IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA" BENCH, PATNA

BEFORE SHRI DUVVURU RL REDDY, VP
AND
SHRI RAJESH KUMAR, AM

ITA No.384/PAT/2024

(Assessment Year:2011-12)

Shri Hari Narayan Gupta (HUF) C/o M/s Kanak Mandir, Opp. IOC Petrol Pump, Boring road, Patna-80001, Bihar	**Vs.**	**ITO, Ward-6(5)** Patna, Bihar
(Appellant)		**(Respondent)**

PAN No. AADHN3834N

Assessee by	:	S/Shri A.K. Rastogi & Rakesh Kumar, Ars
Revenue by	:	Shri Ashwani Kr. Singal, DR

Date of hearing: 24.11.2025
Date of pronouncement: 23.02.2026

O R D E R

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)"] dated 30.03.2024 for the AY 2011-12.

2. The only issue raised by the assessee is against the confirmation of addition by the ld. CIT (A) of ₹1,33,85,300/- as made by the ld. AO on account of long-term capital gain arising from the property given for the Joint Development Agreement.

3. The facts in brief are that the assessee is deriving income from business and is a senior citizen. During the year, the assessee filed the return of income on 29.09.2011, showing total income of ₹4,24,260/-. Thereafter, the case of the assessee was reopened u/s

147 of the Act by issuing notice u/s 148 of the Act on 18.12.2018, for the reason that the income of the assessee to the tune of ₹1,33,85,300/- from Long-Term Capital Gain, arising from and with respect to Land Development Agreement (LDA) dated 04.08.2010, between the assessee and M/s Artech Construction Engineering Pvt. Ltd. has escaped assessment. In this LDA between the assessee and developer, it was agreed to develop the property by the builder, with share of 42.5% of the total land area of 12598 sq. ft. owned by the appellant which would be constructed by the land developer and share of constructed buildings to be taken by the appellant was 13385.3 sq.ft comprising total floor area of 31495 sq.ft. and developer would be entitled to ownership of 57.5% of the total constructed area. The ld. AO also called for the development agreement from the office of the Registrar for Properties u/s 133(6) of the Act which was duly furnished to the assessee. As per the land development agreement registered the total value of land was ₹59,84,000/- and the value of share owned by the assessee at full total value of land stands at 25,43,200/-. The ld. AO noted that the assessee has relinquished the rights over his share of land in terms of the land development agreement and the Provisions of Section 53A of transfer of property Act are attracted and capital gain has arisen from transfer of property u/s 2(47)(v), 45 and 48 of the Act. The assessee filed the written submission before the ld. AO however, finally, the ld. AO computed the capital gain arising from the said transfer at ₹1,33,85,300/- as under:-

1)	Total area of land as per JDA	12,598 SFT
2)	Total permitted Super Build Area to be constructed on the land (As per FAR Provisions)	31495 SFT
3)	Total number of land owners	One
4)	Share of this Land Owner in the land	Full

5)	Tota measurement of super build area under the ownership of the land owner (on 42:5:57.5 basis with Builder and land owner)	13385.3 SFT
6)	Estimated cost of construction of Super Build Area (including parking area) @ square feet X ₹1000/-	₹1,33,85,300/-
7)	Value of consideration of land as Land Development Agreement in part of assessee	₹25,43,200/-
8)	Total value of consideration of property (higher of 6 & 7 applicable as per Section 50C of the Income Tax Act, 1951)	Fs.1,33,85,300/-
9)	Less: Indexed cost of land	-----
10)	Long Term Capital Gain for tax purpose	₹1,33,85,300/-

4. The ld. CIT (A) in the appellate proceedings dismissed the appeal of the assessee by passing a very cryptic order by observing that the Long-Term Capital Gain was correctly computed by the ld. AO and brought to tax. The ld. CIT (A) relied on the decision of Chaturbhuj Dwarkadas Kapadia of Bombay vs. Commissioner of Income-tax [2003] 129 Taxman 497 (Bombay)/[2003] 260 ITR 491 (Bombay)/[2003] 180 CTR 107 (Bombay)[13-02-2003], however, the facts are distinguishable as in that case the substantial payments were made at the time of execution of joint development agreement.

5. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has entered into a Land Development Agreement with the builder as stated hereinabove and builder has been allowed to construct the property under the said development agreement. The assessee was to get 42.50% of the total constructed area and builder share was to be 57.50%. Apart from this, there has been no other performance of any act on the part of the assessee as well as the builder which showed that there was transfer of rights in favour of the builder/ developer. The copy of Joint Development Agreement, is available at page no.3 to 20 of the Paper Book of the assessee. We note that under the said agreement the builder was to obtain the permissions/sanction/ map approval of the area as is apparent from clause 6 of the agreement. We further

note that in the F.Y. 2015-16 on 04.04.2015, the agreement was executed between the builder and the assessee for share distribution of the constructed area, copy of which is available at page no.27 to 44 of the Paper Book. Considering all these facts, we are of the view that no transfer of any property had taken place within the meaning of Section 2(47)(v) of the Act and therefore, accordingly, no capital gain has arisen to be taxed u/s 45 and 48 of the Act. We further note that the assessee has already offered to tax on his share of constructed area which was allotted to the share of the assessee in terms of the agreement for distribution of construction area dated 04.04.2015 and assessee has already paid tax on the capital gain arising from the sale / transfer arising from the said development agreement in assessment year 2016-17. Therefore, we are not in agreement with the conclusion drawn by the ld. CIT (A) on this issue. The case of the assessee is squarely covered by the decision of Patna High Court in case of ACIT Vs. Dr. Mahabir Prasad son of Sahdeo Yadav in Miscellaneous Appeal No.391 of 2009 dated 15.05.2012, wherein the Hon'ble Court had held as under:-

"Heard the parties in respect of IA No.3221 of 2012. The same has been filed along with Vakalatnama of one Ratan Kumar Tulsi son of the sole respondent Dr. Mahabir Prasad who is said to have died on 16.2.2012. The prayer in the IA is to allow substitution of the three heirs and legal representatives mentioned in paragraph 1 of the IA.

In the facts of the case, the prayer for substitution is allowed. Let the three heirs who are wife and sons of deceased Dr. Mahabir Prasad be substituted in his place. Mr Ajay Kumar Rastogi one of the counsels representing Ratan Kumar Tulsi undertakes to file Vakalatnama on behalf of other two heirs also within four weeks.

Heard learned counsel for the appellant and learned counsel for the heirs of deceased respondent Dr Mahabir Prasad who has been substituted today.

The Tribunal has considered the relevant materials and 2/ 2 has then agreed with the findings of learned CIT (A) that assessee received agriculture land on the death of his father and that land being agricultural land was a source of income for the HUF. The findings are supported by materials on record and do not suffer from any error of law.

The other issue relating to exemption under Section 54F of the Income Tax Act has been decided by the Tribunal after considering the relevant fact that the assessing officer had also charged capital gain in the year 1999- 2000 and hence, there would not be any scope to hold that the transfer of land had taken place in 1991 as claimed by the Department. The nature of development agreement has been properly appreciated by the Tribunal for rejecting the contention of the Department regarding transfer having taken place in 1991.

Since both the material issues have been decided by the Tribunal as per law, we find no substantial question of law for determination in this appeal. It is accordingly dismissed."

5.1. Similar ratio has been laid down in the case of C.S. Atwal Vs. CIT reported in 378 ITR 244 (P&H). In the said decision the Hon'ble court held that possession delivered, if at all, was as a license for the development of property and not in the capacity of a transferee. The said decision of the Hon'ble Punjab and Haryana High Court has been upheld by the Hon'ble Apex Court as reported in (2019) 412 ITR 60 (St), wherein the Hon'ble Apex court has dismissed the SLP by the department against the order of the Punjab and Haryana High Court on the issue of transfer of land between the landlord and the developer with reference to Section 53A read with section 2(47)(v) of the Act. Similarly, the co-ordinate bench in case of Fardeen Khan vs. Assistant Commissioner of Income-tax-11 (1), Mumbai [2015] 58 taxmann.com 186 (Mumbai)/[2015] 40 ITR(T) 487 (Mumbai)] held as under:-

*"**31.** The contention of the ld. D.R. that assessee has accepted Rs. 13.75 crores from Godrej Properties Ltd. pursuant to the Development Agreement, therefore, it amounts to transfer of the land to Godrej Properties Ltd. does not find any merit. There was no transfer of land as per amended provisions of section 53A of TOPA applicable for the relevant A.Y. 2008-09 under consideration accompanied by fact that there was no transfer of possession to GPL and the possession of land was with assessee only and the same has been expressly statd in clause 6 of Development Agreement. Furthermore the assessee has not received any consideration from Godrej Properties Ltd. but had received only "deposit" which was to be adjusted against the sale of villas on completion of the project. It is also a matter of record that Godrej Properties Ltd. has not carried out any construction/development activity as per the project envisaged in Development agreement relied on by A.O. What was mentioned in the Development Agreement was only the value of land to provide benchmark for the purpose of sharing*

profits and adjustment of deposit of Rs. 13.75 crores paid by Godrej Properties Ltd. It is also a matter of record that neither a single villa was constructed nor sold pursuant to the Development Agreement. It is also a matter of record that Development Agreement which is relied upon by the A.O. for the purpose of arriving at the conclusion that asseassee has earned capital gains has been annulled in the year 2011. Accordingly, we do not find any merit in the action of A.O. making addition on the basis of Development Agreement.

32. *Now coming to the argument of the ld. D.R. that date of conversion of land into 'stock-in-trade' should be taken as per the books of the assessee i.e. April, 2007. As per our considered view, the treatment given in the books of account is not a sole factor to determine the year in which land was converted into 'stock-in-trade' but series of events undertaken, facts and circumstances of the case which are very much relevant while considering the year in which "capital asset" is converted into "stock-in-trade". Thus Development Agreement has to be harmoniously construed with reference to the related facts and circumstances of the case. Before reaching to the conclusion, we cannot forget the fact that the ownership and possession of land were always retained with the assessee and the same has been expressly stated so in clause 6 of the Development Agreement. The assessee has not received any consideration from Godrej Properties Ltd. nor was there any assurance about profit given by the Godrej Properties Ltd. in the project, the project had not materialized and ultimately Development Agreement was annulled in 2011. If we analyse all these facts, we can safely conclude that there was neither any transfer of land to Godrej Properties Ltd. nor any gains arisen to the assessee during the relevant A.Y. 2008-09 under consideration.*

33. *The ld. D.R.'s contention that assessee had entered into sham transaction, we found that neither it is the case of A.O. nor that of ld. CIT(A) that the assessee has entered into any sham transaction to avoid any tax. Accordingly, this contention of the ld. D.R. cannot be accepted at this juncture. Even otherwise, if the Development Agreement is to be ignored, there is no transfer and no income as the A.O. as well as ld. CIT(A) have computed and taxed the assessee on the basis of Development Agreement only.*

34. *In view of the above discussion, the A.O. is directed to delete the capital gains computed in the hands of the assessee.*

35. *In the result, appeals of the assessee are allowed."*

5.2. The said order of the co-ordinate bench has been affirmed by the Hon'ble Bombay High Court in case of Principal Commissioner of Income Tax vs. Fardeen Khan [2018] 96 taxmann.com 398 (Bombay) [2019] 411 ITR 533 (Bombay)[25-07-2018], wherein by observing and holding as under:-

*"**8.** Being aggrieved with the order dated 27th December, 2012, Respondent filed a further appeal to the Tribunal. By the impugned order, the Tribunal held that there was*

no transfer within the meaning of Section 2(47)(v) of the Act. This was for the reason of an amendment made in 2001 to the Indian Registration Act, wherein a transfer for the purposes of Section 53A of the Transfer of Property Act, would not take effect, unless, such an agreement is registered. Admittedly, the Development Agreement dated 20th April, 2007 is not a registered document. It further held that the decision of this Court in Chaturbhaj Dwarkadas Kapadia of Bombay case (supra), would have no application to the present facts in view of the change in law with regard to part performance w.e.f. 2001 onwards. So far as Section 2(47) (vi) of the Act is concerned, the impugned order held that there was no transfer in terms of Section 2(47)(vi) of the Act, as it is evident from the Development Agreement dated 20th April, 2007 which provides that there has been no grant of possession of the land to M/s. Godrej Properties Ltd., for the purposes of Sections 2(47)(v) and (vi) of the Act. Further, M/s. Godrej Properties Ltd., did not have exclusive possession of the land but had only permitted user/ license to the land from the Respondent. The impugned order further records the fact that no development activities was carried on the land owned by the Assessee and in view of the market conditions, it was found that the project was not viable and a second Development Agreement was entered into between the parties which was later on revised by Supplemental Agreement dated 27th July, 2012. Thus, the Development Agreement dated 20th April, 2007 was annulled.

9. *It was in the aforesaid circumstances that the impugned order noted that no transfer had taken place in the previous year relevant to subject Assessment Year. It further notes that the Development Agreement, indicating the value/ costs of land at Rs.55 Crores as a notional cost and providing only a benchmark to compute the consideration payable to the Respondent on the probable sales of the houses to be built on the land, which would take place in future. Thus, in the subject Assessment Year, there was no consideration received and/or accrued. This, particularly, so as there was no certainty of quantum of sales of the homes built on the land."*

5.3. Considering the facts of the assessee in the light of the above decisions, we are inclined to set aside the order of ld. CIT (A) and direct the ld. AO to delete the addition.

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

Order pronounced in the open court on 23.02.2026.

Sd/-	Sd/-
(DUVVURU RL REDDY)	(RAJESH KUMAR)
(VICE PRESIDENT)	(ACCOUNTANT MEMBER)

Kolkata, Dated: 23.02.2026
Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata