

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL BENCH AT KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.462/Pat/2025
Assessment Year: 2014-15**

Pancham Singh.....Appellant
Udaini, PO- Mittanchak, Punpun,
Gopalpur, Patna
Bihar – 804453.
[PAN: LASPS3469J]

vs.

ITO, Ward-6(3), Patna.....Respondent

Appearances by:

Shri Alok Kumar, Advocate, appeared on behalf of the appellant.

Shri Ashwani Kr. Singal, JCIT, appeared on behalf of the Respondent.

Date of concluding the hearing : December 17, 2025

Date of pronouncing the order : March 16 , 2026

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee is directed against the order dated 29.08.2025 of the NFAC, Delhi [‘CIT(A)’] passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”).

2. Brief facts of the case are that the appellant is an individual who had not filed his return of income for the A.Y. 2014-15. The Assessing Officer was having information that the appellant had entered into a LDA with M/s Sehra Real Estate Pvt Ltd. on 27/08/2013 for the development of his immovable property situated at Mauja Rukanpura, Thana No. 5, Circle Danapur, Patna, measuring approximately 7,405.2 sq. ft. Under the agreement, the assessee transferred development rights to the developer in exchange for a share in the constructed built-up area, with a sharing ratio of 48:52 between the landowner and the developer, respectively. The total permissible built-up area was 18,513 sq. ft.,

entitling the appellant to 4,443 sq. ft. The developer was solely responsible for construction, approvals, financing, and sale its share. The AO was of the view that as the agreement was duly registered and possession was handed over to the developer, the transaction fell within the ambit of a 'transfer' under Section 2(47)(v) of the Income Tax Act, 1961, read with Section 53A of the Transfer of Property Act, 1882, thereby attracting capital gains under Section 45 of the Act. Based on the facts gathered during the proceedings, it was observed that the possession of the property was handed over to the developer for execution of the project. The transaction thus constituted a transfer as defined u/s 2(47)(v) of the Income Tax Act, 1961, triggering capital gains liability u/s 45. Since no return of income was filed by the assessee for the relevant assessment year, therefore, the case of the assessee was reopened u/s 147 of the Act after recoding reasons and taking prior approval from competent authority. During the course of assessment proceedings various statutory notices were issued to the appellant, however no compliance was made by the appellant and accordingly the case was concluded u/s 147 of the Act. The Assessing Officer computed the deemed capital gain based on the cost of construction attributable to the appellant's share (4,443 sq. ft. @Rs.1,300/sq. ft.), resulting in a total consideration of Rs.57,75,900 and assessed long-term capital gains accordingly.

3. Being aggrieved by the said order, the assessee filed an appeal before the Ld. CIT(A) wherein the Ld. CIT(A) dismissed the appeal of the assessee.

4. Being aggrieved and dissatisfied by the order of the Ld. CIT(A), the assessee has submitted that the assessee entered into a registered agreement for development of his ancestral land on 27.08.2013 for the construction of residential building/apartment on the said land. It is

evident from JDA on page 2 under para-3 that nature of deed is "Development Agreement". This clearly postulates that it is not the sale deed in which the land owner has relinquished his ownership. The land owner is continued to be the owner of the property throughout the development of the property and there is no transfer of ownership to the developer throughout the development period. Further on last page attached with agreement as "*Endorsement of Certificate of Admissibility*" it is evident that total 2% stamp duty has been paid as prescribed for agreement under article 5(b) of Schedule 1A of Bihar Stamp Duty Chart as provided under Indian Stamp Act. The ld. AR further submits that the assessee had made agreement with builder for development of land but right and title of land has not been transferred in the meaning of Transfer of Property Act nor it can be said that the title of land was transferred within the meaning of section 2(47) of I.T. Act. The learned AR submits that this case is squarely covered by identical case in a recent judgement of Hon'ble Calcutta High Court in **PCIT vs Emporis Properties (P) Ltd. (2023) cited in 458 ITR 68 (Cal HC)**, wherein it was held after following the *CIT vs Balbir Singh Maini, 398 ITR 531(SC)* that "*where in a case of Joint Development Agreement, the assessee continued to be the owner of the property throughout its development and there was no transfer of ownership to developer and more over registering authorities had also not treated said agreement as a deed of conveyance but had calculated stamp duty by treating same under article 4, 5 (f) of Schedule 1A of Indian Stamp Act, Tribunal was correct to holding that there was no transfer or sale of asset under Joint Development Agreement as envisaged u/s 2(47)(u) read with section 53A of transfer of property act, 1882*".

4.1 The ld. AR also submits that in respect of addition of ₹57,75,900/- as LTCG on land development agreement is concerned, on the day when agreement was executed without considering the actual facts & positions and terms of the agreement after wrongly invoking section 2(47), 45, 48

and 50C of the Act when it is an undisputed fact that the sole consideration for the assessee to enter into such an agreement was 48% super build up area to be given to the appellant on a later date as and when such proposed construction was to be completed upon issuance of certificate of completion by competent authority. His submission is that this fact was duly noted by the Assessing Officer in the impugned order and it is also matter of fact that no completion certificate was issued and consequently no possession of such constructed area was received by the appellant till date and further, it is on record that map of the building i.e. license to commence the construction of building had been sanctioned by the competent authority on 25.06.2014 corresponding to A.Y.- 2015-16. His submission is that as per terms of the agreement land owners are the absolute owner of the land and he has given the permission or handed over the possession only for prepare the proposed building plan map and only after sanctioning the plan map from the competent authority the exact figure of super build up area for share of 48% will be calculated. It is stated that the correct computation of capital gain cannot be calculated until exact super build up area will not be decided. The exact super built up area will only be calculated when map will be sanctioned by the competent authority after decision of FAR (Floor Area Ratio). The further submission is that there are various parameters of building by-laws to decide the FAR when map is sanctioned by the competent authority, such as width of Road, height of building etc. It is on record that the Ld. A.O. has assumed the FAR (Floor Area Ratio) as 2.5 and on this basis, he assumed total constructed area whereas it is to be noted that FAR will be decided when map will be sanctioned by the competent authority. There are so many specific terms & conditions in building by-laws to decide the FAR. The ld. AR contends that FAR cannot be decided before sanctioning of map and when FAR is not decided how total construction area can be calculated. Hence Total

permitted super-build up construction area as calculated by the Assessing Officer is fictitious and arbitrary in the present case.

5. Contrary to that, the ld. DR supports the impugned order.

6. We have considered the submissions of the counsels of the respective parties and perused the materials on record. We find that the assessee entered into a registered agreement for development of his ancestral land on 27-08-2013 for the construction of residential building/ apartment on the said land. On perusal of JDA, we find that nature of deed is "Development Agreement" and it clearly postulates that it is not the sale deed in which the land owner has relinquished his ownership. The land owner is continued to be the owner of the property throughout the development of the property and there is no transfer of ownership to the developer throughout the development period. Further on last page attached with agreement as "*Endorsement of Certificate of Admissibility*" it is evident that total 2% stamp duty has been paid as prescribed for agreement under article 5(b) of Schedule 1A of Bihar Stamp Duty Chart as provided under Indian Stamp Act. We further find that the assessee had made agreement with builder for development of land but right and title of land has not been transferred in the meaning of Transfer of Property Act nor it can be said that the title of land was transferred within the meaning of section 2(47) of I.T. Act. as neither land has been sold nor right of property has been extinguished in favour of builder. We also find that in respect of the addition of ₹57,75,900/- as LTCG on land development agreement, on the day when agreement was executed without considering the actual facts & positions and terms of the agreement after wrongly invoking section 2(47), 45, 48 and 50C of the Act. It is an undisputed fact that the sole consideration for the assessee to enter into such an agreement was 48% super build up area to be given to the appellant on a later date as and when such proposed

construction was to be completed upon issuance of certificate of completion by competent authority and it is also matter of fact that no completion certificate was issued and consequently no possession of such constructed area was received by the appellant till date. Further, it is on record that map of the building i.e. license to commence the construction of building had been sanctioned by the competent authority on 25.06.2014 corresponding to A.Y.- 2015-16. That as per terms of the agreement land owners are the absolute owner of the land and he has given the permission or handed over the possession only for prepare the proposed building plan map and only after sanctioning the plan map from the competent authority the exact figure of super build up area for share of 48% will be calculated. It is stated that the correct computation of capital gain cannot be calculated until exact super build up area will not be decided. The exact super built up area will only be calculated when map will be sanctioned by the competent authority after decision of FAR (Floor Area Ratio). It is pertinent to mention that there are various parameters of building by-laws to decide the FAR when map is sanctioned by the competent authority, such as width of Road, height of building etc. We further note that it is also on record that the Assessing Officer has assumed the FAR (Floor Area Ratio) as 2.5 and on this basis, he assumed total constructed area whereas it is to be noted that FAR will be decided when map will be sanctioned by the competent authority. There are so many specific terms & conditions in building by-laws to decide the FAR. The contention of the assessee in this respect is that FAR cannot be decided before sanctioning of map and when FAR is not decided how total construction area can be calculated. Hence Total permitted super-build up construction area as calculated by the Ld. A.O. is fictitious and arbitrary in the present case. We also note that any joint development arrangement in which only possession is handed over but the right to disposal of land/undivided interest in land is retained by the

land owner or is not granted to the developer, such arrangement will not fall within the ambit of section 53A of the TP Act, 1882. The possession that was made over by the assessee to the developer was not of the developer's share as envisaged in the agreement, but of the entirety of the land for the construction to be made thereon. We find it clear in the present case that the income from capital gain on a transaction which had not decided in the year of agreement is a hypothetical income. We rely on the decision of CIT v. Balbir Singh Maini 157 DTR (SC) 273/398 ITR 531(SC)2017) that “in case of transfer of land to developer under joint development agreement (JDA), the owner having delivered only the possession of land of the developer for the specific purpose to develop the property under the agreement and at no stage purported to transfer rights akin to ownership to the developer, sub-cl. (vi) of s. 2(47) is not attracted to the impugned transaction”.

6.1 Again, it has also been held by the Hon'ble Apex court in the case of Seshasayee steels (P) Ltd. v Asstt. CIT[2020] 421 ITR 46/312 CTR 375 (SC) that assessee having entered into an agreement to sell with a builder giving a license to the latter for the purpose of developing its land into flats and selling the same, such license cannot to be said to be 'possession' within the meaning of s. 53A of TP Act & since on the date of the agreement to sell, the owner's rights were completely intact both as to ownership and to possession even *de facto*, s. 2(47)(vi) is also not attracted. Similarly, in the case under consideration according to terms of agreement the possession that was to be made over by the assessee to the developer, was not of the developer's share as envisaged in the agreement, but of the entirety of the land for the construction to be made thereon. Therefore, the principal ratio which emerged out of the above judgment of the Hon'ble Apex Court is that part performance agreement (JDA) by the landowner, by giving possession of the property for the limited purpose of development, would not amount to a transfer, and,

hence, would not give rise to capital gains. Hence, as per ratio laid down by the Hon'ble Apex Court in the above case, hypothetical income cannot draw in provisions of section 45 and 48 of the Act. Considering the above discussion and judicial pronouncements, we quash the assessment order and delete the additions made by the Assessing Officer.

7. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 16th March, 2026.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated:. 16. 03.2026.

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches