IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
(H*earing in Virtual Court)*

S.N.	आ.अ.सं./ I.T.A No.	निर्धारणवर्ष/ AY:	अपीलार्थी/Appellant	Vs	प्रत्यर्थी/Respondent
1	2967/AHD/2015	2010-11	Chimanbhai Dahyabhai Patel, Vill. Hazira, Matafalia, Tal: Choryasi, Dist. Surat-394515 **PAN:ATXPP 0383 R**	Vs	ITO Wd-4(4), R.No.219, Aayakar Bhawan, Majura Gate, Surat-395001
2	2968/AHD/2015	2010-11	Dalpatbhai Dahyabhai Patel, Vill.Hazora, Matafaliya Tal: Choryasi, Dist. Surat-394515 **PAN:BELPP 8453 C**	Vs	ITO Wd-4(4), R.No.219, Aayakar Bhawan, Majura Gate, Surat-395001

निर्धारिती कीओर से **/Assessee by**	Shri Hiren R Vepari, C.A
राजस्वकी ओर से **/Revenue by**	Ms.Anupma Singla, Addl. Commissioner of Income-tax/Sr. Departmental Representative

S.N.	आ.अ.सं./ I.T.A No.	निर्धारणवर्ष/ AY:	अपीलार्थी/Appellant	Vs	प्रत्यर्थी/Respondent
3	1331/AHD/2016	2008-09	Navinbhai Mohanbhai Patel, Vill. Mora, Tal: Choryasi, Dist. Surat **PAN:BIPPP 2982 J**	Vs	ITO Wd-4(4), **New jurisdiction** ITO Wd-2(1)(4) R.No.219,Aayakar Bhawan, Majura Gate, Surat-395001
4	1328/AHD/2016	2008-09	Champaben Amrutbhai Patel, Ambawadi, Sultanabad, Surat-395007	Vs	ITO Wd-4(4), **New jurisdiction** ITO Wd-2(1)(4) R.No.219,Aayaka

			PAN:AVFPP 2084 P		r Bhawan, Majura Gate, Surat-395001
5.	1664/AHD/2016	2007-08	Smt. Ambaben Narottambhai Patel, 60, Maharshi Arbind Nagar Society, L.P. Savani, Palsana Road, Surat-395009 **PAN:CKMPP 2152 A**	Vs	ITO Wd-4(4), Surat **New Ward** ITO,Wd-1(3)(6) R.No.208, 2nd Floor, Aayakar Bhavan, Majura Gate, Surat

निर्धारिती कीओर से /**Assessee by**	Shri P.M.Jagasheth, C.A
राजस्वकी ओर से /**Revenue by**	Ms.Anupma Singla, Addl. Commissioner of Income-tax/Sr. Departmental Representative

S.N.	आ.अ.सं./ I.T.A No.	निर्धारणवर्ष/ AY:	अपीलार्थी/Appellant	Vs	प्रत्यर्थी/Respondent
6	332/AHD/2017	2010-11	Shri Darshankumar R Patel, 63, Shantivan Township, Opp. Gail Tower, Anand Mahal Road, Surat **PAN:AOTPP 0953 J**	Vs	ITO Wd-2(1)(4) Room No.219, Aayakar Bhawan, Majura Gate, Surat-395001

निर्धारिती कीओर से /**Assessee by**	Shri Sapnesh R Sheth, C.A
राजस्वकी ओर से /**Revenue by**	Ms.Anupma Singla, Addl. Commissioner of Income-tax/Sr. Departmental Representative

S.N.	आ.अ.सं./ I.T.A No.	निर्धारणवर्ष/ AY:	अपीलार्थी/Appellant	Vs	प्रत्यर्थी/Respondent
7	37/AHD/2015	2010-11	Shri Bhikubhai Gopalbhai Ahir, Vill. Sandhiyer, Tal: Olpad, Dist. Surat	Vs	ITO Wd-4(1) Aayakar Bhawan, Majura Gate, Surat-395001

			PAN:AHJPA 1997 Q		
8	38/AHD/2016	2010-11	Shri Dhanabhai Gopalbhai Ahir, Vill. Sandhiyer, Tal: Olpad, Surat **PAN:AHJPA 1996 R**	Vs	ITO Wd-4(1) Aayakar Bhawan, Majura Gate, Surat-395001

निर्धारिती कीओर से /**Assessee by**	Shri Dhaval Mehta, C.A
राजस्वकी ओर से /**Revenue by**	Ms.Anupma Singla, Addl. Commissioner of Income-tax/Sr. Departmental Representative

S.N.	आ.अ.सं./ I.T.A Nos.	निर्धारणवर्ष/ AYs:	अपीलार्थी/Appellant	Vs	प्रत्यर्थी/Respondent
9-10	316/AHD/2017 1555/AHD/2017	2010-11 2009-10	Lalietaben Maganbhai Ahir, Govind Niwas, Kamleshwar Park Society, Opp. Bhathiji Temple, Kamrej, Surat **PAN: AKFPA5441 G**	Vs	ITO Wd-2(1)(2) Aayakar Bhawan, Majura Gate, Surat-395001

निर्धारिती कीओर से /**Assessee by**	None
राजस्वकी ओर से /**Revenue by**	Ms.Anupma Singla, Addl. Commissioner of Income-tax/Sr. Departmental Representative

S.N.	आ.अ.सं./ I.T.A No.	निर्धारणवर्ष/ AY:	अपीलार्थी/Appellant	Vs	प्रत्यर्थी/Respondent
11	373/AHD/2015	2010-11	Shri Kishorbhai Gijubhai, Vill. Hazira, Tal: Choryasi, Dist. Surat **PAN: ACIPP 2499 L**	Vs	ITO Wd-4(2), Aayakar Bhawan, Surat
12	374/AHD/2015	2010-11	Shri Manojbhai Gijubhai, Gundardi Faliya, Vill. Hazira,	Vs	ITO Wd-4(2), Aayakar Bhawan, Surat

			Tal: Choryasi, Dist.Surat **PAN:AVFPP 2084 P**		
13	134/AHD/2015	2010-11	Smt. Niruben Ishvarhai Patel, L/h of Shri Ishvarbhai G Patel B-43, Shreenath Society, Adajan, Surat-395009 **PAN: BHFPP 9614 J**	Vs	ITO Wd-4(1), Aayakar Bhavan, Surat
14.	1619/AHD/2015	2007-08	Smt. Valiben Narshihbhai Patel, Mata Faliya, New Street, Vill. Hazira, Tal Choryasi, Surat-394270 **PAN:BGNPP 3195 D**	Vs	ITO Wd-4(2),Aaykar Bhawan, Surat
15	1620/AHD/2015	2007-08	Smt. Narmadaben Rameshbhai Patel, Vill. Hazira,Tal: Choryasi, Dist. Surat-394270 **PAN: BGNPP 3194 C**	Vs	ITO Wd-4(1), Aayakar Bhavan, Surat
16	1621/AHD/2015	2010-11	Shri Maheshbhai Prabhubhai Patel,Vill. Hazira,Tal: Choryasi, Dist. Surat-394270	Vs	ITOWd-4(2),Aaykar Bhawan, Surat
17	1642/AHD/2015	2007-08	Shri Parsottambhai Somabhai Patel,Vill. Hazira,Tal: Choryasi, Surat-394270 **PAN: ANQPP 8960 R**	Vs	ITO Wd-4(1), Aaykar Bhawan,Surat
18	1643/AHD/2015	2007-08	Shri Kantibhai Parsottambhai Patel, Mata Faliya, Vill. Hazira, Tal: Choryasi, Surat-394270 **PAN: ADLPP 9968 Q**	Vs	ITO Wd-4(2), Aaykar Bhawan, Surat
19	2088/AHD/2015	2009-10	Dayalbhai Govindbhai Ahir, Govind Niwas, Kamleshwar Park	Vs	ITO Wd-2(1)(1), Aayakar Bhawan, Majura Gate,

			Society, Opp. Bhathiji Temple, Kamrej, Surat **PAN: BEAPA 3520 G**		Surat
20	2179/AHD/2015	2007-08	Shri Pankajbhai Premabhai Patel, Vill. Hazira, Tal: Choryasi, Surat-394270 **PAN :AHXPP 6586 A**	Vs	ITO Wd-4(1), Aaykar Bhawan, Surat
21	2180/AHD/2015	2007-08	Smt. Jashuben Bhagubhai Patel, Mata Faliya, Vill. Hazira, Tal: Choryasi, Surat-394270 **PAN: AOUPP 7690 F**	Vs	ITO Wd-4(2), Aaykar Bhawan, Surat
22	2181/AHD/2015	2007-08	Shri Premabhai Govinbhai Patel,Vill. Hazira, Tal: Choryasi, Surat-394270 **PAN:ADMPP 0062 F**	Vs	ITO Wd-4(2), Aaykar Bhawan, Surat
23	2561/AHD/2015	2007-08	Shri Navinbhai Ichchhubhai Patel, Vill. Hazira, Tal: Choryasi, Surat-394270 **PAN: ABYPP 4512 B**	Vs	ITO Wd-4(1), Aaykar Bhawan, Surat
24	2562/AHD/2015	2007-08	Shri Champakbhai Ichchhubhai Patel, Vill. Hazira, Tal: Choryasi, Surat-394270 **PAN: AIXPP 3347 G**	Vs	ITO Wd-4(1), Aaykar Bhawan, Surat
25	2563/AHD/2015	2007-08	Shri Hasmukhbhai Ichchhubhai Patel, ***L/h of Smt. Kankuben I Patel*** Mata Faliya, Vill. Hazira, Tal: Choryasi, Surat-394270 **PAN:ACSPP 5942 N**	Vs	ITO Wd-4(2), Aaykar Bhawan, Surat
26	2564/AHD/2015	2007-08	Shri Hasmukhbhai Ichchhubhai Patel, 3, Praveg Raw House, Nr.	Vs	ITO Wd-4(2), Aaykar Bhawan, Surat

			TGB, L.P.Savani Road, Adajan, Surat **PAN:ACSPP 5942 N**		
27	2567/AHD/2015	2010-11	Shri Ramanbhai Kanjibhai Patel, Mata Faliya, AT P.O. Hazira, Tal: Choryasi, Surat-394270 **PAN: AHHPP 6706 E**	Vs	ITO Wd-4(3), Surat
28	2568/AHD/2015	2007-08	Dahyabhai Somabhai Patel [HUF], 34-35, Vadiya Nagar, Adajan, Surat **PAN: AAED 9594 G**	Vs	ITO Wd-4(1), Surat

निर्धारिती कीओर से /**Assessee by**	Shri Saurabh N Soparkar, Sr. Advocate & Ms Urvashi Shodhan, Advocate
राजस्वकी ओर से /**Revenue by**	Ms.Anupma Singla, Addl. Commissioner of Income-tax/Sr. Departmental Representative
सुनवाई की तारीख/ Date of hearing:	23.03.2022 & 24.03.2022
उद्घोषणा की तारीख/Pronouncement on	25.04.2022

आदेश /O R D E R

Order under section 254(1) of Income Tax Act

PER BENCHR:

1. This group of twenty eight (28) appeals is part of Hazira Land Acquisition cases relating to different assessment years wherein one of the appeal in Ambaben J Patel in **ITA No. 3021/Ahd/2014** was treated as a "lead" case. This combination, after hearing the submission of both the parties, partly allowed the appeal of the assessee in that lead case. The

grounds of appeals raised by various assessee's in this group is similar. This combination, in lead case of Ambaben J Patel on various grounds of appeals has passed the following order:

> 61. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. We have also considered the various documentary evidences furnished by the parties. Further, we have also deliberated on various case laws relied by both the parties. First we are taking application for admission of additional evidence field by the revenue. In the application the revenue has contended that during first appellate stage, the ld CIT(A) made reference under section 250(4) to NRSC Hyderabad for ascertaining nature of land its user from the period 1999 to 2014. And that NRSC prepared its report and sent to the office of ld CIT(A). The report of NSRC was considered by ld CIT(A) in ten cases while adjudication the issue with regards to nature and use of the land in preceding year before the date of acquisition. Before us, the learned DR for the revenue vehemently argued that the admissions of additional documents are essential for effective and complete adjudication of the issues and the controversy and in taking uniform approach in all the appeals.
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> 62. The copy of the application for admission of additional evidence was furnished to all the learned Counsels and authorised representatives, representing different assessee(s). No written reply was filed by any of the assessee(s). Though, all the Counsels representing various assessee(s) objected for admission of such additional evidences. The leading learned Senior Counsel, while opposing the application submitted that under Rule 29 of Income Tax (Appellate Tribunal) Rules, the revenue is not entitled to file additional evidence even otherwise, if the Bench is of the considered

view and deems it necessary may in its discretion with reasons may admits it. And that report of NRSC is of no use and does not give any desirable result to assess or determine the nature of land or any evidence to negate the fact that the land was not used for agricultural purposes. By referring various paragraphs of reports, the learned Senior Counsel also submitted that in the disclaimer, attached to the said report, NRSC, Hyderabad reported the shape file provided by CIT(A) did not match with field boundaries of the reference satellite data, with implication on accuracies of location area. And in absence in absence of adequate number of GCPs, rubber sheeting technique carried out also did not yield the desirable results. After careful consideration of the contention of the party, and going through the language employed in Rule 29, we are of the view that the revenue has no vested right to seek the admissions of additional documents. However, keeping in view the peculiarity of the facts that the report of NRSC was taken into consideration by ld CIT(A) while adjudicating about 10 appeals, therefore, to take a uniform approach, the application for admission of additional evidence filed by the revenue is allowed and the documents are taken or record for appreciation of the issues.

63. Now adverting to the main grounds of appeal raised by the assessee. We find that the assessee has raised multiple grounds of appeal. However, first we shall take up the issue, which goes to the root cause of the dispute between assessee and the assessing officer, as raised in ground No. 2 & 3 of grounds of appeals. To make it more simple we reframed these grounds as to whether the land acquired by the Special Land Acquisition officer is agricultural land or not or if so, it falls within the municipal area as defined under Section 2(14)(iii)(a) of the Income Tax Act or that Hazira Notified area is deemed municipality. Further as to whether the assessee is eligible for exemption under section 10(37) of the Act. The Assessing Officer

while passing the assessment order held that land of assessee is situated in Hazira notified area which was declared as notified area by Industries and Mines Department, govt. of Gujarat as well as Chapter XVI A of Gujarat Municipalities Act. Though, the assessee before Assessing Officer objected that her land is not a capital asset as defined under Section 2(14) of Act. The land is used for agriculture and agriculture activities were carried out by her father. The assessee to substantiate her claim furnished the detail of agriculture activities, extract of form NO. 7/12. The assessee also stated that her land is 26 KM away from the Surat city and the provision of capital gain is not applicable on payment received on account of acquisition of her land. In alternative, it was also contended that the village Hazira where land is situated having population of less than 10,000. The contentions of assessee were rejected and the compensation received by assessee was brought to tax by Assessing Officer that land is situated in Hazira notified area and as per the notification of Industries and Mines Department, Govt. of Gujarat, the land falls under the ambit of capital gain and compensation received on acquisition of land falls within the definition of capital asset. The claim of assessee under section 10(37) was also rejected by taking a view that assessee has not produced any evidence regarding the agriculture activities carried out in 2 years preceding the date of acquisition /transfer. As recorded above before ld. CIT(A), the assessee filed her detailed written submission as recorded in para 6.2 of his order. The Ld. CIT(A) confirmed the action of Assessing Officer by observing that Mamlatdar, Taluka-Choryasi, Dist.-Surat, vide his letter dated 16/01/2013 mentioned that population of nine villages falling within notified area as per census of 2001 was more than 10000 and that Hazira is a deemed municipality. On the alternative plea about the claim of assessee on the benefit of exemption under section 10(37), the ld. CIT(A) remanded the matter to the Assessing

Officer to give his report to clarify regarding the population as to which area is to be considered for the purpose of section 2(14)(ii)(a). The assessing officer was also directed to comment on the distance of acquired land from municipal limit (Surat Municipality). The said remand report was required by Ld. CIT(A) by observing that office of the Mamlatdar vide their letter dated 16/01/2013 mentioned that population of each of nine villages (Hazira notified area) mentioned in the letter is less than 10000 as per census 2001 but combined population of nine villages exceed 10000. However, in the certificate issued by Chief Officer of notified area Hazira, the population of Hazira notified area was 2137. The ld. CIT(A) recorded that despite sending reminder letter to the Assessing Officer. We find that CIT(A) proceeded to decide the issue on the basis of material before him and identified the issue that this ground involved three issues viz; (i) if the land acquired is capital asset under section 2(14), (ii) if the land acquired by Special Land Acquisition officer falls in the definition of "capital asset" under section 2(14)(iii)(a) or not and (iii) whether if it is capital asset under section 2(14). If the land falls under the definition of capital asset, the assessee is eligible for exemption under section 10(37) of the Act or not. The Ld. CIT(A) recorded that assessee claimed the land acquired was situated eight kilometre away from municipal limit of Surat Municipal Corporation, at the time of acquisition. The ld. CIT(A) held that Assessing Officer has not invoked the section 2(14)(iii)(b) in his assessment order. Accordingly, the issue was held in favour of assessee by holding that land was acquired beyond eight kilometre within Municipal Corporation. We find that this finding of the ld CIT(A) is not challenged by revenue, thus, attained finality.

64. So far as part first issue is concerned, which relates to section 2(14)(iii)(a) of the Act is concerned, the ld CIT(A) held that as per Notification dated 30.01.1997 (Notified area of Hazira) nine

villages were included in the said Notified area. If the said notified area is considered as a unit, the population of only those Survey numbers which have been included in the said Notification, has to be considered for the purpose section 2(14)(iii)(a) of the Act. The remaining population of the villages will not be considered. If the said population of the said Notified area is less than ten thousand, the land acquired cannot be treated as capital asset, provided it was an agricultural land at the time of acquisition or transfer. As per census data 2001, the population of Hazira Notified area is 2137. The ld CIT(A) held that Hazira Notified area is a deemed municipality under the provisions of Gujarat Municipality Act, 1963. The ambiguity is created by certificate Mamlatdar relied by Assessing Officer. The Ld. CIT(A) further noted that if all those survey numbers are not included, the population of those survey numbers is only 2137 and not ten thousand or more. The entire population of all the nine villages cannot be aggregated unless entire area of the villages falls in the Notified area. The ld. CIT(A) at the same time held that this exercise may be academic for the reasons given in a decision in subsequent findings by making reliance in case of G.M. Omer Khan Vs Addl.CIT (Supra) wherein it was held that population of entire notified is to be considered for the purpose of Section 2(14)(ii)(a) and not the population of any single village.

65. On the issue whether the land is an agriculture land or nor, the ld. CIT(A) held that the assessee was required to establish that land was used for agriculture purpose only. The District Agriculture Officer confirmed that most of the land is rocky, affected from Sea water and no irrigation facility. Thus, the contention of assessee cannot be accepted that land was used for agriculture purpose or capable of operation. No evidence of agriculture income was furnished. The ld. CIT(A) held that the assessee failed to establish

that land was used for agriculture purpose. Thus the conditions of Section 10(37) are not fulfilled.

66. Before us, the ld. Senior Counsel for assessee vehemently submitted that compensation received on acquisition would not be subject to capital gain, as the agriculture land is not a capital asset as not being situated in an area which comprised within the jurisdiction of any municipality having population of not less than 10000 as per last census. If the land is not a capital asset, question of paying tax on its acquisition would not arise. The assessee has to satisfy two conditions (i) the land is agriculture land and (ii) to claim exemption that agriculture land is not situated within municipal limit having population of not less than 10000. For first condition, the ld. Senior Counsel submits that from the contents of award itself it is clear that the land in question is agriculture land. The award was passed by officers of the State Govt. and the correctness of the statement made in the award cannot be doubted. The land is shown as agriculture land in the revenue record. The jurisdictional High Court in CIT Vs Sidharth J Desai (supra) has laid down thirteen test to determine the true nature and character of the agriculture land. On the second aspect that for claiming exemption to show that agriculture land is not situated within a municipality having population of less than 10000. It was submitted that Hazira is not a municipality and in order to appreciate this aspect, the process by which this area was established makes it clear that by way of notification, it would not make an area as municipality. Thus, we examined the order of lower authorities viz a viz the submission of learned senior counsel for assessee.

67. We are in agreement with the submissions of learned Senior Counsel for the assessee that the word “Municipality” is not defined in the Income Tax Act, it is also not defined in General Clause Act. Article-243P(e) of the Constitution of India defines the same as “an

institution as self-Government constituted under Article 243Q". Proviso to Article 243Q(1). In turn, it provides that a 'municipality' under this clause may not be constituted in such urban area or part thereof as the Governor may having regard to the size of area and the municipal services being provided or proposed to be provided by industrial establishments in that area and such other factors as may be deemed fit by public Notification, specified to be an industrial township. In a simple meaning that industrial township set-up under this proviso would not be "Municipality". We also concur with the submissions of learned Senior Counsel Hazira Notified area is Industrial Township, therefore, not a municipality. On the issuance of the Notification under Section 16(1) of Gujarat Industrial Development Act, 1962, Hazira Notified area become a Notified area, thereupon the provisions of Chapter-XVI-A Gujarat Municipalities Act, would apply. Hazira Notified area would then be an 'Industrial Township' area under Section 264A of the said Act. We are in agreement with the submission of learned Senior counsel for the assessee that under section 264B of the said Act, the State Government has a power to apply any section of the said Act or part thereof, or the Rules in force as maybe applied to a municipal borough to such notified area. Section 264C would create a fiction that for the purposes of any section of the said Act which may be applied to a notified area, the person or committee appointed for such area under section 264B shall be deemed to be a "Municipality" under the said Act. The fiction is an unlimited fiction. Firstly, the fiction is only in relation to those sections of the said Act which are applied to the notified area and even the second part of the fiction of deeming the notified area to be a "municipality" is only for the purpose of the said Act. It does not convert notified area into a "Municipality" in any way.

68. The Hon'ble Supreme Court in the case of Saij Gram Panchayat Vs State of Gujarat (supra) while considering the scope of section 16 of GIDA and Section 264A inserted in Gujarat Municipalities Act, in view of insertion of Part IXA in the Constitution held that industrial area under the GIDA would be a notified area under new section 264A of Gujarat Municipalities Act and would mean an 'industrial township area' under the proviso to clause (1) of Article 234-Q of the Constitution of India (Para-10).It was further held that GIDA operates in a different sphere from Part IX and IXA of the Constitution as well as Gujarat Panchayat Act. The latter being provision dealing with local self-government, while former being an Act of Industrial Development and orderly establishment an organization and industries in a State. The Industrial Areas which have been notified under Section 16 of the GIDA. These industrial areas have been developed by the Gujarat Industrial Development Corporation (GIDC) and they can hardly be looked upon as rural areas covered by Part IX of the Constitution. It is only such industrial areas which can be notified under Section 16 of the Gujarat Industrial Development Act, 1963. If by a notification issued under Section 16, these industrial areas are deemed to be notified areas under the Gujarat Municipalities Act and are equated with industrial townships under the proviso to Clause (1) of Article 243Q, the constitutional scheme is not violated. It was further held that under Chapter 3 of the Gujarat Industrial Development Act, 1962, the Gujarat Industrial Development Corporation, has been given power, inter alia, to develop land for the purpose of facilitating the location of industries and commercial centres. It has also been given the power to provide amenities and common facilities in such areas including provision of roads, lighting, water supply, drainage facilities and so on. It may do this either jointly with Government or local authorities or on an agency basis in furtherance of the purposes for

which the corporation is established. The industrial area thus has separate provision for municipal services being provided by the Industrial Development Corporation. Once such an area is a deemed notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IXA of the Constitution, where municipal services may be provided by industries. It was further held that unless, it qualifies with the criteria prescribed under Article 243-Q of Constitution of India cannot be at par with municipality. Article 243-Q constitute three types of municipalities viz (i) Nagar Panchayat (ii) a Municipal council and (iii) Municipal Corporation, it provides that a municipality under clause (1) may not be constituted under certain circumstances. In respect of any three types of areas, set out in clause (1) of Article 243-Q, having regard to the size of area, the municipal services being provided or proposed to be provided by the industrial establishment in that area and such other factor as the Governor will deem fit to consider, he may by public notification, specifies such area to be an industrial township.

69. Further Hon'ble Supreme Court in Solapur MIDC Industries Association Etc. Vs State of Maharashtra & Ors., JT (1996) 7 SCC 14 held that Municipal Corporation Act and an Industrial Development Act have distinct fields of operation and there is no inter se conflict between the two.

70. So far as reliance on the case law in G.M Omer Khan Vs Add CIT (supra) relied by ld CIT(A) as well as by ld DR for the revenue is concern, we find that the facts of that case are entirely different. In the said case the land of the assessee was situated in a village within the Municipality. The assessee in that case contended that his laid was in an area which in terms meant a 'Village' and the population of that village was far below ten thousand and the mere fact that the said area fell within the municipality of a city which had a population

of more than ten thousand, was of no consequence. He, therefore, claimed that the property in question was an agricultural land not covered by section 2(14). On reference, the High Court interpreting section 2(14)(*iii*)(a) opined that the property acquired was a 'capital asset' as the words 'which has a population of not less than ten thousand' In section 2(*14*) *(iii)* (*a*) would qualify only 'the municipality or cantonment and not the expression 'area', and, therefore, the capital gains arising out of the sale of the land In question could not be exempted under section 2*(14)(iii)(a).*

71. Considering the aforesaid legal position, we are of the view that by setting up of an industrial area by way of notification under section 16 of GIDA, the notified area would not be a deemed municipality, though, certain provision of Gujarat Municipalities Act are applicable for day to day affairs of the notifies area. Hence, we hold that the Hazira Notified area is not municipal area or deemed municipality therefore, the agriculture land situated in such notified area would not partake the character of agriculture land as 'capital asset' as defined under section 2(14) of the Act and the value of compensation received on acquisition of such land is not be taxable under Income tax Act. Thus, the appeal of assessee is liable to be succeeded on this issue alone.

72. Now adverting to the issue whether the land acquired is agriculture land and /or being used for agriculture purpose and assessee is eligible for exemption under section 10(37) of the Act. The assessing officer while rejecting the eligibility of section 10(37) held that the assessee has not produced any evidences regarding agriculture activities carried out on the land and that the District Agriculture officer, Zilla Panchayat Surat has written letter to Collector that many part of the land is under sea water and part of land is barren. The ld CIT(A) affirmed the action of assessing officer by taking view similar view.

73. Before, us the learned Senior Counsel for the assessee vehemently argued that for seeking eligibility under section 10(37), the assessee has fulfilled the four conditions of this sub-section, viz., (i) such land is situated in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of Section 2; (ii) such land during the period of two immediately preceding the date of transfer, was being used for agricultural purpose by such Hindu Undivided Family (HUF) or individual or a parent of assessee; (iii) such transfer is by way of compulsory acquisition under any law or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India and (iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

74. We have already held the land is not situated within a municipal area, thus, first condition is satisfied. So far as second condition, is concerned, we find it is certified by District Agricultural Officer, Surat vide his letter dated 16.06.2014 that the agricultural operation are carried in the land. Further the award was passed in financial year 2007-08, in the award the Special land Acquisition Collector on a number of stances mentioned that the land under acquisition is used for the agriculture purpose, this prove beyond doubt the land was being used for agricultural purposes, not only on date of acquisition but till the date of acquisition all throughout, but in any case for more than two years. The land in the revenue record is also shown as agriculture land. For third condition, we find that that first award is by consent; however, as held by Hon'ble Supreme Court in the case of CIT Vs Ghanashyam (HUF) (supra) it was held that consent award which has followed all steps of compulsory acquisition has to be regarded as an award of compulsory acquisition. There is no dispute that the State Government before starting the acquisition proceedings, initiated under Land Acquisition

Act 1894, issued notice under section 4 & 6 of that Act. So far as second award is concerned, it is undisputedly an award of compulsory acquisition. For fourth condition, there is no dispute the income arisen on compensation.

75. The Hon'ble Delhi High Court in Hindustan Industrial Resources Ltd Vs CIT (supra) held that when award passed by District Collector (Land Acquisition) is a document which established beyond doubt that the land in question was an agricultural land. Thus, on the date of purchase, the land in question was an agricultural land and on the date of acquisition, the character of the land continued to be agricultural.

76. Further, the Hon'ble Gujarat High Court in CIT Vs Siddhrath J Desai (supra) while considering the fact that the assessee had purchased a piece of agricultural land which was situated in an area not included in the municipal limits. There was no development in the surrounding area indicating any potentiality for the development of the land. For the period of three years immediately after its purchase, agricultural activity was carried on in the land. At or about the time of its subsequent sale, the land was not actually put to agricultural use. All the while, however, the land continued to be listed in the revenue record and it was assessed to land revenue. On 22-11-1968, the assessee obtained permission of the competent authority under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, for the sale of the land to a co-operative housing society. On 1-2-1969, the assessee sold the land to the society. On 5-2-1969, the society obtained the permission for non-agriculture use of the land, under section 65 of the Bombay Land Revenue Code, 1869, from the competent authority. The assessee claimed that the surplus realised by him on the sale of land was not liable to be taxed as capital gains as the land in question was agricultural land. The ITO held that since no agricultural

operations were carried on immediately before the sale of the land, the land could not be treated as agricultural on the date of its sale and, therefore, the surplus realised by the assessee was liable to be taxed as capital gains. On appeal, the AAC reversed the decision of the ITO. On further appeal, the Tribunal affirmed the decision of the AAC. On reference before High Court held that having regard to the facts and findings recorded by the Tribunal, it was obvious that not only the physical characteristics of land, in the instant case, but the user also was agricultural. Even though the land was not actually put to agricultural use since about one year prior to the sale, there was no evidence to establish that it was converted to any other use. The fact that permission under section 63 of the Bombay Tenancy and Agricultural Lands Act was obtained by the assessee to sell the lands to the society for residential purposes would not, militate against the land continuing to be agricultural on the date of its sale, as the permission was obtained only about two and a half months prior to the sale. Therefore, till the land was held by the assessee its character as agricultural land was not changed either as a result of its reclassification on in the revenue records or by the actual alteration of its use. Again, there was no evidence on record to show that there was any development in the surrounding area or that the land itself was developed prior to its sale. The land was located on the outskirts of the village but it was not situate in the municipal limit. The land must, therefore, be taken as having been situate in a rural area and it continued to have an agricultural bias right up to the date of its sale. Further, there was no evidence or material on record to indicate that the price offered for the land by the society, even proceeding on the basis that" the intended user of his part was non-agricultural, would not have been offered by an agriculture who wanted to purchase the land for purely agricultural user. There being no evidence on record as regard the nature of the soil, its fertility, its

suitability and adaptability for raising cash crops, the irrigation facility and such or similar factors which had a great bearing on the valuation of an agricultural land, it would be hazardous to come to the conclusion that the price offered was such that no agriculturist would have paid the same if he wanted to purchase the land for purely agricultural purposes. Accordingly, the land was an agricultural land and the surplus realised on a sale thereof was not liable to be assessed to capital gains tax. The High Court laid down thirteen test to determine whether the land would be agriculture land by applying such test.

77. So far as reliance of revenue on the report of NRSC is concerned, which was otherwise relied by ld CIT(A) in ten cases. The ld DR for the revenue while making her submissions by referring various parts of it submitted that no agriculture activity or evidence of any crop is found on various parcel of the land from 1999 to 2012. And only shrubs were found with no sign of any crop or vegetables of the parcels of land. Further the satellite images shows that no agriculture activities were carried on the land. The ld DR also submitted that report of NRSC is scientific report and conclusive proof. We do not find merit in the submissions of the ld DR, as disclaimer, attach to the said report, NRSC, itself reported the shape file provided by CIT(A) did not match with field boundaries of the reference satellite data, with implication on accuracies of location area. Further, in absence in absence of adequate number of GCPs, rubber sheeting technique carried out also did not yield the desirable results. And that concurrent ground truth was not available for thus study and interpretation is exclusively based on the manifestation of features and experience of the interpreter, which could be subjective. It is also mention in the last para in the disclaimer that results have to be corroborative in association with the ground observation, available, if any. Thus, the report itself contents vague observation

and cannot be used as evidence or conclusive or expert report based of any scientific evidence against the assessee. Moreover, said report was not provided to the assessee. Thus, by applying of such test we find that the land of the assessee acquired by Special Land acquisition officer is agriculture land. In the result, the assessee is also succeeded on this issue/ ground as well.

78. Considering the facts that we have already held that the land of the assessee is not 'capital asset' as the same does not fall in municipal area, Hazira Notified area is not a municipality or deemed municipality and on alternative plea also held eligible for exemption under section 10(37), therefore, all other pleas or counter pleas of the parties and the remaining issues arising thereto have become academic.

79. Now adverting to the ground of appeal relates to reopening of the assessment. The assessing officer made reopening on the basis of information received from the office of Special Land Acquisition officer that the assessee has received compensation on transfer of land and that he has reason to believe that income of the assessee has escaped assessment to the extent of capital gain. Notice under section 148 was duly served on the assessee. In response to the notice under section 148 the assessee filed return of income, declaring same income as declared in the return filed under section 139(1) of the Act. We find that in this lead case the assessee before, ld CIT(A), has raised specific ground of appeal against reopening. However no specific finding was given in this case by ld CIT(A), except mention that ground No. 1 of the appeal is dismissed. The learned Senior Counsel for the assessee while making his submission vehemently argued that first award (with consent) was passed on 31.07.2007 and second award for compulsory acquisition was passed by Special Land Acquisition Officer on 21.01.2008. Thus, both the award was passed in financial year 2007-08, hence, the receipt can

only be taxed in assessment year 2008-09 and not in any other assessment year. The other ld AR for the assessee, Sh. Rasesh Shah, also made submission on the sufficiency of the reasons and not mentioning various other aspect, and submitted that the re-assessment is bad in law. However, the other ld AR Sh Hiren Vepari representing in appeal listed at serial number 163 & 164 in ITA No. 2967 & 2968/Ahd/2015 submits that he is not pressing the ground of reopening. Remaining learned AR's adopted the submissions of learned Senior Counsel or of Sh Rasesh Shah. The ld SR DR for the revenue strongly objected against the objections of reopening and the validity of the assessment order and relied on the decision of Supreme Court in Raymond Woollen Mills Ltd Vs CIT (supra). Considering the contentions of both the side, we are of the view that at the stage of reopening the assessing officer has only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material was not a thing to be considered at this stage. We find that Hon'ble Supreme Court in Raymond Woollen Mills Ltd Vs CIT (supra) while considering the technical objection of sufficiency of reasons had not strike down the reopening of the case. And it was held that it would be open to the assessee to prove that assumption in the notice was erroneous. Thus, in view of the aforesaid factual and legal discussion, we do not find merit in the grounds in challenging the validity of re-opening, thus, the corresponding grounds of appeal is dis missed.

80. Next ground of appeal relates to partly confirming the action of assessing officer in taxing Rs. 6,50,000/- as capital gain and not treating the same as part of compensation. The assessing officer treated part of compensation of Rs.13.00 lakh as income from 'other sources'. On appeal, the ld. CIT(A) held that this component of compensation is given for constructed property on the land

consisting of pucca house, pucca wall etc., apart from natural grown grass. The assessee claimed that compensation in respect of aforesaid aspect is actually the compensation in respect of land only and not assessable under the head "other sources". The ld CIT(A) held that action of Assessing Officer is not correct on taxability of such amount under the head "income from other sources". The constructed property on the land is a 'capital asset' and income earned on sale or acquisition is assessable under the head "capital gains" only. The Ld. CIT(A) further observed that the assessee either at the assessment stage or appellate stage has not furnished any evidence or details of cost of acquisition, so he estimated @ 50% of Rs.13.00 lakh as cost of acquisition. Therefore, the addition was reduced to Rs.6,50,000/- and directed the assessing officer to assess under the head "capital gain" in place of income under the head "other sources". Before us, the learned Senior Counsel urged that some of the assessee(s) were paid additional and separate compensation in relation to standing trees and such compensation is to be treated as part of land and thus exempt. Sh Rasesh Shah, the ld AR for the other assessee also supported the submissions of learned Senior Counsel and in addition filed his detailed written submissions inter alia stated therein that as per Form-G of Award passed by Special Land Acquisition Collector no bifurcation was furnished between trees, construction and other items, so no addition on account of LTCG can be made. As recorded above the learned DR for the revenue supported the order of ld CIT(A). On consideration of facts, we find that in some of the cases, there is payment against the built-up units/ pucca houses. Additional payments were also made only for those landowners who were holding such built-up unit. We find that no evidence was furnished by the land owners about the cost of acquisition or improvement thereof, either before the assessing officer or before ld CIT(A). Even

before us, no such estimate of cost of such built-up structure is furnished. As recorded above the ld CIT(A) estimated the cost of acquisition of built-up units/ pucca structure @ 50% of the cost awarded for such built-up / pucca structure in the award. Considering the area where in the such built-up unit or pucca house is situated, in our view, the estimation of it's cost of acquisition is on lower side, therefore we deem it fit and proper to increase it to 60%, would be reasonable and fair. Therefore, we direct the Assessing officer to treat the cost of acquisition @ 60% of Rs. 13.00 lacs as cost of acquisition. In the result, the corresponding ground of appeal is partly allowed.

81. Next ground relates to treating the agriculture income of Rs. 5,000/- as unexplained cash credit. Considering the facts that we have already held that the land of assessee was agriculture and was being used as such, therefore, the income offered by assessee as agriculture is also allowed and the assessing officer is directed to delete this addition. In the result, the corresponding ground of appeal is allowed.

82. Before, summing up, we appreciate the submissions, of ld senior DR for the revenue in representing and defending the orders of lower authorities and in assisting the bench in disposal in this bunch of appeals.

83. As recorded in initial part of this order, this order would be followed in all remaining appeals of Hazira Land Acquisition appeals.

84. In the result, the appeal of the assessee is partly allowed."

2. Considering the fact that in all the aforesaid appeals, the facts are almost similar, the assessee has raised common grounds of appeals. Considering the fact that in lead case in Ambaben J Patel, we have already allowed the appeal of assessee,

therefore, following the principle of consistency, the appeal (s) of the assessees are partly allowed with similar directions.

3. In the result, all the appeals of the assessees are partly allowed. Copy of this order be placed in each of files.

Order pronounced in the Open/ virtual Court on 25th April, 2022.

Sd/-	Sd/-
(Dr ARJUN LAL SAINI)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Surat, Dated: /04/2022
Dkp. Out Sourcing Sr.P.S

Copy to:
1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Assistant Registrar, ITAT, Surat