heard. The appellant itself has contested in Ground 2 and 3 against the issuance of statutory notices and yet claims that enough opportunity was not provided by the AO which is a contravention of its own statement. Further, it has been categorically stated by the AO, that one letter issued to the appellant had returned undelivered and another was returned with the postal remark that the receiver was gone. Therefore, as evident from the facts of the case, this claim of the appellant that sufficient opportunity was not given to the appellant does not hold credibility. Consequently, Ground No. 8 is dismissed.

10. Grounds of Appeal No. 4, 7, 10, and 11 being vague and general in nature, requires no separate adjudication as such, as in the facts and circumstances of the case, the same are dismissed

11. Through Ground No. 9, the appellant has challenged the initiation of penalty proceedings u/s 271(1)(c) of the Act. This ground is premature at



this stage as no such penalty has yet been levied by the AO and hence, the Ground No. 9 is dismissed.

12. In the result, the appeal is Partly Allowed.”

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 before us that that there was a land development agreement along with three other persons which was executed on 28.03.2014 but was registered on 30.04.2014 and, therefore, capital gains, if any, falls in the AY 2015-16. It was submitted that the power of attorney which was to be executed in the name of the developer was not executed.

6. The agreement with the developer was executed on 28.03.2014 and therefore, the capital gains arises in AY 2014-15 but the agreement was registered on 30.04.2014 and the Ld. AO has charged the capital gains in AY 2015-16. The power of attorney which was to be executed in favour of the developer was not executed, no map was approved and finally the agreement was cancelled on 29.07.2024. Out of three others, one person got relief before the Ld. CIT(A) and in the case of the second person the matter is pending before the Ld. AO. In the paper book 2 filed before us on 27.02.2025, at Annexure-3, page number 53 to 60, the deed for the cancellation of the agreement has been filed which apparently was not filed before the Ld. Assessing Officer. The Ld. AR requested that the matter may be remanded to the Ld. AO as the facts of the case narrate that since the agreement was cancelled there was no transfer and no liability for capital gains arises. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.



7. We have heard the rival submissions made. The assessee has also filed written submission before the Tribunal which has been gone through. The Bench was of the view that the additional evidence filed goes to the root of the matter and therefore, another opportunity needs to be provided to the assessee as the assessment was made *ex parte* and before the appellate authority also proper submissions were not made. Accordingly, the order of the Ld. CIT(A) is hereby set aside and the matter is remanded to the Ld. AO to frame the assessment *de novo* after considering the evidences to be filed by the assessee. The assessee shall be at liberty to file all the evidences before the Ld. Assessing Officer and also to raise all legal issues before him, which shall be decided by the Ld. AO. 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. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 4th December, 2025.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rakesh Mishra]
Accountant Member

Dated: 04.12.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Amit Kumar Verma, Nakhas Pind, PO Begampur, Patna City, Patna, Bihar, 800009.**
2. **ITO, Ward-6(1), Patna.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata