

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.764/RPR/2025

निर्धारण वर्ष / Assessment Year : 2015-16

Anish Vishnoi
New Bus Stand Baloda Bazar,
Baloda Bazar S.O.,
Raipur (C.G.)-493 332
PAN: AEAPV0087J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 03.02.2026

घोषणा की तारीख / Date of Pronouncement : 05.02.2026

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 26.09.2025 for the assessment year 2015-16 as per the following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the learned CIT(A) has erred in law in upholding the reassessment order purportedly passed under section 147 r.w.s. 144B, even though the Assessing Officer who initiated the proceedings u/s 148 had no valid jurisdiction to do so. The assumption of jurisdiction itself being void ab initio, the entire reassessment proceedings stand vitiated and the impugned order is liable to be quashed.

2. The learned CIT(A) has erred in upholding the validity of the reassessment order passed u/s 147 r.w.s. 144B by the Ld. Assessing Officer without following the mandatory faceless assessment procedure, rendering the assessment void ab initio.

3. That on the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the action of Ld. AO in arbitrarily rejecting the objection raised by the Appellant against the draft assessment order. The same is unjustified, erroneous and unsustainable.

4. That on the facts and circumstances of the case, the Learned CIT(A) has partly erred in confirming the addition of Rs.34,12,620/- as Long-Term Capital Gain, by considering the land at Village Magarchaba as Capital Asset and taking the total sale consideration at Rs.34,12,620/- instead of Rs.17,28,000/- with a direction to AO to consider the actual Cost of Acquisition of Land despite acknowledging and accepting the submissions made by the appellant that agricultural land is rural agricultural land and not a capital asset u/s 2(14).

5. That on the facts and circumstances of the case, the Learned CIT(A) was not justified in confirming the adhoc addition of Rs. 16,84,620/- on account of on-money, without

providing any detail/documents to the appellant on the basis of which view has been formed and without providing opportunity of being heard or cross examine or verify the said documents.

6. The appellant craves to add alter or delete any of the above grounds of appeal during the course of appellate proceedings.”

2. At the very outset, it is noted that the appeal is time barred by 5 days. The assessee has filed condonation petition a/w. affidavit dated 21.11.2025 explaining the reasons of delay. The relevant extract of the said affidavit is culled out as follows:

चत्तासगढ़ CHHATTISGARH

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1. That I had filed my original return of income for A.Y. 2015-16 on 23.02.2016 declaring a total income of Rs. 3,03,380/- consisting of income from salary and interest under the provisions of the Income-tax Act, 1961. Further, during the relevant year, I had also sold a rural agricultural land situated at Village Magarbacha, realizing total sale consideration of Rs. 17,28,000/-, which, being rural agricultural land, was not liable to capital gains tax.
2. That my case was selected for reassessment proceedings, and an order under section 147 of the Act was passed making an addition of Rs. 34,12,620/- as Long-Term Capital Gain arising from the sale of land situated at Village Magarbacha, including an alleged receipt of on-money amounting to Rs. 16,84,620/-.
3. That against such order, I filed an appeal before the Commissioner of Income Tax (Appeals) – NFAC through Form 35 dated 23.04.2022, Acknowledgement No. 595383140230422. The Ld. CIT(A) – NFAC passed the order on 26.09.2025 partly allowing the appeal under section 250 by granting relief towards indexed cost of acquisition of the land from the addition made by the Ld. AO.
4. That I am in the process of filing an appeal before the Hon'ble ITAT, Raipur against the order of the CIT(A) (NFAC). All preparations for filing the appeal before 30th November 2025 were duly completed by my counsel, and the challan for payment of appeal fee was also deposited on 28.11.2025, confirming my bona fide intention to file the appeal within the prescribed period.
5. That I fell ill with a severe flu (viral fever) due to the recent change in weather on 28th November and remained sick till 4th December.
6. That I reside in Baloda Bazar, Chhattisgarh, whereas my Counsel, CA Abhishek Mahawar, who is filing the appeal before the ITAT, resides in Raipur.



7. That various documents including Form 36 were required to be signed by me at my Counsel's office in Raipur for filing the appeal.
8. That due to the unavoidable reasons stated above, I could not travel to Raipur for execution of such documents until today, resulting in a delay of 5 days in filing the appeal.
9. That the Appellant's case is strong on merits, and therefore, it is requested to kindly condone the unavoidable delay and extend due justice to the Appellant.

3. I have carefully considered the contents of the affidavit as well as delay condonation petition. I do not find any deliberate or malafide conduct on the part of the assessee for filing appeal belatedly. Rather, due to circumstances beyond the control of the assessee, such delay has occurred. That even the Ld. Sr. DR also conceded for condonation of the said delay. Accordingly, the delay of 5 days involved in the present appeal is condoned keeping in view of the directives in the judgments viz. (i) **Collector, Land Acquisition Vs. Mst. Katiji & Ors, reported in 167 ITR 471 (SC)**; (ii) **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025**; (iii) **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025** and (iv) **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025.**

4. The brief facts in this case are as follows:

“3. During the year under consideration, the appellant had sold three agricultural lands. The details of which is as below:

S. No.	Description of property	Khasra No.	Date of sale	Sale Value (in Rs.)
1.	Agricultural land at Village Magarchaba, Tehsil : Baloda Bazar	735	27.06.2014	17,28,000
2.	Agricultural land at Village Parsabhader Gram Panchayat Kokdi, Tehsil- Baloda Bazar	35/4	04.10.2014	2,57,000/-
3.	Agricultural land at Village Patidih, Tehsil- Baloda Bazar	53/7 397/1, 397/2, 408/2, 419, 455/4)	05.12.2014	32,28,000

The distance of the land from the local limits of municipality (i.e from the municipal limit of Baloda Bazar) is more than 2 Km and the population of the area is less than 10,000. Hence, the property sold by the appellant is agricultural land and as per Clause (iii) of Section 2(14) of the Income Tax Act, 1961. Such agricultural land is not a capital asset and therefore any gain earned on sale of such land is not taxable.

4. A notice u/s 148 of the Act dated 30.03.2021 was issued by the Income Tax Officer-1(1), Raipur (the Jurisdictional AO). In response to the same, the appellant filed its return of income on 23.04.2021 declaring total income of Rs.

3,03,380/- under the provisions of the Act. The notice u/s 143(2) r.w.s 147 dated 08.10.2021 along with reasons was issued by the jurisdictional AO.

5. The reasons recorded for reopening of the case stated that "Please find the sale deed of the property sold by you during the year under consideration and reason for not showing capital gain earned on such transmission in the return of income filed by you in response to the notice of 148 of the Income Tax Act, 1961." However, no sale deed was attached with the notice.

6. In response, the appellant filed letter dated 23.10.2021 raising objections to the reopening of the case based on various grounds and requesting the documents relied upon for formation of such reason for reopening. However, the Additional/ Joint/ Deputy/ Assistant Commissioner of Income tax/ Income Tax officer, National Faceless Assessment Centre, Delhi ('the Assessing Officer') rejected the objections vide communication dated 17.01.2022 stating that the land is a capital asset u/s 2(14) of the act.

7. Subsequently, notice u/s 142(1) dated 20.01.2022 was issued by the assessing officer requiring the appellant to furnish various details and documents. The said notice was duly complied by the appellant by filing reply dated 27.01.2022 where in the appellant submitted its computation of income, copy of all the bank statements for the relevant period, certificate from the Patwari regarding the distance of land sold from the nearest municipal corporation i.e from Baloda Bazar Municipal Corporation and copy of Purchase deed of the properties sold.

8. Against the same, the Ld. AO issued a show cause notice cum draft assessment order dated 17.03.2022 proposing addition of Rs.34,12,620/- as Long-Term capital Gain with respect to sale of land situated at Village Magarchaba and accepting the other two lands as agricultural land."

5. That when the matter went before the Ld. CIT(Appeals)/NFAC, as evident from Para 8.4 onwards, the Ld. CIT(Appeals)/NFAC has accepted

that the said land is an agricultural land and is outside the purview of capital asset and therefore, no capital gain should be attracted. The Ld. CIT(Appeals)/NFAC writes that on perusal of the remand report and other documents including submission of the assessee, it is found that the allegation of the A.O was incorrect and invalid as the distance of the land from the municipal limit is 2.75 Km as per google map and further the same was verified from certificate of Patwari issued vide order dated 17.03.2022 wherein it was clearly stated that distance of the land as per google map is 2.75 Km from municipal limit. Hence, the above allegation of the A.O is baseless, incorrect and invalid. The Ld. CIT(Appeals)/NFAC further writes that the A.O violated the fundamental rules of justice in reaching to the conclusion. Firstly, the A.O has not provided the complete set of information recorded as reasons to the assessee nor did he provide evidence or copy of google map wherein it was measured distance of rural land of the assessee at Magarchaba village. Secondly, the A.O has failed to provide any opportunity to rebut the evidence used by him (i.e. google map or any other document) and /or statement from where he inferred that the assessee has received any 'on money'. Finally, the A.O has also declined to consider the evidence/materials provided by the assessee (i.e. Patwari certificates with measurements) and therefore, principles of natural justice specifically "Audi-Alteram Partem" was totally disregarded by the A.O. However, later on, the Ld. CIT(Appeals)/NFAC observes that

the assessee had received 'on money' as additional over and above amounting to Rs.16,84,620/- in cash which the assessee had suppressed and held that A.O has rightly brought the sale consideration of Rs.34,12,620/- to tax as LTCG.

6. I have carefully considered the documents on record, heard the submissions of the parties herein and analyzed the facts and circumstances in this case. The Ld. CIT(Appeals)/NFAC admits that the land in question is not a capital asset, rather it is an agricultural land since it is located at a distance of 2.75 Km from municipal limit as per the google map and also as per the Patwari certificate which certifies that the land to be an agricultural land. Further, at Para 8.4 of the Ld. CIT(Appeals)/NFAC order, it was observed by the first appellate authority that the A.O has acted behind the back of the assessee without confronting the assessee with all the relevant materials/evidences which have been used by the A.O against the assessee which was therefore, in violation of principles of natural justice. That once, it has been decided by the Ld. CIT(Appeals)/NFAC that the allegation of the A.O that the said land was capital asset is baseless, incorrect and invalid and there has been gross violation of principles of natural justice and that in fact as per evidence furnished by the assessee the land sold is an agricultural land, thereafter, it is practically infructuous view regarding any 'on money' payment for transaction which itself is not taxable. In other words, once it

has been decided that the nature of land is an agricultural land, for which, question does not arise for LTCG, when the entire transaction pertains to agricultural land which is outside the purview of taxation, in such scenario, the issue of receiving 'on money' itself becomes academic and ceases relevance. Therefore, the conclusion arrived at by the Ld. CIT(Appeals)/NFAC is perverse, arbitrary, vitiated and bad in law. Accordingly, the order of the Ld.CIT(Appeals)/NFAC is set-aside and the A.O is directed to delete the addition from the hands of the assessee while providing appeal effect of this order.

7. As per the above terms grounds of appeal raised by the assessee are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in open court on 05th day of February, 2026.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 05th February, 2026.

SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,

- रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur