

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 1969/Ahd/2018
(Assessment Year: 2015-16)

ITO Ward-3(3)(3), Ahmedabad	Vs.	Smt. Narmadaben Madhavray Savani, Saundarya Villa, Rajpath, Ambli Road, Ambli, Ahmedabad-380059
[PAN No.CXVPS4647D]		
(Appellant)	..	(Respondent)

Assessee by :	Shri Ankit Parikh, A.R.
Revenue by :	Shri Vijaykumar Jaiswal, CIT DR
Date of Hearing	30.03.2022
Date of Pronouncement	10.06.2022

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the Revenue is directed against the order dated 17.07.2018 passed by the Ld. CIT(A)-3, Ahmedabad arising out of the order dated 29.12.2017 passed ITO, Ward-3(3)(14), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2015-16 whereby and whereunder the claim of deduction under Section 54F to the tune of Rs. 7,28,85,153/- was granted and addition of Rs. 2,00,14,765/- in regard to the Long Term Capital Gain (in short ‘LTCG’) accrued from sale of agricultural lands have been deleted.

2. The brief facts leading to the case is this that the assessee, an individual filed its return of income on 31.03.2017 showing total income at Rs. 20,69,920/-. Thereafter, the case was selected for scrutiny under CASS in regard to the capital gain arising out of the sale of the property and a

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notice under Section 143(2) of the Act was issued on 18.09.2017. It appears from the records that in spite of several notices issued under Section 142 r.w.s. 127 and 142(1) of the Act no body attended neither any written submission was filed on behalf of the assessee whereupon a show-cause notice under Section 144 was issued on 12.12.2017 but without any result. Hence, the Ld. AO proceeded ex-parte. Such proceeding was continued mainly on the basis of the sale deed obtained from the offices of the Sub-Registrar, Gandhinagar in response to a notice under Section 133(6) of the Act wherefrom it appears that the assessee sold five non-agricultural land and two agricultural land situated at Village-Palodiya, Tal. Kadi, Gandhinagar. The assessee has shown sale consideration of Rs. 7,47,11,000/- and after indexed cost of acquisition at Rs. 18,26,347/- claimed deduction under Section 54F to the tune of Rs. 7,60,95,831/-. The show-cause proposing addition in respect of capital gain was issued on 15.12.2017 fixing the date of hearing on 22.12.2017. The contents whereof is as follows:

“Please refer to this office Notice u/s. 143(2) of the I.T. Act, dated 18/09/2017 issued for the A.Y. 2015-16 and subsequently notices u/s. 142(1) of the Act, were issued on 08/11/2017, 24/11/2017, 01/12/2017 & 08/12/2017. These notices were not complied by you till date.

2. *In this regard, during the course of assessment proceedings, you have sold out Non-agricultural lands situated at **Village-Palodia, Taluka-Kalol, Dist. Gandhinagar**, the details are as under:-*

SCHEDULE

Sr. No.	Description of Land	Survey No.	Khata No.	Admeasuring	Date of N.A.	TDS(Rs.)
1	N.A. Land at Palodiya	284	240	0-25-26 Hec. Are. Sq. Mtr.	Ji. Pan./Jaman/NSR/Vashi/3151 thi 60/08/dated	88,250/-

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					27/10/2008	
2.	N.A. Land at Palodiya	287	240	0-36-42 Hec. Are. Sq. Mtr.	Ji. Pan./Jaman/NSR/Vashi/3151 thi 60/08/dated 27/10/2008	1,27,470/-
3.	N.A. Land at Palodiya	289	241	0-13-15 Hec. Are. Sq. Mtr.	Ji. Pan./Jaman/NSR/Vashi/3151 thi 60/08/dated 27/10/2008	NIL As below Rs.50 lakh.
4.	N.A. Land at Palodiya	290	240	0-24-28 Hec. Are. Sq. Mtr.	Ji. Pan./Jaman/NSR/Vashi/3151 thi 60/08/dated 27/10/2008	84,980/-
5.	N.A. Land at Palodiya	291	242	1-14-32 Hec. Are. Sq. Mtr.	Ji. Pan./Jaman/NSR/Vashi/3151 thi 60/08/dated 27/10/2008	4,00,120/-
6.	Agriculture Land at Palodiya	285	25	0-54-63 Hec. Are. Sq. Mtr.		1,17,728/-
7.	Agriculture Land at Palodiya	280	132	1-25-45 Hec. Are. Sq. Mtr. Juni sharat ni jamin paiki hec. Are. 5,300 sq. mtr.		82,420/-

3. On verification of Par-B of Schedule CG of return of income, it is seen that you have claimed deduction u/s.54F of the Act, of Rs. 7,60,95,831/-. Therefore, vide notice u/s. 142(1) dated 08/11/2017 fixing the date of hearing was fixed on 14/11/2017, wherein you have been requested to justify the deduction claimed u/s. 54. You have not complied to the said notice, and hence another opportunities were given vide notice u/s. 142(1) dated 24/11/2017 & 08/12/2017. You have not complied with these notices also, nor any written submission made by you.

4. As per the information available with this office, you have sold Non-Agricultural land as per Scheduled mentioned above. On verification of the sale-deed, the Collector of Kalol has passed the order for N.A. land vide order No. **Ji.Pan./Jaman/NSR/Vashi/3151 thi 60/08 dated 27/10/2008**. You have claimed

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deduction u/s. 54F amounting to Rs.7,60,95,831/- out of the Capital Gain arised on sale of the above non-agricultural land, the purchaser made payments to you after deducting TDS. Section 54F is not applicable in your case. Section 54B is also not applicable in your case, as the land was N.A. on 27/10/2008, As per Section 54B of the I. T. Act, the following conditions should be satisfied:-

The taxpayer is an Individual or HUF.

He transfers an agricultural land.

The agricultural land was used by the assessee being an individual or his parent or by HUF for agricultural purposes for a period of two years immediately preceding the date of transfer.

In view of the above, you are requested to show cause as to why the amount claimed Rs. 7,60,95,831/- as deduction u/s. 54F of the Act, should not be disallowed.

5. Your compliance to the above show-cause should reach to this office on or before 22/12/2017 failing which assessment will be completed u/s. 143(3) of the Act, making the above disallowance.”

3. In response to the show-cause the representative of the assessee attended the hearing before the Ld. AO and submitted the purchase deed of non-agricultural land. It was further submitted by him that the assessee is having only one residential house and neither purchased nor constructed any other property other than the new asset. On 28.12.2017 the assessee filed a copy of unregistered ‘Agreement to sell’ and claimed that she has made investments in residential property and is entitled to deduction under Section 54F. It appears from the said ‘Agreement to sell’ that Madhavray Kalabhai Savani, the partner of M/s. Savani Infrastructure has sold the plot of land admeasuring 2700 sq. yards at F.P. No. 114 of T.P.S. No. 3 at Shekpur-Khanpur, Taluka City, District Ahmedabad whereupon a scheme has been planned for construction of 11 storied building out of which the assessee would get two floors. Relevant to mention that the vendor Madhavray Kalabhai Savani, is the assessee’s husband. The deed, is appearing at Page 8 of the Assessment Order specified that the vendor is seized and possessed of and absolutely entitled to as the owner of that non-

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agricultural land for “commercial purpose” admeasuring 2257.52 Sq. Mtrs equivalent to 2700 Sq. Yards bearing Final Plot No. 114 (City Survey No. 2125) of TP Scheme No. 3 situated, lying and being at Mouje Shaijpur – Khanpur, Taluka Ahmedabad, City West within the registration Sub district Ahmedabad 3 (Memnagar) and District Ahmedabad.

4. After careful consideration of the entire set of documents, the AO observed that the scheme was not completed within three years from the date of sale of the plot of land neither the assessee produced any document to support that the two floors purchased are of residential nature and not commercial. Finally with the following observation the Ld. AO rejected the claim of the assessee:

“4.4 Thus it is evident that the assessee has diverted her fund for purchase of a new property, under her husband's construction scheme which was not even constructed. The claim of 54F cannot be allowed. In view of the above as well as considering section 17 of Registration and Other Related (Amended) Act, 2001, and Section 53A of Transfer of Property Act, the Agreement to sell cannot be considered for claiming the deduction u/s. 54F of the I.T. Act, and thus, the amount of Rs.7,60,95,831/- claimed as deduction u/s. 54F is rejected.

5. The copies of Sale-Deed were obtained from the Sub-Registrar, Kalol. The assessee has sold five non-agricultural, and two agricultural land at Village-Palodia, Taluka-Kalol, Dist.: Gandhinagar, the details of the land as mentioned below. In the return of income, the assessee has shown full value of consideration at Rs.7,47,11,000/- out of which indexed cost of acquisition claimed at Rs.18,26,347/-, balance shown as capital gain Rs.7,28,84,653/-, On balance of Rs,7,28,84,653/-, the assessee has claimed deduction u/s. 54F amounting to Rs.7,60,95,831/-. **Penalty u/s. 271(l)(c) of the Act, are being initiated separately for furnishing inaccurate particulars of income/concealment of income to the extent as mentioned above.**

5.1 During the entire course of assessment proceedings, the assessee has not made any submission till 22/12/2017 that is upto the last week December, and thereafter part submission made. The submission made rebutted as mentioned in Para-4. Therefore, on the basis of the information available, the Long Term Capital Gain is worked out as under:-

Sr. No.	Particulars	Survey No.	Khata No.	Admeasuring	Sale consideration	Assessee's share
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1	N.A. Land -Palodiya	284	240	Hec. Are. Sq. Mtr. 0-25-29	Rs.88,52,000/-	Rs.88,52,000/-
2	N.A. Land- Palodiya	287	240	Hec. Are. Sq. Mtr. 0-36-42	Rs. 1,27,47,000/-	Rs. 1,27,47,000/-
3	N.A. Land- Palodiya	289	241	Hec. Are. Sq. Mtr. 0-13-15	Rs. 46,02,500/-	Rs. 46,02,500/-
4	N.A. Land- Palodiya	290	240	Hec. Are. Sq. Mtr. 0-24-28	Rs. 84,98,000/-	Rs. 84,98,000/-
5	N.A. Land- Palodiya	291	242	Hec. Are. Sq. Mtr. 1-14-32	Rs. 4,00,12,000/-	Rs. 4,00,12,000/-
TOTAL SALE CONSIDERATION						Rs. 7,47,11,500/-
<i>Less: Cost of acquisition –</i>						Rs. 18,26,347/-
1) Cost of Acquisition Rs.8,56,100/-(100000+146000+52600+97500+460000 - five land)						
2) Indexed cost of acquisition : $856100 \times 1024 / 480 = 18,26,347$						
<i>Balance</i>						Rs. 7,28,85,153/-
<i>Long Term Capital Gain</i>						Rs. 7,28,85,153/-

”

5. As regards the other agricultural land lying and situated at Survey No. 280 & 285 at Village-Palodiya, Taluka-Kadi, District: Gandhinagar, the assessee has not taken into consideration the sale proceeds received on account of these two land, neither shown any capital gain in the return of income. Pertinent to note that these two lands are in the vicinity with the other five non-agricultural lands sold by the assessee. The Ld. AO rejected the contention made by the assessee and finally found these two lands are agricultural one and the sale consideration of Rs. 2,00,14,765/- has also

been subjected to Long Term Capital Gain and added to the total income of the assessee with the following observation:

“6. The assessee **has sold two agricultural land Survey No. 280 & 285 at village-Palodiya, Taluka- Kadi, Dist.: Gandhinagar. The assessee has not taken into consideration the sale proceeds received on account of these two land, and also not shown any capital gain in the return of income. The assessee has not provided purchase-deed in respect of two agricultural land Survey No. 280 & 285 at village-Palodiya, Taluka-Kadi, Dist.: Gandhinagar. The details of sale consideration received from sale of land which is as under:-**

Sr. No.	Particulars	Survey No.	Khata No.	Admeasuring	Sale consideration	Assessee's share
1	Agricultural land at Palodiya	285	25	Hec. Are. Sq. Mtr. 0-54-63	Rs.1,17,72,765/-	Rs.1,17,72,765/-
2	Agricultural land at Palodiya	280	132	Hec. Are. Sq. Mtr. 1-25-45 paiki 5,300 sq. mtr.	Rs.82,42,000/-	Rs.82,42,000/-
TOTAL SALE CONSIDERATION						Rs.2,00,14,765/-

6.1 It is important to note that these two lands are in vicinity with the other 5 non agricultural land sold by the assessee as mentioned in Para 5. The details are as under:-

Sr. No.	Particulars of land and area	Survey No.	Khata No.	Area/He./Ar e/S.Mt.	Sale consideration
1	N.A. Land-Palodiya	284	240	0-25-29	Rs.88,52,000/-
2	N.A. Land - Palodiya	287	240	0-36-42	Rs.1,27,47,000/-
3	N.A. Land - Palodiya	289	241	0-13-15	Rs.46,02,500/-
4	N.A. Land-Palodiya	290	240	0-24-28	Rs.84,98,000/-
5	N.A. Land-Palodiya	291	242	1-14-32	Rs.4,00,12,000/-
6	Agricultural land at Palodiya	285	25	0-54-63	Rs.1,17,72,765/-
7	Agricultural land at Palodiya	280	132	1-25-45 paiki 5,300sq. mtr.	Rs.82,42,000/-

6.2 The assessee has offered the 5 land mentioned in Para 5 for capital gain (though claimed wrong deduction u/s 54F of the Act) but **the** assessee has not shown any such gain on the two lands bearing survey number 285 and 280 her ITR. In the sale deed the land is mentioned as agricultural land. But on verification of the sale deed it is noticed that no agricultural activities are carried out on these two lands. **The scanned copy of the pictures enclosed in the sale deed dated 20/05/2014 is produced as under:-**

.....
.....

6.2 The land at Mouje village Palodiya Block No./Revenue Survey No.280 (Khata No.132 admeasuring 5300 Sq. Mtr. sold at Rs.82,42,000/-. The another at Mouje village Palodiya land Survey No.285(Khata No.25) admeasuring He. Are.S.Mtr. 0-54-63 sold at Rs.1,17,72,765/-. Both the land are situated in the nearby vicinity of above five non-agricultural lands. On verification of copy of Sale-Deed, the Photo of the land shows that the land is barren and crops not appeared. Further, the sale consideration received on the sale of these two agricultural lands is almost in parity with the consideration received on sale of non-agricultural land. The normal understanding is that the non-agricultural land yield more sale consideration as compared to agricultural land, which is not in the case of the assessee.

6.3 Therefore the above two lands cannot be considered as agricultural land. The assessee has not submitted any details in respect of these two lands. The assessee has not wrongly shown these two lands as agricultural land. She has failed to offer the capital gain on these two land in her ITR and has not made any **submission** during the course of assessment proceedings, therefore the sale consideration of **Rs. 2,00,14,765/-** is also subject to Long Term Capital Gain and is added to the total income. **Penalty u/s. 271(1)(c) of the Act, are being initiated separately for furnishing inaccurate particulars of income/concealment of income to the extent as mentioned above.**”

6. During the appellate proceeding the appellant furnished additional evidences under Rule 46A of the I.T. Rules which were forwarded to the AO by under office letter dated 25.04.2018 requesting him to submit the report within 20 days from the date of receipt of the said letter. A reminder to the AO with the copy to the Range head dated 24.05.2018 was also sent to expedite the matter but without any result. When the reason for such non-cooperation of the AO was put before the Ld. D.R. at the time of hearing of the matter, he candidly submitted before us that 20 days time was not sufficient for the Ld. AO to prepare the remand report particularly for work pressure due to time barring assessment. However, additional evidences so submitted by the appellant was admitted by the Ld. CIT(A) condoning the delay of 5 days in filing the appeal preferred by the assessee and the Ld. CIT(A) proceeded with the matter for decision.

7. The plea taken by the assessee before the Ld. CIT(A) in order to justify non-disclosure of capital gain arising out of sale of agricultural land to the tune of Rs. 2,00,14,765/- in her return of income is this that the assessee is 75 years old lady, not an expert about the Income Tax Law; she does not fall to the tax audit requirements as per Section 44AB of the Act, neither having a Tax Auditor/CA to guide her about the Income Tax Laws and Regulations.

Further that the land is beyond 8 Km from the local limits of the Municipality and thus, not a capital asset. In support of this submission the certificate to that effect from the Palodiya Gram Panchayat has been supplied by the assessee before the Ld. CIT(A).

Apart from that the income of the assessee is not liable to be audited. Further that there is no statutory or mandatory requirement to carry out agricultural activity in order to justify the land as agricultural one.

The agreement to sell executed on this 100 rupees Stamp Paper bearing the signature of the party is sufficient enough to prove the genuineness of the agreement though it is not registered or notarized.

The agreement for sell dated 07.07.2014 entered into between Madhavray Kalabhai Savani being the partner of the M/s. Savani Infrastrucure and the husband of the appellant before us has also been supplied to the Ld. CIT(A) wherefrom it appears the vendor is seized and possessed of and absolutely entitled to as the owner of all that the non-agricultural land for 'commercial purposes' admeasuring 2257.52 Sq. Mtrs.

equivalent to 2700 Sq. Yards bearing Final Plot No. 114 (City Survey No. 2125) of TP Scheme No.3. It was also brought to the notice of the Ld. CIT(A) that the said plot of land is lying and situated at Mouje Shaijpur-Khanour, Taluka Ahmedabad within the Office of the District Sub-Registrar, Ahmedabad-3 (Memnagar) falls under the “CBD Zone” (Central Business District Zone). The assessee sought to justify such a scheme being commercial and residential too with the supporting document being the copy of AUDA DP/Planning Regulations. So far as the fact of non-completion of the project within three years from the date of sale is concerned the assessee submitted that he did not have any control over such completion made by the developer.

8. Taking into consideration the entire aspect of the matter the Ld. CIT(A) passed the order in favour of the assessee granting full relief of deduction under Section 54F to the assessee with the following observation:

*“5.4 Decision: I have carefully considered the facts of the case. I have also considered the submissions and arguments of the appellant with regard to the claim of deduction u/s 54F of the Income Tax Act, 1961 amounting to Rs 7,60,95,831/- and income of Rs.2,00,14,765/- on account of agricultural exempt income outside the purview of Capital Asset as per the provisions of Income Tax Act, 1961. As already noted and in view of remand report not received inspite of reminder, the verification was undertaken by this office as per jurisdictional ratio laid down by Hon'ble Supreme Court in the case of Jute Corporation of India Ltd. - 187 ITR 688 (SC). The additional evidences were decided to be admitted as per detail contained in para 3.1 of this order. **The controversy revolves around two major issues:***

- (a) *Exempt income from the sale of agricultural plots,*
- (b) *Deduction u/s.54F for capital gains earned from the sale of non-agricultural plots.*

*The **first issue** relating to non-taxable gains as the sale effected is of agricultural land is considered. The detail of such land is as under:*

<i>Sr.No.</i>	<i>Date</i>	<i>Survey No.</i>	<i>Type</i>	<i>Amount (Rs.)</i>
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1.	21.05.2014	280	Agricultural	82,42,000
2.	21.05.2014	283	Agricultural	74,13,200
3.	21.05.2014	285	Agricultural	1,17,72,765

The appellant has sold three agricultural land pieces. The google map indicates that Palodiya village is a distance of 9.7 Kilometers via Shilaj Road and 9.2 kilometers via Bopal from the outer limit of AMC. This is independent evidence which cannot be manipulated and is on record. Further, the certificate of Gram Panchayat dated 17.04.2018 is reproduced as under:

"Certificate is hereby issued that as per the figures of census of Village Palodiya, Taluka Kalol, District, Gandhinagar total population is 1724 and Palodiya Village is located at a distance of about 9 Kms from the Ahmedabad Urban Area, which fact having been verified at the village, this certificate is being issued.

Sd/- Illegible
Talaati cum Mantri
Palodiya Village Panchayat
Taluka kalol
17.04.18"

From the above evidences it is very clear that the impugned land sold by the appellant is actually agricultural Land. The agricultural land is outside the definition of Capital Asset as per Section 2(14) of the Income tax Act, 1961.

The main contention taken by the appellant was that the rural agricultural land situated at Village Palodiya is not a capital asset as per the provision of section 2(14)(iii) of the Act. The issue has also come up in a recent judgment of ITAT, Ahmedabad. The relevant portion of jurisdictional /TAT decision in the case of /TO vs. Akash Deep Farms P. Ltd. (ITA No.2138/Ahd/2012 dtd.11.08.2015) is as under:

"8. We have duly considered rival contentions and gone through the. record carefully. The definition of "capital asset" has been provided in section 2(14) of the Act. Sub-clause (a) and (b) of Section 2(14)(iii) contemplates that if an agriculture land is in India, and it is situated at a distance of more than 8 KMs. from the local limit of any municipality cantonment board, then, that land would not fall within the ambit of definition "capital asset". In other words, if the land which is not forming part of capital asset sold by an assessee, then, no gain as such would be considered, as accrued to the assessee. In the present case, the Id. AO has observed that if the distance of geographical situation of the assessee's land is being measured form municipality limit, by way of crow's fight them, it is within the municipal limit.

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10. Next objection of the AO was that the State Government has enhanced the municipal limit in 2006 and the distance is to be measured from new boundary of the Ahmedabad Municipal Corporation Limit AMC limit was extended upto Sarkhej

since 2006. The Id. CIT(A) has examined this aspect, and has observed that perusal of sub-clause (b) of section 2(14)(iii) would indicate that the municipal limit is to be taken from the area which has been notified by the Central Government in its gazette notification. Central Government has notified the area on 06.01.1994, and from that notification, the agriculture land of the assessee was situated beyond a distance of 8 KMs. This aspect has been lucidly considered by the Id. CIT(A) in the finding extracted supra. We do not see any reason to interfere in this finding. In view of the above discussion, we do not find any merit in the appeal of the Revenue. It is dismissed. "

The issue stand covered through ratio in following case laws:

CIT vs. Satinder Pal Singh 229 CTR 82 [P&H]

CIT Vs. Madhukumar N. HUF-23 Taxmann.com 341 (Kar. HC)

CIT vs. Khoobsurat Resorts Pvt. Ltd. - ITA No. 776 of 2011 dt. 05.11.2012 (Delhi HC)

Smt. (Dr.) Subha Tripathi Vs. Dy.CIT - 34 Taxmann.com 286 (ITAT, Jaipur)

Satya Dev Sharma Vs. ITO - 46 Taxmann.com 149 (ITAT, Jaipur)

DCIT Vs. Arjit Mitra - 16 Taxmann.com 66 (ITAT, Kolkata)

The appellant has clearly stated that the provision of taxing capital gains are only applicable in case of a capital asset and as the Rural agricultural land situated at village **Palodiya** not a capital asset and hence the provision of capital gains would not apply. Further, section 45 is the charging section and section 48 is the section for computation of capital gain and both provisions are integrated with each other. As the rural agricultural land situated at Village Palodiya is not a capital asset as per the definition of section 2(14)(iii) of the Act and hence, the chargeability u/s. 45 would fail and accordingly, the computation provision as per section will also fail. It is clear that the sales consideration received on sale of rural agricultural land at **Palodiya** is exempt as it is not a capital asset.

As per perusal of documents on record as discussed above, the google map indicates that Palodiya village is a distance of 9.7 Kilometers via Shilaj Road and 9,2 kilometers via Bopal from the outer limit of AMC. This is independent evidence which cannot be manipulated and is on record. The map placed on record has been examined and it is seen that the impugned land parcel is at the distance of 9.7 KM from the AMC. Even the cursory look at Google map indicates that the aerial distance would also be around 9.0 K.M. from the outer limit of AMC, hence amendment w.e.f. A.Y.2014-15 in section 2(14)(iii) would not jeopardise the case of appellant. In my opinion, it is beyond the AMC limit of 8 KM. I agree with the appellant that the Rural Agricultural Land situated at Village **Palodiya** is not a capital asset as per provisions of section 2(14)(iii) r.w.s 45 and the sales consideration is exempt. Further, as per the decision of Hon'ble Apex Court in the case of *CIT vs. B.C. Srinivasa Setty* reported in 128 ITR 294 which is squarely covered to the facts of the case of appellant that section 45 charging section would fail as the Rural Agricultural Land situated at Village **Palodiya** is not a capital asset. Therefore, the contention of the appellant is found to be correct.

The **second issue** is relating to the deduction u/s.54F and same is being taken up for decision. The appellant has sold five non-agricultural land pieces as per detail below:

Sr.No.	Date	Survey No.	Type	Amount (Rs.)
1	21.05.2014	284	Non-Agricultural	88,52,000
2	21.05.2014	287	Non-Agricultural	1,27,47,000
3	2105.2014	289	Non-Agricultural	46,02,500
4	2105.2014	290	Non-Agricultural	84,98,000
5	2105.2014	291	Non-Agricultural	4,00,12,000

The AO has made following argument to disallow deduction u/s.54F:

- i) The agreement is made between Madhavray Kalabhai Savani, partner of M/s. Savani Infrastructure (The Vendor) and Smt. Narmadaben Savani (The Vendee).
- ii) In the agreement to sell, no where mentioned that the scheme is residential or commercial?
- iii) The details of payments made have not been mentioned in the agreement. It is only mentioned that purchasers had agreed to purchase the two floors for a total consideration of Rs.760.96 lakhs.
- iv) The Vendor Madhavray Kalabhai Savani, is assessee's husband. Further, it is seen that the "Agreement to Sell" is unregistered document and the same was not even notarized. The unregistered document has no evidentiary value as per Section 17 of the Registration and other related laws (Amendment) Act, 2001 as well as Section 53A of the Transfer of Property Act.
- v) The unregistered and un-notarized agreement of sell has been provided only on 28.12.2017 i.e. only three days before the time barring assessment.
- vi) The mode of payment of purchase of new property has not been provided till date. Even the payment was made from the Joint account, and the assessee and her husband are the joint holder of the account. No bank statement has been provided by the assessee. The assessee has filed ITR-2 and has only shown income from other sources. Therefore there is no regular source of income of the assessee to enable her to buy so many non agricultural land.
- vii) No where mention the date of commencement and completion of the Scheme.
- viii) Further on 28th December assessee has submitted a copy of agreement to sell (5 pages).

Before the evidences on record are examined it is mentioned that the contents of page No.8 of assessment order has been noticed wherein the AR had filed second copy of agreement to sell by deleting the word "commercial". Sanguine it to

say the issue has to be decided by adopting holistic approach as per evidences and explanation placed on record vis-a-vis provisions of the Act and ratio laid down by various judicial orders. The CBD has projects of hybrid characteristic including commercial as well as residential in nature and this is inferred from the Govt. documents on record. The project is definitely falling in the area of CBD as per Govt. approval on record. Therefore, in my opinion, not much importance to be given to word "commercial" in agreement to sale at the cost of ignoring the substance of the matter.

The appellant has provided the specific logical responses to the specific averments raised by the Assessing Officer and the same are carefully considered. Further, it seems that there is no material discrepancies with regards to the amount shown of Capital Gain on Sale of Non-Agricultural Land. Even there is no dispute on the amount of investments or a valuation shown by the appellant. The appellant has submitted that there is no dispute on the ownership of the land sold, valuation of the land sold and on the receipt of sale consideration in the bank account of the appellant. Further it has been clarified by the appellant that copy of agreement to sale which is different from a contract as the latter is enforceable by law. Even reference to Section 17 of the Registration and Other related laws (Amendment) Act, 2001 as well as section 53A of the Transfer of Property Act will not apply as it is not a contract, has been submitted by the appellant, and the same is viewed with reference to the issue involved. Further it is explained with documentary proof that the plot of the scheme of M/s Savani Infrastructure falls under CBD Zone (Central Business District Zone) which is a combination of Residential and Commercial house as per the ADDA/AMC Regulations. A copy of Zoning Certificate on record clearly says that the project is under central business district (CBD) Zone. The definition for "use and zone" has been filed wherein in Government record as per para 9.1.9 Central Business District means "This is the central business and commercial core of the city which includes a mix of offices, retail and other business uses, along with some residential developments."

City Survey Superintendent, Ahmedabad record also filed by the appellant. M/s. Savani Infrastructure has issued allotment letter dated 10.04.2015 which says as under:

"M/s. Savani Infrastructure is a partnership firm having its registered office at 203, Mauryansh Elenza, Shyamal Cross Road, Satellite having PAN: ACLFS3509F. The firm is executing a construction project of 11 floors situated at 3 World Centre. This is to confirm that floor No. 10 and 11 of our building is allotted to Smt. Narmadaben Savani having PAN: CXVPS4647D residing at 3 Saundarya Villa, Bopal-Ambli Road. She has made the total investment of Rs.82349000/- till 31.03.2015 whose ledger is attached in this allotment letter. The balance amount of investment shall be given to her at the time of transfer of property.

Place: Ahmedabad

Sd/-

The appellant has filed with AO copy of agreement to sell and details of payment to M/s. Savani Infrastructure on 20.12.2017. The agreement to sell is on judicial paper and clause B is reproduced as under:

"The Vendor has thereafter planned to construct a house having total 11 (eleven) floors the built-up area of which is approximately 143498.30 sq. feet and sold out of that 2 (Two) floors to Smt. Narmadaben Savani for a consideration of Rs. 760.96 lacs (Rupees Seven Hundred Sixty lacs Ninety Five Thousand Eight Hundred Thirty One Only)."

It is further seen that an amount of Rs.8,23,49,000/- has been paid to Savani Infrastructure by the appellant on different dates upto 13.03.2015 for booking of residential property. Additionally, the copy of RERA Certificate also proves that the construction project is at an advanced stage and the same will be completed within due course of time. The scanned copy of document dated 20.04.2018 submitted to RERA in four pages is on record which indicates that M/s. Savani Infrastructure has already spent Rs.33,45,25,618/- on the project against the receipt from the appellant of Rs.8,23,49,000/-. Therefore, the appellant owns a small residential portion of the big hybrid project. The appellant is of the view that based on photographs shown in the assessment order cannot be the only ground for disallowing the deduction u/s 54F of the Income Tax Act, 1961 and I concur with this argument as there are various factors which are to be considered as per provisions of the Act. The appellant emphasised that the investment of Rs.8,23,40,000/- has been made and no question is raised on this fact. Once absolute investment is made the appellant is eligible to get deduction u/s.54F as per ratio laid down in the following case laws:

Ajeetkumar Jaiswal vs. ITO- ITA No.1707/Hyd./2016 (A.Y.2013-14)

ACIT vs. Umayal Annamalai - ITA No.415/Mds./2015 & C.O.No.43/Mds/2015 (A.Y.2005-06)

Smt. Rajneet Sandhu Vs. DCIT (ITAT, Chandigarh) - ITA NO.392/CHD/2010 dt. 28.07.2010

Smt. Shashi Verma Vs. CIT-224 ITR 106(MP)

CIT Vs. Sadarmal Kothari - 302 ITR 286 (Mad.)

Mr. P.R. Kulkarni & Sons (HUF) vs. Addl. CIT - ITA No.569/Bang/2009 (A.Y.2006-07)

Even investment in the firm by the appellant were her husband is a partner is not a valid ground because as per Section 2(31) of the Income Tax Act, 1961 individual and firm are-two separate legal persons.

The appellant also has proved the fact that it has received an allotment letter wherein it is mentioned that residential units would be allotted to the appellant by the builder. The entire amount of Capital Gain is invested by her on or before 31/03/2015 which is within Assessment Year 2015-16, the year under consideration. The ratio laid down in the case laws (supra), states that if the entire amount of Capital Gain is invested in new residential property then deduction u/s 54F should be allowed. Shri Ankit Parikh, C.A. repeated his argument on this aspect in two different hearing. It is also noted that the appellant does not own more than one

residential house in the year under consideration. It is also worth noting that construction activity in today's world is based on lot of government approvals and clearances and at times it is beyond the control of the appellant. The investment in the new residential asset is more than the LTCG involved, therefore, claim of deduction u/s.54F is fully allowable. It is my considered opinion which is guided by the ratio laid down in different case laws (supra) that the appellant has fulfilled all stipulated conditions to get deduction u/s.54F for A.Y.2015-16.

Even if the construction activity is not completed within 3 years from the impugned capital gains then the addition which if decided to be made, should be done in the year when the period of 3 years gets elapsed, i.e. the action can be contemplated in A.Y. 2018-19 instead A.Y. 2015-16.

The appellant has submitted evidences and logical explanations to prove both the contention raised as (a) & (b) above as correct. Grounds No.1 & 2 of appeal are accordingly allowed.

6. *In the result, the appeal is partly allowed.”*

9. Therefore, it appears from the above that two controversies revolve around the two major issues being exempt income from sale of agricultural plots and deduction under Section 54F for capital gain earned from the sale of non-agricultural plots which has been decided by the Ld. CIT(A) in favour of the appellant. It is a fact that none of the document has been considered by the Ld. AO to whom the remand report was sought for. It is also acceptable by us that 20 days time is not sufficient enough to give a comment on the set of additional documents submitted by the assessee before the Ld. CIT(A) by the Ld. AO and to prepare a remand report upon due application of mind to enable the Ld. CIT(A) come to a valid conclusion. We find that reasonable opportunity has not been provided to the Ld. AO on this aspect which goes to the root of the matter and therefore, in the absence of such compliance as mandated in the statute the impugned order passed by the Ld. CIT(A) cannot be given a stamp of approval by us. Hence, in our considered opinion the matter required to be remanded to the file of the Ld. AO for proper adjudication of the issues. We, therefore, set-

aside the order passed by the Ld. CIT(A) and restore the issue to the file of the Ld. AO to decide the same afresh upon giving an opportunity of being heard to the assessee and upon considering the additional evidences so adduced by the assessee or any other evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that the assessee would also not seek for any unnecessary adjournment before the Ld. AO and would cooperate with best of his abilities to get the issue resolved. Revenue's appeal is, therefore, allowed for statistical purposes.

10. In the result, the appeal preferred by the Revenue is allowed for statistical purposes.

This Order pronounced in Open Court on 10/06/2022

Sd/-
(PRAMOD M. JAGTAP)
VICE PRESIDENT

Ahmedabad; Dated 10/06/2022

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad