

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

| S.N. | आ.अ.सं./<br>I.T.A No. | निर्धारणवर्ष/<br>AY: | अपीलार्थी/Appellant   | Vs | प्रत्यर्थी/Respondent                                       |
|------|-----------------------|----------------------|---|----|---|
| 1-2  | 439&440/AHD<br>/2016  | 2009-10              | Vasantbhai Maganbhai<br>Ahir<br>Govind Niwas, 1-<br>Kamleshwar Park<br>Society, Opp. Bhathiji<br>Temple, Kamrej, Surat<br><b>PAN: AKLPA 9844R</b> | Vs | ITO Wd-2(1)(4),<br>Aayakar Bhawan,<br>Majura Gate,<br>Surat |
| 3    | 41/SRT/2017           | 2007-08              | Naranbhai Govindbhai<br>Ahir Govind Niwas,<br>Kamleshwar Park<br>Society, Opp. Bhathiji<br>Temple, Kamrej, Surat<br><b>PAN: ADQPA 1469 C</b>      | Vs | ITO Wd-2(1)(3)<br>Aayakar Bhawan,<br>Majura Gate,<br>Surat  |
| 4    | 42/SRT/2017           | 2007-08              | Hemlataben Nanubhai<br>Ahir, Govind Niwas,<br>Kamleshwar Park<br>Society, Opp. Bhathiji<br>Temple, Kamrej, Surat<br><b>PAN: BDZPA 7377 K</b>      | Vs | ITO Wd-2(1)(2)<br>Aayakar Bhawan,<br>Majura Gage,<br>Surat  |
| 5    | 43/SRT/2017           | 2007-08              | Nanduben Nanubhai<br>Ahir Govind Niwas,<br>Kamleshwar Park<br>Society, Opp. Bhathiji<br>Temple, Kamrej, Surat<br><b>PAN: AKGPA 6498 L</b>         | Vs | ITO Wd-2(1)(2)<br>Aayakar Bhawan,<br>Majura Gage,<br>Surat  |
| 6    | 44/SRT/2017           | 2007-08              | Dayalbhai Govindbhai<br>Ahir Govind Niwas,<br>Kamleshwar Park<br>Society, Opp. Bhathiji<br>Temple, Kamrej, Surat<br><b>PAN: BEAPA3520 G</b>       | Vs | ITO Wd-2(1)(1)<br>Aayakar Bhawan,<br>Majura Gage,<br>Surat  |

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| 7  | 45/SRT/2017  | 2007-08 | Krishorbhai<br>Maganbhai Ahir<br>Govind Niwas,<br>Kamleshwar Park<br>Society, Opp. Bhathiji<br>Temple, Kamrej, Surat<br><b>PAN: AKFPA 5441 G</b> | Vs | ITO Wd-2(1)(1)<br>Aayakar Bhawan,<br>Majura Gage,<br>Surat       |
| 8  | 46/SRT/2017  | 2007-08 | Nanubhai Govindbhai<br>Ahir Govind Niwas,<br>Kamleshwar Park<br>Society, Opp. Bhathiji<br>Temple, Kamrej, Surat<br><b>PAN: ABAPA 7160Q</b>       | Vs | ITO Wd-2(1)(3)<br>Aayakar Bhawan,<br>Majura Gage,<br>Surat       |
| 9  | 392/SRT/2017 | 2007-08 | Mukeshbhai Shantilal<br>Patel Vill. Hazira,<br>Taluka: Choryasi,<br>Dist.Surat-394270<br><b>PAN:ABGPP 5746 F</b>                                 | Vs | ITO Wd-2(1)(2)<br>Aaykar Bhawan,<br>Majura Gate,<br>Surat-395001 |
| 10 | 394/SRT/2017 | 2007-08 | Sharmilaben<br>Mukeshbhai Patel,<br>Vill: Hazira, Taluka:<br>Choryasi, Dist. Surat-<br>394270<br><b>PAN:ABTPP 8139 R</b>                         | Vs | ITO Wd-2(1)(2)<br>Aaykar Bhawan,<br>Majura Gate,<br>Surat-395001 |
| 11 | 395/SRT/2017 | 2007-08 | Janakbhai Shantilal<br>Patel, 3, Tirumala<br>Society, Nr. Lake View<br>Garden, Piplod, Surat-<br>395007<br><b>PAN:ABGPP 5743 A</b>               | Vs | ITO Wd-2(1)(2)<br>Aaykar Bhawan,<br>Majura Gate,<br>Surat-395001 |

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| निर्धारिती की ओर से/ <b>Assessee by</b> | Shri Saurabh Suparkar, Senior Advocate with<br>Ms. Urvashi Shodhan Advocate            |
| राजस्व की ओर से / <b>Revenue by</b>     | Ms.Anupma Singla, Addl. Commissioner of Income-<br>tax/Sr. Departmental Representative |

| S. N. | आ.अ.सं./<br>I.T.A No. | निर्धारणवर्ष/<br>AY: | अपीलार्थी/Appellant   | Vs | प्रत्यर्थी/Respondent                                    |
|-------|-----------------------|----------------------|---|----|--|
| 12    | 2681/AHD/2016         | 2007-08              | Smt. Ambaben<br>Jamubhai Patel, 41,<br>Gita Nagar Society,<br>Adajan, Surat-395009<br><b>PAN: ADPPP8562 P</b> | Vs | ITO Wd-2(1)(4), Aayakar<br>Bhawan, Majura Gate,<br>Surat |

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| निर्धारिती की ओर से /Assessee by | Shri Rasesh Shah, C.A   |
| राजस्व की ओर से /Revenue by      | Ms.Anupma Singla, Addl. Commissioner of<br>Income-tax/Sr. Departmental Representative |

| S. N | आ.अ.सं./<br>I.T.A No. | निर्धारण<br>वर्ष/<br>AY: | अपीलार्थी/Appellant  | Vs | प्रत्यर्थी/Respondent                                    |
|------|-----------------------|--------------------------|--|----|--|
| 13   | 2381/AHD/2016         | 2009-10                  | Hiteshbhai Dahyabhai<br>Patel, Vill. Mora,Kanbi<br>Mohallo, Tal:Choryasi,<br>Dist. Surat<br><b>PAN: AEDPP 1042 G</b> | Vs | ITO Wd-2(1)(4), Aayakar<br>Bhawan, Majura Gate,<br>Surat |

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| निर्धारिती की ओर से /Assessee by | Shri Tinish R Mody, C.A   |
| राजस्व की ओर से /Revenue by      | Ms.Anupma Singla, Addl. Commissioner of<br>Income-tax/Sr. Departmental Representative |

| S. N | आ.अ.सं./<br>I.T.A No. | निर्धारण<br>वर्ष/<br>AY: | अपीलार्थी/Appellant  | Vs | प्रत्यर्थी/Respondent   |
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| 14   | 1329/AHD/2016         | 2008-09                  | Champaben Amrutbhai<br>Patel, Ambawadi,<br>Sultanabad, Surat-<br>395007<br><b>PAN: AVFPP 2084P</b> | Vs | ITO Wd-4(4), Surat <b>New<br/>jurisdiction</b> ITO Wd-<br>2(1)(4) Aayakar Bhawan,<br>Majura Gate, Surat |
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| 15 | 1665/AHD/2016 | 2007-08 | Smt. Ambaben<br>Narottambhai Patel,<br>60,Maharshi Arvind<br>Nagar Society, L.P.<br>Savani, Palsana<br>Road,Adajan, Surat-<br>395009<br><b>PAN:CKMPP 2152 A</b> | Vs | ITO Wd-4(4), Surat <b>New<br/>Ward</b> ITO,Wd-1(3)(6)<br>Aayakar Bhavan, Majura<br>Gate, Surat |
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| निर्धारिती की ओरसे /Assessee by    | Shri P. M. Jagasheth, CA  |
| राजस्व की ओर से /Revenue by        | Ms.Anupma Singla, Addl. Commissioner of<br>Income-tax/Sr. Departmental Representative |
| सुनवाई की तारीख/ Date of hearing:  | 23.03.2022 & 24.03.2022   |
| उद्घोषणा की तारीख/Pronouncement on | 26.04.2022  |

### आदेश /O R D E R

#### Order under section 254(1) of Income Tax Act

#### PER BENCH:

1. This group of fifteen (15) appeal(s), are part of Hazira Land Acquisition cases, out of which 14 appeals relate to penalty levied under section 271(1)(c) and one appeal in ITA No. 240/Ahd/2016 relates to penalty levied under section 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. Brief facts of the cases are that the land of aforesaid individual assesseees were acquired by Special Land Acquisition Officer, Surat for M/s Essar Steel Ltd. The Revenue / Assessing

Officer made re-opening in all cases under section 147 of the Act. Assessment was completed under section 143(3) r.w.s. 147 of the Act in cases of all different assessees. The Assessing Officer while passing the separate assessment orders made addition on account of Long Term Capital Gains (LTCG) on transfer of land, capital gain on the certain amount received for permanent (pacca) structure was treated as income from other sources and in some cases the agriculture income was treated as income from undisclosed sources. The assessing officer levied penalty under section 271(1)(c) on various additions. The Assessing officer levied penalty @100% of tax sought to be evaded. On appeal the Ld. CIT(A) upheld the action of assessing officer. Thus, further aggrieved the assessee(s) have filed present appeal before this Tribunal.

3. We have heard the submissions of learned authorised representative of the assessee(s) and the learned departmental representative for the revenue and have gone through the orders of the lower authorities. These appeals were heard alongwith other appeals of Hazira Land Acquisitions cases,

wherein the appeal of Ambaben J Patel in ITA No. 3021/Ahd/2014 was treated as lead case.

4. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully in quantum assessment as well as in penalty matters. We find that against various additions made in the assessment, the assessee(s) filed appeal before Ld. CIT(A). The Ld. CIT(A) in quantum assessment, upheld the addition of capital gain on transfer of land. However, the income added under the head “income from other sources” against the pucca structure was changed to as “income from capital gains”. As the assessees were not allowed the cost of acquisition and improvement on permanent structure, they were allowed 50% as cost of construction or improvement, received against permanent structure and the additions on account of undisclosed source was treated as income form agriculture activities.
5. On further appeal before Tribunal, the Tribunal held that addition of capital gain on account of transfer of land/ acquisition of land is not taxable as the said land / impugned land is not ‘capital asset’ as defined under section 2(14)(iii)(a)

of the Act. The land transferred by individual assessee(s) does falls in the Municipal Area. Hazira Notified area is not a Municipal area or deemed municipal area, therefore, the receipt/ gain on transfer of land is not taxable under Income tax Act. Further, the assesseees on alternative pleas were also held entitled for exemption under section 10(37) of the Act as the land was compulsorily acquired by Government of Gujarat by completing statutory formalities under Land Acquisition Act, 1882. The land was used for agriculture purpose for two years prior to its acquisition. And the assessee(s) fulfilled all the requisite condition for seeking exemption under section 10(37) of the Act. The other addition made under the head “capital gains” against the cost of pucca structure, the assessee’s were allowed 60% as cost of acquisition or cost of improvement, against the relief of 50% as allowed by Ld. CIT(A). Further, in some cases, the agricultural income offered by assessee(s) were treated as “income from other sources” has been held as “income from agricultural activities”. Thus, in quantum appeals all the assessee was granted substantial relief in deleting major part of additions and only part of

capital gains only on account of cost of improvement on pucca structure was partly upheld on estimation basis. Therefore, all substantial additions were either deleted or upheld only on estimation basis. In our considered view no penalty under section 271(1)(c) of the Act is leviable on all the assessee(s).

6. In the result, all the appeals filed against the levy of penalty under section 271(1)(c) are allowed.

7. Now, turning the ITA No. 440/Ahd /2016, which is against the penalty levied under section 271(1)(b) levied vide dated 11.07.2014. We find that neither during the hearing of the appeal on 23.03.2022 nor at the time of filing written submission no specific submissions is made against various grounds raised in this appeal. We further find that the assessing office levied penalty of Rs. 10,000/- for non-compliance of notices issued on 21/10/2013, 12/11/2013, 16/12/2013 and on 15/01/2014. The notices were issued either through Speed post or by serving through affixation. Before learned CIT(A), the assessee submitted that assessee has not received any notices and that the assessment was completed under Section 144 of the Act. The learned CIT(A)

held that the notices sent through Speed post at the given address in ITD record is deemed service. The assessee willfully and deliberately not complied with the statutory notices during the assessment proceedings and upheld the action of the Assessing Officer. On careful perusal of order dated 11/07/2014 passed under Section 271(1)(b) of the Act, we find that the Assessing Officer has not recorded whether the notices sent through the Speed post was actually served or returned back unserved. Further, on notices served through affixation, the Assessing Officer has not recorded his satisfaction about the proper service through affixation in the presence of witnesses. In these circumstances, we find merit in the submission of assessee made before the Assessing officer that he was not served with various notices. We further find that show cause notice for levy of penalty under Section 271(1)(b) was also allegedly served by Ward Inspector by affixation. Similarly, there is no satisfaction of Assessing Officer that show cause notice for levy of penalty was duly served. Considering the fact that the assessment order as well as penalty under Section 271(1)(b) was levied in ex parte

proceeding without proper recording satisfactory services of show cause notices, hence the penalty levied under Section 271(1)(b) is deleted.

8. In the result, the appeal of the assessee in ITA No. 440/Ahd/2016 is also allowed.

Order announced on 26 April, 2022 in the Virtual Court and result was placed on notice board.

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

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 26/04/2022  
*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