

IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA No. 230/PAT/2026
Assessment Year : 2016-2017

Malti Devi, C/o Abhay Sharma, Saguna Near Math, Danapur Cantt., Danapur, Patna - 801503 [PAN: BPXPD9609D]	Vs.	Income Tax Officer, Ward – 1(4), Ara
APPELLANT		RESPONDENT

Assessee by	:	Shri Sudeep Sinha, Advocate
Revenue by	:	Shri Ravi Kant Chowdhary, Sr. DR

Date of hearing	:	30.06.2026
Date of Pronouncement	:	19.08.2026

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “the Ld. CIT(A)"] dated 24.09.2025, DIN & order No. ITBA/NFAC/S/250/2025-26/1081121351(1) on the following grounds of appeal:

“1. For that the order passed by the Ld. CIT(A) is bad in law and on facts and is liable to be set aside.

2. For that the Ld. CIT(A) has erred in holding that execution of Joint Development Agreement dated 03.09.2015 constitutes a "transfer" under section 2(47) and in taxing capital gains in A.Y. 2016-17, ignoring that no possession was handed over, no construction was carried out, and no real income accrued to the Appellant during the year, the addition is thus based on purely hypothetical and notional income and is liable to be deleted.

3. For that the Ld. CIT(A) has failed to appreciate that possession and completion of the project occurred only in the year 2024, and therefore, capital gains, if any, are chargeable only in the year of completion/possession.

4. For that the appellant is entitled to exemption under section 54F of the Act with respect to the flats received vide possession letter dated 01.10.2024 by the Developer.

5. For that the Appellant seeks to rely upon an appellate order passed in the case of Dashrath Mahto, involving identical facts, same developer, and same project, wherein relief has been granted; the said order came to the knowledge of the Appellant after passing of the order of the Ld. CIT(A), and is therefore raised as an additional ground in the interest of justice.

6. For that the assessment order is bad in law as it was passed by AO not having jurisdiction over the appellant and without proper service of statutory notices under sections 148 and 142(1) and.

7. For that the Appellant craves leave to add, amend, or alter any of the above grounds at the time of hearing.”

2. At the outset of hearing, it was noticed that the appeal filed by the assessee is time barred by 122 days and in this regard, the assessee filed condonation petition stating the reason for delay in filing the appeal which is as under:

“1. That the present appeal is being filed against the order passed by the Ld. CIT(A).

2. That there has occurred a delay of 127 days in filing the present appeal before the Hon'ble Tribunal.

3. That the delay has occurred due to circumstances beyond the control of the appellant and not due to any negligence or deliberate inaction.

4. That the appellant is an 81-year-old lady, not well educated and not conversant with electronic communications or the functioning of the income tax portal.

5. That the order of the CIT(A) was not served physically on the appellant and was only uploaded on the income tax portal.

6. That the appellant does not regularly access emails, SMS or the income tax portal and therefore remained unaware that the appellate order had been passed.

7. That the appellant came to know about the order only when a letter dated 29.01.2026 was received demanding payment of outstanding demand.

8. That immediately thereafter the appellant contacted legal counsel and steps were taken to file the present appeal.

9. That therefore from the date of actual knowledge of the order, only about 60 days has passed approximately.

10. That the delay in filing the appeal is thus bona fide and unintentional.

11. That the appellant also has strong grounds on merits, as another assessee involved in the same development project has been granted full relief, and therefore the appellant also expects similar relief in accordance with the rule of consistency.

12. That if the delay is not condoned, the appellant will suffer irreparable loss and prejudice, whereas no prejudice will be caused to the revenue if the delay is condoned.

PRAYER

In view of the above facts and circumstances, the appellant most respectfully prays that the Hon'ble Tribunal may kindly condone the delay of 127 days in filing the present appeal and admit the appeal for hearing in the interest of justice."

3. On going through the above, we noted that the assessee had "reasonable cause" for not filing appeal within the specified due date. Accordingly, relied on the judgment of Collector, Land Acquisition vs Mst. Katiji, (1987) 167 ITR 171 (SC), we condone the delay and the appeal is taking up for adjudication.

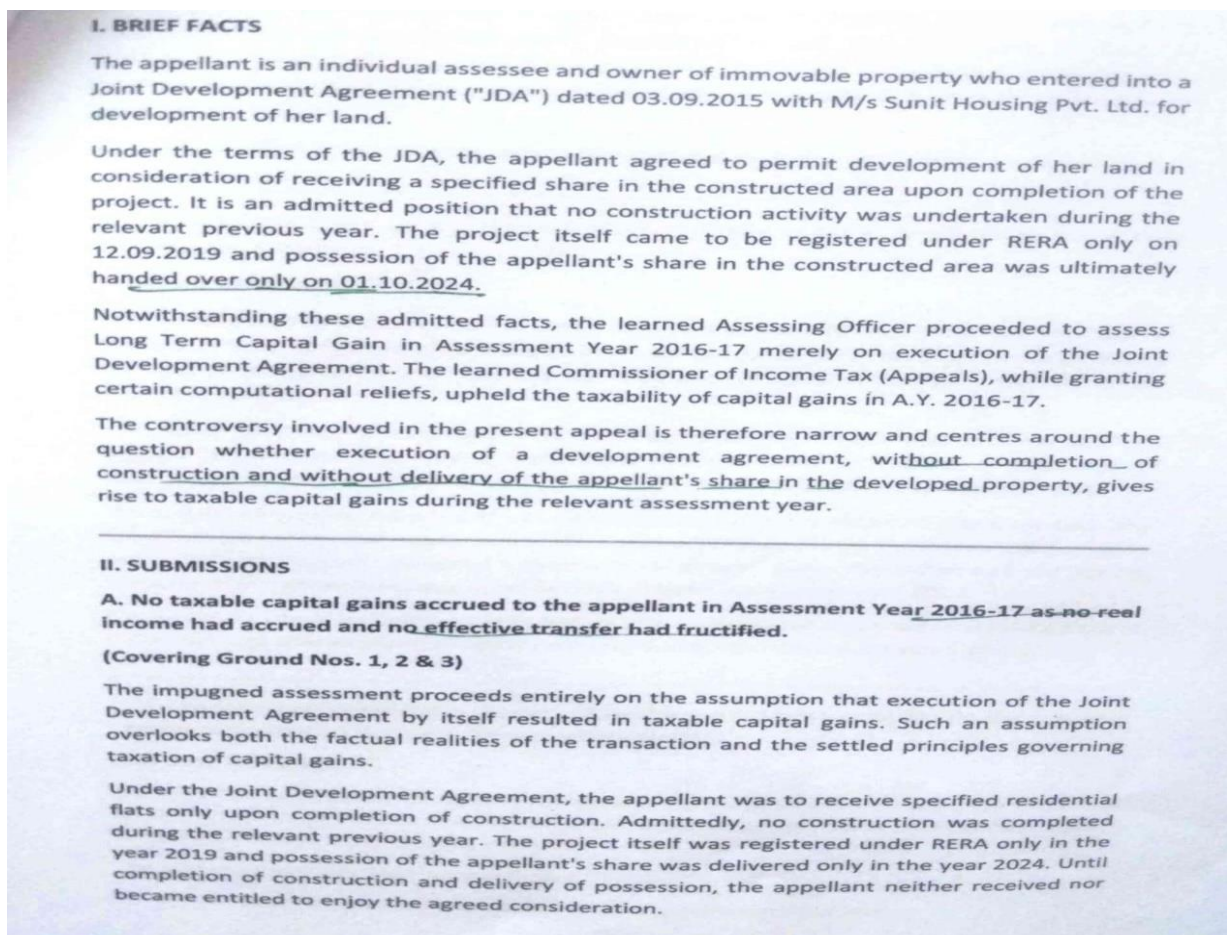
4. Briefly stated the facts of the case are that the assessee entered into a Joint Development Agreement (JDA) with M/s Sunit Housing Pvt. Ltd. On 03.09.2015, in consideration of receiving specified share in the constructed area upon completion of the project. It was admitted fact that in the year under consideration, there was no construction activity

undertaken, the project itself came to be registered under RERA only on 12.09.2019 and assessee's share was ultimately handed over only on 01.10.2024, the assessee is a land owner of the total area. It was noted that in the land development agreement to the develop specified area where full share of 50% of the total land area of 3730.84 Sq.ft. the total permitted super built up area to be constructed on the land as per FAR provision 9321.1 Sq.ft. the total number of land owners one share of this land owner in the land full and total measurement of super built area under ownership of the land owner on 50-50 basis with land owner and builder 4663.55 Sq.ft., the JDA was got registered on 03.09.2015 as per JDA at page number 13, the total consideration was to be paid by the developer to the land owner is Rs. 41,11,500/- and Rs. 30,11,500/- was paid in three instalments this is also clear from the page number 13. The AO treated it as transfer within the meaning of section 2(47)(v) of the Act and capital gain was computed in the case of the assessee of Rs. 69,95,325/-. Accordingly, there is total tax demand of Rs. 26,22,687/-.

5. Aggrieved from the above, the assessee filed appeal before the Ld. CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee relying on the various judgment as per his order.

6. Aggrieved from the above order, the assessee filed appeal before the ITAT.

7. The Ld. Counsel reiterated the submissions made before the lower authorities and he submitted that the mere execution of registered JDA does not amount to transfer within the meaning of section 2(47) of the Act and submitted that the project got registered under RERA only on 12.09.2019 and ultimately the land owner got her share only on 01.10.2024. Accordingly, in the year of entering into the JDA does not arise capital gain in the hands of the assessee. Mere entering into JDA without completion of construction and without delivery of the assessee's shares in the developed property in the form of constructed area as per the terms and conditions of the JDA does not give rise to taxable capital gain during the impugned assessment year and he filed written submission which is as under:



The Income-tax Act taxes real income which has accrued or arisen and not hypothetical or contingent expectations. The benefit contemplated under the Joint Development Agreement remained uncertain and dependent upon future completion of the project. Development agreements are inherently contingent arrangements and may fail owing to financial constraints, regulatory impediments, cancellation or other supervening circumstances. Taxation of anticipated future benefits before they crystallise would amount to taxation of hypothetical income.

The addition therefore proceeds on a purely notional basis and deserves to be deleted.

B. The ratio laid down by the Hon'ble Supreme Court in *CIT v. Balbir Singh Maini* fully supports the appellant.

(Covering Ground Nos. 2 & 3)

The Hon'ble Supreme Court in *CIT v. Balbir Singh Maini* has authoritatively held that capital gains cannot be levied merely because a development agreement has been executed where the contemplated transaction has not fructified into an effective transfer resulting in real accrual of consideration.

The Supreme Court emphasised that the Income-tax Act taxes real income and not hypothetical income and that a transaction which remains contingent or incapable of effective implementation cannot be brought to tax merely because an agreement exists.

The principle emerging from the aforesaid judgment squarely applies to the present case. The appellant did not receive possession of the constructed area during the relevant assessment year. The project itself remained incomplete for several years thereafter and the agreed consideration materialised only upon delivery of possession in the year 2024.

The learned authorities below have therefore proceeded to tax an anticipated future benefit rather than income which had actually accrued during the relevant previous year.

C. The appellate order passed in the case of Shri Dashrath Mahto involving the same builder and the same project deserves due persuasive weight.

(Covering Ground No. 5)

The appellant respectfully relies upon the appellate order passed in the case of Shri Dashrath Mahto, who was one of the landowners participating in the very same development project undertaken by M/s Sunit Housing Pvt. Ltd.

The said appellate authority recorded that:

- the appellant entered into the same development arrangement;

- the landowner would receive his share only after completion of construction;
- construction was completed only in the year 2024; and
- consequently no capital gains arose during the previous year relevant to Assessment Year 2016-17.

The appellate authority accordingly directed deletion of the entire addition.

Although reference has been made therein to section 45(5A), the significance of the order lies primarily in its factual findings that no completed transaction had taken place during the relevant year and that possession was delivered only upon completion of construction.

The present appellant stands on identical footing. The same developer, the same project, the same development model and the same timeline of construction and possession are involved. No distinguishing factual circumstance has been pointed out by the Revenue.

It is respectfully submitted that consistency in tax administration requires similarly situated assesseees forming part of the same project to receive similar treatment unless distinguishing facts exist. Any contrary approach would lead to arbitrary and unequal application of the Act.

D. The learned CIT(A) has proceeded on an assumption that the project would necessarily culminate in completion.

(Covering Ground Nos. 2 & 3)

The approach adopted by the learned CIT(A) assumes that execution of the development agreement itself assured receipt of the agreed consideration.

Such an assumption overlooks commercial realities. A development agreement may fail due to financial constraints, regulatory approvals, litigation, cancellation or other unforeseen circumstances. Until the promised constructed area actually comes into existence and possession thereof is delivered to the landowner, the consideration remains contingent and uncertain.

Taxation based upon such uncertain future events amounts to taxation of hypothetical income and is contrary to the settled doctrine that only real income can be subjected to tax.

E. Without prejudice, the appellant is entitled to exemption under section 54F.

(Covering Ground No. 4)

Without prejudice to the principal contention that no taxable capital gains arose during Assessment Year 2016-17, it is respectfully submitted that the appellant ultimately received

residential flats pursuant to the development agreement upon completion of the project and delivery of possession.

Section 54F is a beneficial provision intended to promote investment in residential housing and deserves liberal interpretation. Judicial authorities have consistently recognised that receipt of residential units under a development agreement constitutes investment in residential property and that exemption should not be denied merely because the consideration is received in the form of constructed flats.

The appellant respectfully submits that even if capital gains are held to arise upon completion of the project and delivery of possession, the appellant would be entitled to exemption under section 54F subject to fulfilment of the statutory conditions. The present dispute is therefore essentially one relating to the correct year of taxability and not an attempt to avoid taxation.

Without prejudice, reliance is placed on the order of The Hon'ble Karnataka High Court in *CIT v. Smt. K.G. Rukminiamma* [(2011) 331 ITR 211 (Kar.)] wherein it was held that where a landowner, under a development agreement, receives multiple residential units in lieu of the transferred property, the benefit of section 54F cannot be denied merely because the consideration is received in the form of more than one residential unit. The Court recognised that the exemption provision, being beneficial in nature, deserves liberal construction so as to advance its object of promoting investment in residential housing. Thus, even assuming (without admitting) that capital gains become chargeable only upon completion of the project and delivery of possession, the appellant would be entitled to claim exemption under section 54F, subject to fulfilment of the statutory conditions.

F. Lack of jurisdiction & non issuance of statutory notices

(Covering Ground No. 6)

The appellant has specifically challenged the validity of the reassessment proceedings on the ground that the assessment was completed by an Assessing Officer lacking jurisdiction and without proper service of statutory notices under sections 148 and 142(1).

Without prejudice to the submissions on merits, the appellant respectfully prays that the aforesaid jurisdictional ground may also be adjudicated. However, if the appeal is allowed on merits, the said ground may not require separate consideration.

III. CONCLUSION

The present case does not involve receipt of any real consideration during the relevant assessment year. It concerns only execution of a development agreement under which the promised consideration remained contingent and materialised only after completion of the project in the year 2024.

promised consideration remained contingent and materialised only after completion of the project in the year 2024.

The Revenue has sought to tax a hypothetical future benefit in Assessment Year 2016-17 notwithstanding the admitted fact that construction had not been completed and possession had not been delivered. Such taxation is contrary to settled principles governing accrual of income and capital gains.

Further, another landowner participating in the very same project with the same developer has already been granted relief on identical facts. In the absence of any distinguishing feature, the principle of consistency also supports the appellant's case.

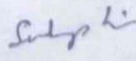
IV. PRAYER

In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- (a) hold that no taxable capital gains arose to the appellant in Assessment Year 2016-17;
- (b) delete the addition made towards Long Term Capital Gain in full;
- (c) alternatively hold that the appellant is entitled to exemption under section 54F in accordance with law;
- (d) take into consideration the appellate order passed in the case of Shri Dashrath Mahto involving the same developer and identical factual circumstances while adjudicating the present appeal; and
- (e) grant such other or further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Filed by

Counsel for the Appellant


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Patna-800001

8. On the other hand, the Ld. DR relied on the order of lower authorities and submitted that the JDA was registered and ownership was transferred to the land developer to develop the property and the

assessee also received consideration which is clear from the JDA, therefore, it satisfy the provision of section 2(47)(v) of the Act and part performance was given to the assessee. The land was handed over to the developer. Therefore, the Ld.CIT(A) has rightly confirmed the assessment order passed by the AO.

9. Considering the rival submissions and perusing the entire material available on record and orders of authorities below. We noted that the assessee is a land owner and entered into registered JDA (RJDA) on 03.09.2015 for constructing the houses as per the JDA, the entire development rights were transferred into favour of the developer to smooth working of the construction activity. As per para number 13 of the JDA, the consideration is also mentioned the consideration is fixed terms for Rs. 41,11,500/- and Rs. 30,11,500/- was paid in three instalments but the assessee got her constructed share on 01.10.2024. The property was got registered under RERA in 2019. Accordingly, mere entering into the RJDA does not amount to transfer within the meaning of section 2(47)(v) of the Act., it depends upon the terms and conditions of the JDA. In support of our decision, we are relying on the judgment of Hon'ble Apex Court in the case of CIT Vs. Balbir Singh Maini reported in (2017) 86 taxmann.com 94/95 taxmann.com 202 398 ItR 57 (SC). Further, in the case of Suraj Lamp & Industries Ltd. Vs. State of Haryana (2011) 14 taxmann.com 103/202 taxman 607 (2012) 348 ITR 1 (SC). Recently, the coordinate Bench of the ITAT Pune Tribunal in the case of

Kondibai Kacharya Navadekar Vs. ITO ITA No. 3306/Pun/2025, order dated 09.07.2026 in which it has been held as under:

“10. We find support from the decision of the Hon’ble Bombay High Court in the case of in the case of Commissioner of Income-tax -9 vs. Eastern Ceramics Ltd., IT Appeal No. 68 OF 2010 vide order dated July 1, 2013 held as under :

Quote, “vi) We find that the CIT(A) as well as the Tribunal had held that during the assessment year 2000-01, no transfer of capital assets by sale of land at Goregaon had taken place. This was not only for the reason that the respondent-assessee was restrained from disposing the factory land in question but also as observed by the CIT(A) and the Tribunal that during subject assessment year, no construction activity took place and even commencement certificate was issued in a sub sequent assessment year. The amount received by the respondent-assessee was only an advance requiring fulfilment of certain obligations. The agreement itself provides that in case the respondent-assessee is not able to fulfil its obligation, then it was required to refund the amount to the developer. Thus, there was no transfer of land during the assessment year 2000-01. The revenue has not challenged the second part of the order of the Tribunal. Moreover, the Assessing Officer has interfered without any evidence that possession of factory land was given to respondent-assessee in the subject assessment year on the basis that construction activity had started. This is erroneous as the commencement certificate was only received from BMC on 7 November 2000 i.e. in the next assessment year. We find that two authorities viz: CIT(A) and Tribunal have rendered a finding of fact that no transfer of land took place in the concerned assessment year is not shown to be perverse. In this view of the matter, we see no reason to entertain question (a).”Unquote.

11. Similarly, the ITAT Pune in the case of Balasaheb Popatrao Phadol vs. Income-tax Officer, [2025] 212 ITD 280 (Pune - Trib.) held as under :

Quote, “9. We have heard Ld. Counsels from both the sides and perused the material available on record including both the development agreements and commencement certificate of the property subject to development and also gone through the judgement relied on by the assessee. In this regard, we find that the assessee has entered into a development agreement with M/s Shree Yashree Construction Pvt. Ltd. which was registered on 18.05.2011. A supplementary development agreement was again entered into between the assessee and M/s Shree Yashree Construction Pvt. Ltd. and was registered on 23.07.2012 i.e. during the subsequent assessment year 2013-14. We also find that the commencement certificate & the building permission of the subjected property was issued on 20.06.2012 by Nashik Municipal Corporation which is also in subsequent assessment year. We also find that in consideration of said development agreement the assessee has received 22 number of flats of value of Rs.2,23,26,000/- in the subsequent assessment year. These flats were handed over to the assessee in subsequent assessment year i.e. in assessment year 2013-14 and not during the period under consideration. We also find that these flats were sold by the assessee in assessment year 2013-14 and the respective capital gains was also shown in the income tax return of assessment year

2013-14. However, deduction u/s 54F was claimed by the assessee against the said capital gain arising on sale of flats in subsequent assessment year & there is no information on record that the department has rejected the deduction claimed by the assessee in subsequent assessment year. The sole grievance of the assessee in this appeal is that although the development agreement was first entered during the period under consideration i.e. assessment year 2012-13 but subsequently a supplementary development was again entered & also registered in the subsequent assessment year & even the consideration i.e. flats were also received in subsequent assessment year i.e. in assessment year 2013-14 and the Assessing Officer erred in calculating capital gains during the period under consideration whereas according to the assessee the said capital gain was arising in subsequent assessment year i.e. in assessment year 2013-14. In this regard, we also find that the building permission was also given in subsequent assessment year & not during the period under consideration. Considering the totality of the facts of the case and the evidences produced before us, & also in the light of the judgement passed by Hon'ble Bombay High Court in the case of Bharat Jayantilal Patel dated 10-02-2023 (supra), we are of the considered opinion that capital gains income does not arise to the assessee on transfer of development rights in its land to a developer, since assessee had merely granted licence to permit construction on land to such developer but not given any possession in land as contemplated under section 53A of T.P. Act, 1882, there was no transfer as per section 2(47)(v) giving rise to any capital gain in hands of assessee." Unquote.

12. Thus, respectfully following the decision of Hon'ble Bombay High Court (supra) Hon'ble Delhi High Court and ITAT, Pune (supra), we hold that there was no transfer of capital asset during the relevant AY and hence no capital gain was taxable. Accordingly, grounds of appeal raised by the assessee are allowed.

13. Since we have held that there was no Transfer during the year, the question of deduction u/s 54F of the Act as claimed by the assessee becomes academic in nature and we do not intent to adjudicate the same.

14. In the result, the appeal of the assessee is partly allowed.

10. On going through the above judgment the facts of the case are similar, we noted that there is no transfer within the meaning of section 2(47)(v) of the Act for the impugned assessment year. However, in the written submission, the assessee himself as stated that the assessee got her share only on 01.10.2024 relevant to AY 2025-26. Accordingly, we are giving direction u/s 150 of the Act to the AO to initiate proceeding u/s 147 of the Act upon the assessee for computation of capital gains in the year of transfer i.e. AY 2025-26 as assessee counsel himself

accepted if any. If the assessee herself offered capital gain in the AY 2025-26 then it requires verification of correct computation. The “tax should be levied on real income but there is no real income arise in the impugned assessment year.” The AO is directed to assess the income in the FY 2024-25 relevant to AY 2025-26 in the hand of the assessee and decide the issue as per law after giving a reasonable opportunity of being heard to the assessee and assessee is directed to substantiate her case with cogent documents in support of her claim and not seek unnecessary adjournments for early disposal of the case. In case of failure, no second leniency shall be granted to the assessee.

11. In the result, appeal of the assessee is allowed in the above terms.

Order pronounced on 19.08.2026.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Laxmi Prasad Sahu)
Accountant Member

Dated: 19.08.2026
AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

By order

Deputy Registrar, Kolkata Benches

